

By: Thompson of Harris

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) the right to request information regarding any
23 evidence that was collected during the investigation of the offense
24 and the status of any analysis being performed of the evidence;

25 (2) the right to request to be notified:

26 (A) at the time evidence collected during the
27 investigation of the offense is submitted to a crime laboratory for

1 analysis;

2 (B) of the results of any comparison of the
3 biological evidence collected during the investigation of the
4 offense with DNA profiles maintained in any DNA database; and

5 (C) at the time the DNA profile of any suspect is
6 provided to appropriate state or federal DNA databases;

7 (3) if the offense is a sexual assault:

8 (A) the right to counseling, on request,
9 regarding acquired immune deficiency syndrome (AIDS) and human
10 immunodeficiency virus (HIV) infection; and

11 (B) for the victim of the offense, testing for
12 acquired immune deficiency syndrome (AIDS), human immunodeficiency
13 virus (HIV) infection, antibodies to HIV, or infection with any
14 other probable causative agent of AIDS; and

15 (4) to the extent provided by Articles 56.06 and
16 56.065, for a victim of a sexual assault, the right to a forensic
17 medical examination if, within 96 hours of the sexual assault, the
18 assault is reported to a law enforcement agency or a forensic
19 medical examination is otherwise conducted at a health care
20 facility.

21 (b) A victim who requests to be notified under Subsection
22 (a)(2) must provide the attorney representing the state and the law
23 enforcement agency that is investigating the offense with the
24 victim's current address and phone number. The victim must inform
25 the attorney representing the state and the law enforcement agency
26 of any change in the victim's address or phone number.

27 (c) A victim of a sexual assault may designate a person,

1 including an entity that provides services to victims of sexual
2 assault, to receive any notice requested by the victim under
3 Subsection (a)(2).

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

6 (b) The victim impact statement must be in a form designed
7 to inform a victim, guardian of a victim, or a close relative of a
8 deceased victim with a clear statement of rights provided by
9 Articles [Article] 56.02 and 56.021 and to collect the following
10 information:

11 (1) the name of the victim of the offense or, if the
12 victim has a legal guardian or is deceased, the name of a guardian
13 or close relative of the victim;

14 (2) the address and telephone number of the victim,
15 guardian, or relative through which the victim, guardian of a
16 victim, or a close relative of a deceased victim, may be contacted;

17 (3) a statement of economic loss suffered by the
18 victim, guardian, or relative as a result of the offense;

19 (4) a statement of any physical or psychological
20 injury suffered by the victim, guardian, or relative as a result of
21 the offense, as described by the victim, guardian, relative, or by a
22 physician or counselor;

23 (5) a statement of any psychological services
24 requested as a result of the offense;

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

1 (7) a statement as to whether or not the victim,
2 guardian, or relative wishes to be notified in the future of any
3 parole hearing for the defendant and an explanation as to the
4 procedures by which the victim, guardian, or relative may obtain
5 information concerning the release of the defendant from the Texas
6 Department of Criminal Justice; and

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

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

12 (b) The duty of the victim assistance coordinator is to
13 ensure that a victim, guardian of a victim, or close relative of a
14 deceased victim is afforded the rights granted victims, guardians,
15 and relatives by Articles [~~Article~~] 56.02 and 56.021 [~~of this~~
16 ~~code~~]. The victim assistance coordinator shall work closely with
17 appropriate law enforcement agencies, prosecuting attorneys, the
18 Board of Pardons and Paroles, and the judiciary in carrying out that
19 duty.

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

22 (b) The advocate may only provide the injured person with:
23 (1) counseling and other support services; and
24 (2) information regarding the rights of crime victims
25 under Articles [~~Article~~] 56.02 and 56.021.

26 (f) If a person alleging to have sustained injuries as the
27 victim of a sexual assault was confined in a penal institution, as

1 defined by Section 1.07, Penal Code, at the time of the alleged
2 assault, the penal institution shall provide, at the person's
3 request, a representative to be present with the person at any
4 forensic medical examination conducted for the purpose of
5 collecting and preserving evidence related to the investigation or
6 prosecution of the alleged assault. The representative may only
7 provide the injured person with counseling and other support
8 services and with information regarding the rights of crime victims
9 under Articles [~~Article~~] 56.02 and 56.021 and may not delay or
10 otherwise impede the screening or stabilization of an emergency
11 medical condition. The representative must be approved by the
12 penal institution and must be a:

- 13 (1) psychologist;
- 14 (2) sociologist;
- 15 (3) chaplain;
- 16 (4) social worker;
- 17 (5) case manager; or
- 18 (6) volunteer who has completed a sexual assault
19 training program described by Section 420.011(b), Government Code.

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

22 (a) At the initial contact or at the earliest possible time
23 after the initial contact between the victim of a reported crime and
24 the law enforcement agency having the responsibility for
25 investigating that crime, that agency shall provide the victim a
26 written notice containing:

- 27 (1) information about the availability of emergency

1 and medical services, if applicable;

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

5 (A) the costs that may be compensated under that
6 Act and the amount of compensation, eligibility for compensation,
7 and procedures for application for compensation under that Act;

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

10 (C) referral to available social service
11 agencies that may offer additional assistance;

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

14 (4) the address, phone number, and name of the crime
15 victim assistance coordinator of the office of the attorney
16 representing the state;

17 (5) the following statement:

18 "You may call the law enforcement agency's telephone number
19 for the status of the case and information about victims' rights";
20 and

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

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

25 (a) A victim, guardian of a victim, or close relative of a
26 deceased victim is entitled to the following rights within the
27 juvenile justice system:

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

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

8 (3) the right, if requested, to be informed of
9 relevant court proceedings, including appellate proceedings, and
10 to be informed in a timely manner if those court proceedings have
11 been canceled or rescheduled;

12 (4) the right to be informed, when requested, by the
13 court or a person appointed by the court concerning the procedures
14 in the juvenile justice system, including general procedures
15 relating to:

16 (A) the preliminary investigation and deferred
17 prosecution of a case; and

18 (B) the appeal of the case;

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

24 (6) the right to receive information regarding
25 compensation to victims as provided by Subchapter B, Chapter 56,
26 Code of Criminal Procedure, including information related to the
27 costs that may be compensated under that subchapter and the amount

1 of compensation, eligibility for compensation, and procedures for
2 application for compensation under that subchapter, the payment of
3 medical expenses under Section 56.06, Code of Criminal Procedure,
4 for a victim of a sexual assault, and when requested, to referral to
5 available social service agencies that may offer additional
6 assistance;

7 (7) the right to be informed, upon request, of
8 procedures for release under supervision or transfer of the person
9 to the custody of the Texas Department of Criminal Justice for
10 parole, to participate in the release or transfer for parole
11 process, to be notified, if requested, of the person's release,
12 escape, or transfer for parole proceedings concerning the person,
13 to provide to the Texas Juvenile Justice Department [~~Texas Youth~~
14 ~~Commission~~] for inclusion in the person's file information to be
15 considered by the commission before the release under supervision
16 or transfer for parole of the person, and to be notified, if
17 requested, of the person's release or transfer for parole;

18 (8) the right to be provided with a waiting area,
19 separate or secure from other witnesses, including the child
20 alleged to have committed the conduct and relatives of the child,
21 before testifying in any proceeding concerning the child, or, if a
22 separate waiting area is not available, other safeguards should be
23 taken to minimize the victim's contact with the child and the
24 child's relatives and witnesses, before and during court
25 proceedings;

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

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

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

7 (11) the right to be present at all public court
8 proceedings related to the conduct of the child as provided by
9 Section 54.08, subject to that section; and

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

13 SECTION 9. To allow the Texas Crime Victim Clearinghouse
14 sufficient time to update the victim impact statement form as
15 required by Article 56.03(h), Code of Criminal Procedure, a law
16 enforcement agency, prosecutor, or other participant in the
17 criminal justice system is not required to use a victim impact
18 statement form that complies with Article 56.03, Code of Criminal
19 Procedure, as amended by this Act, until January 1, 2014.

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