

By: Hernandez Luna

H.B. No. 3229

A BILL TO BE ENTITLED

AN ACT

relating to the right of an employee who is a victim of a crime to time off from work to attend court proceedings related to that crime.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Labor Code, is amended by adding Chapter 84 to read as follows:

CHAPTER 84. EMPLOYEE RIGHT TO ATTEND CERTAIN COURT PROCEEDINGS

Sec. 84.001. DEFINITIONS. In this chapter:

(1) "Employee" means an individual, other than an independent contractor, who, for compensation, performs services for an employer under a written or oral contract of hire, whether express or implied.

(2) "Employer" means a person who employs one or more employees. The term includes a public employer.

(3) "Public employer" means this state and political subdivisions of this state, including:

(A) state, county, and municipal agencies;

(B) public schools, colleges, and universities;

and

(C) river authorities, publicly owned utilities, and other special districts.

(4) "Victim" means an individual who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, or

1 injury to a child, elderly individual, or disabled individual or
2 who has suffered bodily injury as a result of the criminal conduct
3 of another.

4 Sec. 84.002. RIGHT TO ATTEND COURT PROCEEDINGS; NOTICE TO
5 EMPLOYER. An employee who is a victim of a crime or the parent or
6 guardian of a victim of a crime is entitled to time off as provided
7 by this chapter to attend court proceedings related to the crime.

8 Sec. 84.003. USE OF LEAVE TIME. (a) An employee is not
9 required to use existing vacation leave time, personal leave time,
10 or compensatory leave time for the purpose of an absence from work
11 authorized by this chapter except as otherwise provided by a
12 collective bargaining agreement entered into before September 1,
13 2011.

14 (b) The use of leave time under this section may not be
15 restricted by a term or condition adopted under a collective
16 bargaining agreement that is entered into on or after September 1,
17 2011.

18 Sec. 84.004. EFFECT ON EMPLOYEE PAY. An employer may not
19 reduce the pay otherwise owed to an employee for any pay period
20 lasting eight hours or less because the employee took time off
21 during that pay period for the purpose of an absence from work
22 authorized by this chapter.

23 Sec. 84.005. DOCUMENTATION. (a) Except as provided by
24 Subsection (b), on return to work an employee shall provide
25 reasonable documentation to the employer on the employer's request
26 regarding the employee's absence from work to attend court
27 proceedings related to the crime of which the employee or the

1 employee's child or ward was a victim.

2 (b) An employer may not require documentation under
3 Subsection (a) if, under Article 56.02(a)(10), Code of Criminal
4 Procedure, the attorney for the state notifies the employer of the
5 victim or of the parent or guardian of the victim of the necessity
6 of the victim's cooperation and testimony in a proceeding that may
7 necessitate the absence of the victim from work.

8 Sec. 84.006. EMPLOYER RETALIATION PROHIBITED. (a) An
9 employer may not suspend or terminate the employment of, or
10 otherwise discriminate against, an employee who takes time off from
11 work authorized by this chapter.

12 (b) An employee whose employment is suspended or terminated
13 in violation of this chapter is entitled to:

14 (1) reinstatement to the employee's former position or
15 a position that is comparable in terms of compensation, benefits,
16 and other conditions of employment;

17 (2) compensation for wages lost during the period of
18 suspension or termination;

19 (3) reinstatement of any fringe benefits and seniority
20 rights lost because of the suspension or termination; and

21 (4) if the employee brings an action to enforce this
22 section and is the prevailing party, payment by the employer of
23 court costs and reasonable attorney's fees.

24 Sec. 84.007. NOTICE TO EMPLOYEES. (a) Each employer shall
25 inform its employees of their rights under this chapter by posting a
26 conspicuous sign in a prominent location in the employer's
27 workplace.

1 (b) The Texas Workforce Commission by rule shall prescribe
2 the design and content of the sign required by this section.

3 SECTION 2. Article 56.02(a), Code of Criminal Procedure, is
4 amended to read as follows:

5 (a) A victim, guardian of a victim, or close relative of a
6 deceased victim is entitled to the following rights within the
7 criminal justice system:

8 (1) the right to receive from law enforcement agencies
9 adequate protection from harm and threats of harm arising from
10 cooperation with prosecution efforts;

11 (2) the right to have the magistrate take the safety of
12 the victim or his family into consideration as an element in fixing
13 the amount of bail for the accused;

14 (3) the right, if requested, to be informed:

15 (A) by the attorney representing the state of
16 relevant court proceedings, including appellate proceedings, and
17 to be informed if those proceedings have been canceled or
18 rescheduled prior to the event; and

19 (B) by an appellate court of decisions of the
20 court, after the decisions are entered but before the decisions are
21 made public;

22 (4) the right to be informed, when requested, by a
23 peace officer concerning the defendant's right to bail and the
24 procedures in criminal investigations and by the district
25 attorney's office concerning the general procedures in the criminal
26 justice system, including general procedures in guilty plea
27 negotiations and arrangements, restitution, and the appeals and

1 parole process;

2 (5) the right to provide pertinent information to a
3 probation department conducting a presentencing investigation
4 concerning the impact of the offense on the victim and his family by
5 testimony, written statement, or any other manner prior to any
6 sentencing of the offender;

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

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

24 (8) the right to be provided with a waiting area,
25 separate or secure from other witnesses, including the offender and
26 relatives of the offender, before testifying in any proceeding
27 concerning the offender; if a separate waiting area is not

1 available, other safeguards should be taken to minimize the
2 victim's contact with the offender and the offender's relatives and
3 witnesses, before and during court proceedings;

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

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

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

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

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

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

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

6 (14) to the extent provided by Articles 56.06 and
7 56.065, for a victim of a sexual assault, the right to a forensic
8 medical examination if, within 96 hours of the sexual assault, the
9 assault is reported to a law enforcement agency or a forensic
10 medical examination is otherwise conducted at a health care
11 facility; and

12 (15) for a victim of an assault or sexual assault who
13 is younger than 17 years of age or whose case involves family
14 violence, as defined by Section 71.004, Family Code, the right to
15 have the court consider the impact on the victim of a continuance
16 requested by the defendant; if requested by the attorney
17 representing the state or by counsel for the defendant, the court
18 shall state on the record the reason for granting or denying the
19 continuance.

20 SECTION 3. This Act applies only to a suspension,
21 termination, or other adverse employment action that is taken by an
22 employer against an employee because of an employee absence from
23 work authorized under Chapter 84, Labor Code, as added by this Act,
24 that occurs on or after the effective date of this Act. A
25 suspension, termination, or other adverse employment action that is
26 taken by an employer against an employee before the effective date
27 of this Act is governed by the law in effect on the date the

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1 employment action is taken, and the former law is continued in
2 effect for that purpose.

3 SECTION 4. This Act takes effect September 1, 2011.