

By: Thompson of Harris

H.B. No. 2559

Substitute the following for H.B. No. 2559:

By: Herrero

C.S.H.B. No. 2559

A BILL TO BE ENTITLED

AN ACT

relating to the rights of certain victims of sexual assault.

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

SECTION 1. Article 56.01(2-a), Code of Criminal Procedure, is amended to read as follows:

(2-a) "Sexual assault" means ~~[includes]~~ an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code.

SECTION 2. Articles 56.02(a), (c), and (d), Code of Criminal Procedure, are 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

1 court, after the decisions are entered but before the decisions are  
2 made public;

3 (4) the right to be informed, when requested, by a  
4 peace officer concerning the defendant's right to bail and the  
5 procedures in criminal investigations and by the district  
6 attorney's office concerning the general procedures in the criminal  
7 justice system, including general procedures in guilty plea  
8 negotiations and arrangements, restitution, and the appeals and  
9 parole process;

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

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

24 (7) the right to be informed, upon request, of parole  
25 procedures, to participate in the parole process, to be notified,  
26 if requested, of parole proceedings concerning a defendant in the  
27 victim's case, to provide to the Board of Pardons and Paroles for

1 inclusion in the defendant's file information to be considered by  
2 the board prior to the parole of any defendant convicted of any  
3 crime subject to this subchapter, and to be notified, if requested,  
4 of the defendant's release;

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

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

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

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

27 [~~12~~] the right to request victim-offender mediation

1 coordinated by the victim services division of the Texas Department  
2 of Criminal Justice;

3 (12) [~~(13)~~] the right to be informed of the uses of a  
4 victim impact statement and the statement's purpose in the criminal  
5 justice system, to complete the victim impact statement, and to  
6 have the victim impact statement considered:

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

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

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

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

26 (c) The office of the attorney representing the state, and  
27 the sheriff, police, and other law enforcement agencies shall

1 ensure to the extent practicable that a victim, guardian of a  
2 victim, or close relative of a deceased victim is afforded the  
3 rights granted by [~~Subsection (a) of~~] this article and Article  
4 56.021 and, on request, an explanation of those rights.

5 (d) A judge, attorney for the state, peace officer, or law  
6 enforcement agency is not liable for a failure or inability to  
7 provide a right enumerated in this article or Article 56.021. The  
8 failure or inability of any person to provide a right or service  
9 enumerated in this article or Article 56.021 may not be used by a  
10 defendant in a criminal case as a ground for appeal, a ground to set  
11 aside the conviction or sentence, or a ground in a habeas corpus  
12 petition. A victim, guardian of a victim, or close relative of a  
13 deceased victim does not have standing to participate as a party in  
14 a criminal proceeding or to contest the disposition of any charge.

15 SECTION 3. Subchapter A, Chapter 56, Code of Criminal  
16 Procedure, is amended by adding Article 56.021 to read as follows:

17 Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT. (a) In  
18 addition to the rights enumerated in Article 56.02, if the offense  
19 is a sexual assault, the victim, guardian of a victim, or close  
20 relative of a deceased victim is entitled to the following rights  
21 within the criminal justice system:

22 (1) if requested, the right to a disclosure of  
23 information regarding any evidence that was collected during the  
24 investigation of the offense, unless disclosing the information  
25 would interfere with the investigation of the offense, in which  
26 event the victim, guardian, or relative shall be informed of the  
27 estimated date on which that information is expected to be

1 disclosed;

2 (2) if requested, the right to a disclosure of  
3 information regarding the status of any analysis being performed of  
4 any evidence that was collected during the investigation of the  
5 offense;

6 (3) if requested, the right to be notified:

7 (A) at the time a request is submitted to a crime  
8 laboratory to process and analyze any evidence that was collected  
9 during the investigation of the offense;

10 (B) at the time of the submission of a request to  
11 compare any biological evidence collected during the investigation  
12 of the offense with DNA profiles maintained in a state or federal  
13 DNA database; and

14 (C) of the results of the comparison described by  
15 Paragraph (B), unless disclosing the results would interfere with  
16 the investigation of the offense, in which event the victim,  
17 guardian, or relative shall be informed of the estimated date on  
18 which those results are expected to be disclosed;

19 (4) if requested, the right to counseling regarding  
20 acquired immune deficiency syndrome (AIDS) and human  
21 immunodeficiency virus (HIV) infection;

22 (5) for the victim of the offense, testing for  
23 acquired immune deficiency syndrome (AIDS), human immunodeficiency  
24 virus (HIV) infection, antibodies to HIV, or infection with any  
25 other probable causative agent of AIDS; and

26 (6) to the extent provided by Articles 56.06 and  
27 56.065, for the victim of the offense, the right to a forensic

1 medical examination if, within 96 hours of the offense, the offense  
2 is reported to a law enforcement agency or a forensic medical  
3 examination is otherwise conducted at a health care facility.

4 (b) A victim, guardian, or relative who requests to be  
5 notified under Subsection (a)(3) must provide a current address and  
6 phone number to the attorney representing the state and the law  
7 enforcement agency that is investigating the offense. The victim,  
8 guardian, or relative must inform the attorney representing the  
9 state and the law enforcement agency of any change in the address or  
10 phone number.

11 (c) A victim, guardian, or relative may designate a person,  
12 including an entity that provides services to victims of sexual  
13 assault, to receive any notice requested under Subsection (a)(3).

14 SECTION 4. Article 56.03(b), Code of Criminal Procedure, is  
15 amended to read as follows:

16 (b) The victim impact statement must be in a form designed  
17 to inform a victim, guardian of a victim, or a close relative of a  
18 deceased victim with a clear statement of rights provided by  
19 Articles [Article] 56.02 and 56.021 and to collect the following  
20 information:

21 (1) the name of the victim of the offense or, if the  
22 victim has a legal guardian or is deceased, the name of a guardian  
23 or close relative of the victim;

24 (2) the address and telephone number of the victim,  
25 guardian, or relative through which the victim, guardian of a  
26 victim, or a close relative of a deceased victim, may be contacted;

27 (3) a statement of economic loss suffered by the

1 victim, guardian, or relative as a result of the offense;

2 (4) a statement of any physical or psychological  
3 injury suffered by the victim, guardian, or relative as a result of  
4 the offense, as described by the victim, guardian, relative, or by a  
5 physician or counselor;

6 (5) a statement of any psychological services  
7 requested as a result of the offense;

8 (6) a statement of any change in the victim's,  
9 guardian's, or relative's personal welfare or familial relationship  
10 as a result of the offense;

11 (7) a statement as to whether or not the victim,  
12 guardian, or relative wishes to be notified in the future of any  
13 parole hearing for the defendant and an explanation as to the  
14 procedures by which the victim, guardian, or relative may obtain  
15 information concerning the release of the defendant from the Texas  
16 Department of Criminal Justice; and

17 (8) any other information, other than facts related to  
18 the commission of the offense, related to the impact of the offense  
19 on the victim, guardian, or relative.

20 SECTION 5. Article 56.04(b), Code of Criminal Procedure, is  
21 amended to read as follows:

22 (b) The duty of the victim assistance coordinator is to  
23 ensure that a victim, guardian of a victim, or close relative of a  
24 deceased victim is afforded the rights granted victims, guardians,  
25 and relatives by Articles [~~Article~~] 56.02 and 56.021 [~~of this~~  
26 ~~code~~]. The victim assistance coordinator shall work closely with  
27 appropriate law enforcement agencies, prosecuting attorneys, the



1 Board of Pardons and Paroles, and the judiciary in carrying out that  
2 duty.

3 SECTION 6. Articles 56.045(b) and (f), Code of Criminal  
4 Procedure, are amended to read as follows:

5 (b) The advocate may only provide the injured person with:

6 (1) counseling and other support services; and

7 (2) information regarding the rights of crime victims  
8 under Articles [~~Article~~] 56.02 and 56.021.

9 (f) If a person alleging to have sustained injuries as the  
10 victim of a sexual assault was confined in a penal institution, as  
11 defined by Section 1.07, Penal Code, at the time of the alleged  
12 assault, the penal institution shall provide, at the person's  
13 request, a representative to be present with the person at any  
14 forensic medical examination conducted for the purpose of  
15 collecting and preserving evidence related to the investigation or  
16 prosecution of the alleged assault. The representative may only  
17 provide the injured person with counseling and other support  
18 services and with information regarding the rights of crime victims  
19 under Articles [~~Article~~] 56.02 and 56.021 and may not delay or  
20 otherwise impede the screening or stabilization of an emergency  
21 medical condition. The representative must be approved by the  
22 penal institution and must be a:

23 (1) psychologist;

24 (2) sociologist;

25 (3) chaplain;

26 (4) social worker;

27 (5) case manager; or

1           (6) volunteer who has completed a sexual assault  
2 training program described by Section 420.011(b), Government Code.

3           SECTION 7. Article 56.07(a), Code of Criminal Procedure, is  
4 amended to read as follows:

5           (a) At the initial contact or at the earliest possible time  
6 after the initial contact between the victim of a reported crime and  
7 the law enforcement agency having the responsibility for  
8 investigating that crime, that agency shall provide the victim a  
9 written notice containing:

10           (1) information about the availability of emergency  
11 and medical services, if applicable;

12           (2) notice that the victim has the right to receive  
13 information regarding compensation to victims of crime as provided  
14 by Subchapter B, Chapter 56, including information about:

15                   (A) the costs that may be compensated under that  
16 Act and the amount of compensation, eligibility for compensation,  
17 and procedures for application for compensation under that Act;

18                   (B) the payment for a medical examination for a  
19 victim of a sexual assault under Article 56.06 of this code; and

20                   (C) referral to available social service  
21 agencies that may offer additional assistance;

22           (3) the name, address, and phone number of the law  
23 enforcement agency's victim assistance liaison;

24           (4) the address, phone number, and name of the crime  
25 victim assistance coordinator of the office of the attorney  
26 representing the state;

27           (5) the following statement:

1 "You may call the law enforcement agency's telephone number  
2 for the status of the case and information about victims' rights";  
3 and

4 (6) the rights of crime victims under Articles  
5 [~~Article~~] 56.02 and 56.021 [~~of this code~~].

6 SECTION 8. Section 57.002(a), Family Code, is amended to  
7 read as follows:

8 (a) A victim, guardian of a victim, or close relative of a  
9 deceased victim is entitled to the following rights within the  
10 juvenile justice system:

11 (1) the right to receive from law enforcement agencies  
12 adequate protection from harm and threats of harm arising from  
13 cooperation with prosecution efforts;

14 (2) the right to have the court or person appointed by  
15 the court take the safety of the victim or the victim's family into  
16 consideration as an element in determining whether the child should  
17 be detained before the child's conduct is adjudicated;

18 (3) the right, if requested, to be informed of  
19 relevant court proceedings, including appellate proceedings, and  
20 to be informed in a timely manner if those court proceedings have  
21 been canceled or rescheduled;

22 (4) the right to be informed, when requested, by the  
23 court or a person appointed by the court concerning the procedures  
24 in the juvenile justice system, including general procedures  
25 relating to:

26 (A) the preliminary investigation and deferred  
27 prosecution of a case; and

1 (B) the appeal of the case;

2 (5) the right to provide pertinent information to a  
3 juvenile court conducting a disposition hearing concerning the  
4 impact of the offense on the victim and the victim's family by  
5 testimony, written statement, or any other manner before the court  
6 renders its disposition;

7 (6) the right to receive information regarding  
8 compensation to victims as provided by Subchapter B, Chapter 56,  
9 Code of Criminal Procedure, including information related to the  
10 costs that may be compensated under that subchapter and the amount  
11 of compensation, eligibility for compensation, and procedures for  
12 application for compensation under that subchapter, the payment of  
13 medical expenses under Section 56.06, Code of Criminal Procedure,  
14 for a victim of a sexual assault, and when requested, to referral to  
15 available social service agencies that may offer additional  
16 assistance;

17 (7) the right to be informed, upon request, of  
18 procedures for release under supervision or transfer of the person  
19 to the custody of the Texas Department of Criminal Justice for  
20 parole, to participate in the release or transfer for parole  
21 process, to be notified, if requested, of the person's release,  
22 escape, or transfer for parole proceedings concerning the person,  
23 to provide to the Texas Juvenile Justice Department [~~Texas Youth~~  
24 ~~Commission~~] for inclusion in the person's file information to be  
25 considered by the commission before the release under supervision  
26 or transfer for parole of the person, and to be notified, if  
27 requested, of the person's release or transfer for parole;

1           (8) the right to be provided with a waiting area,  
2 separate or secure from other witnesses, including the child  
3 alleged to have committed the conduct and relatives of the child,  
4 before testifying in any proceeding concerning the child, or, if a  
5 separate waiting area is not available, other safeguards should be  
6 taken to minimize the victim's contact with the child and the  
7 child's relatives and witnesses, before and during court  
8 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 be present at all public court  
18 proceedings related to the conduct of the child as provided by  
19 Section 54.08, subject to that section; and

20           (12) any other right appropriate to the victim that a  
21 victim of criminal conduct has under Article 56.02 or 56.021, Code  
22 of Criminal Procedure.

23           SECTION 9. To allow the Texas Crime Victim Clearinghouse  
24 sufficient time to update the victim impact statement form as  
25 required by Article 56.03(h), Code of Criminal Procedure, a law  
26 enforcement agency, prosecutor, or other participant in the  
27 criminal justice system is not required to use a victim impact

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1 statement form that complies with Article 56.03, Code of Criminal  
2 Procedure, as amended by this Act, until January 1, 2014.

3 SECTION 10. This Act takes effect September 1, 2013.