

1-1 By: Davis S.B. No. 1192
 1-2 (In the Senate - Filed March 6, 2013; March 12, 2013, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 22, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0; April 22, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1192 By: Schwertner

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the rights of certain victims of sexual assault.
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-21 SECTION 1. Subdivision (2-a), Article 56.01, Code of
 1-22 Criminal Procedure, is amended to read as follows:
 1-23 (2-a) "Sexual assault" means ~~includes~~ an offense
 1-24 under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code.
 1-25 SECTION 2. Subsections (a), (c), and (d), Article 56.02,
 1-26 Code of Criminal Procedure, are amended to read as follows:
 1-27 (a) A victim, guardian of a victim, or close relative of a
 1-28 deceased victim is entitled to the following rights within the
 1-29 criminal justice system:
 1-30 (1) the right to receive from law enforcement agencies
 1-31 adequate protection from harm and threats of harm arising from
 1-32 cooperation with prosecution efforts;
 1-33 (2) the right to have the magistrate take the safety of
 1-34 the victim or his family into consideration as an element in fixing
 1-35 the amount of bail for the accused;
 1-36 (3) the right, if requested, to be informed:
 1-37 (A) by the attorney representing the state of
 1-38 relevant court proceedings, including appellate proceedings, and
 1-39 to be informed if those proceedings have been canceled or
 1-40 rescheduled prior to the event; and
 1-41 (B) by an appellate court of decisions of the
 1-42 court, after the decisions are entered but before the decisions are
 1-43 made public;
 1-44 (4) the right to be informed, when requested, by a
 1-45 peace officer concerning the defendant's right to bail and the
 1-46 procedures in criminal investigations and by the district
 1-47 attorney's office concerning the general procedures in the criminal
 1-48 justice system, including general procedures in guilty plea
 1-49 negotiations and arrangements, restitution, and the appeals and
 1-50 parole process;
 1-51 (5) the right to provide pertinent information to a
 1-52 probation department conducting a presentencing investigation
 1-53 concerning the impact of the offense on the victim and his family by
 1-54 testimony, written statement, or any other manner prior to any
 1-55 sentencing of the offender;
 1-56 (6) the right to receive information regarding
 1-57 compensation to victims of crime as provided by Subchapter B,
 1-58 including information related to the costs that may be compensated
 1-59 under that subchapter and the amount of compensation, eligibility
 1-60 for compensation, and procedures for application for compensation

2-1 under that subchapter, the payment for a medical examination under
 2-2 Article 56.06 for a victim of a sexual assault, and when requested,
 2-3 to referral to available social service agencies that may offer
 2-4 additional assistance;

2-5 (7) the right to be informed, upon request, of parole
 2-6 procedures, to participate in the parole process, to be notified,
 2-7 if requested, of parole proceedings concerning a defendant in the
 2-8 victim's case, to provide to the Board of Pardons and Paroles for
 2-9 inclusion in the defendant's file information to be considered by
 2-10 the board prior to the parole of any defendant convicted of any
 2-11 crime subject to this subchapter, and to be notified, if requested,
 2-12 of the defendant's release;

2-13 (8) the right to be provided with a waiting area,
 2-14 separate or secure from other witnesses, including the offender and
 2-15 relatives of the offender, before testifying in any proceeding
 2-16 concerning the offender; if a separate waiting area is not
 2-17 available, other safeguards should be taken to minimize the
 2-18 victim's contact with the offender and the offender's relatives and
 2-19 witnesses, before and during court proceedings;

2-20 (9) the right to prompt return of any property of the
 2-21 victim that is held by a law enforcement agency or the attorney for
 2-22 the state as evidence when the property is no longer required for
 2-23 that purpose;

2-24 (10) the right to have the attorney for the state
 2-25 notify the employer of the victim, if requested, of the necessity of
 2-26 the victim's cooperation and testimony in a proceeding that may
 2-27 necessitate the absence of the victim from work for good cause;

2-28 (11) ~~[the right to counseling, on request, regarding~~
 2-29 ~~acquired immune deficiency syndrome (AIDS) and human~~
 2-30 ~~immunodeficiency virus (HIV) infection and testing for acquired~~
 2-31 ~~immune deficiency syndrome (AIDS), human immunodeficiency virus~~
 2-32 ~~(HIV) infection, antibodies to HIV, or infection with any other~~
 2-33 ~~probable causative agent of AIDS, if the offense is an offense under~~
 2-34 ~~Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;~~

2-35 ~~[(12)]~~ the right to request victim-offender mediation
 2-36 coordinated by the victim services division of the Texas Department
 2-37 of Criminal Justice;

2-38 (12) ~~[(13)]~~ the right to be informed of the uses of a
 2-39 victim impact statement and the statement's purpose in the criminal
 2-40 justice system, to complete the victim impact statement, and to
 2-41 have the victim impact statement considered:

2-42 (A) by the attorney representing the state and
 2-43 the judge before sentencing or before a plea bargain agreement is
 2-44 accepted; and

2-45 (B) by the Board of Pardons and Paroles before an
 2-46 inmate is released on parole;

2-47 ~~[(14) to the extent provided by Articles 56.06 and~~
 2-48 ~~56.065, for a victim of a sexual assault, the right to a forensic~~
 2-49 ~~medical examination if, within 96 hours of the sexual assault, the~~
 2-50 ~~assault is reported to a law enforcement agency or a forensic~~
 2-51 ~~medical examination is otherwise conducted at a health care~~
 2-52 ~~facility;] and~~

2-53 (13) ~~[(15)]~~ for a victim of an assault or sexual
 2-54 assault who is younger than 17 years of age or whose case involves
 2-55 family violence, as defined by Section 71.004, Family Code, the
 2-56 right to have the court consider the impact on the victim of a
 2-57 continuance requested by the defendant; if requested by the
 2-58 attorney representing the state or by counsel for the defendant,
 2-59 the court shall state on the record the reason for granting or
 2-60 denying the continuance.

2-61 (c) The office of the attorney representing the state, and
 2-62 the sheriff, police, and other law enforcement agencies shall
 2-63 ensure to the extent practicable that a victim, guardian of a
 2-64 victim, or close relative of a deceased victim is afforded the
 2-65 rights granted by ~~[Subsection (a) of]~~ this article and Article
 2-66 56.021 and, on request, an explanation of those rights.

2-67 (d) A judge, attorney for the state, peace officer, or law
 2-68 enforcement agency is not liable for a failure or inability to
 2-69 provide a right enumerated in this article or Article 56.021. The

3-1 failure or inability of any person to provide a right or service
3-2 enumerated in this article or Article 56.021 may not be used by a
3-3 defendant in a criminal case as a ground for appeal, a ground to set
3-4 aside the conviction or sentence, or a ground in a habeas corpus
3-5 petition. A victim, guardian of a victim, or close relative of a
3-6 deceased victim does not have standing to participate as a party in
3-7 a criminal proceeding or to contest the disposition of any charge.

3-8 SECTION 3. Subchapter A, Chapter 56, Code of Criminal
3-9 Procedure, is amended by adding Article 56.021 to read as follows:

3-10 Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT. (a) In
3-11 addition to the rights enumerated in Article 56.02, if the offense
3-12 is a sexual assault, the victim, guardian of a victim, or close
3-13 relative of a deceased victim is entitled to the following rights
3-14 within the criminal justice system:

3-15 (1) if requested, the right to a disclosure of
3-16 information regarding any evidence that was collected during the
3-17 investigation of the offense, unless disclosing the information
3-18 would interfere with the investigation of the offense, in which
3-19 event the victim, guardian, or relative shall be informed of the
3-20 estimated date on which that information is expected to be
3-21 disclosed;

3-22 (2) if requested, the right to a disclosure of
3-23 information regarding the status of any analysis being performed of
3-24 any evidence that was collected during the investigation of the
3-25 offense;

3-26 (3) if requested, the right to be notified:
3-27 (A) at the time a request is submitted to a crime
3-28 laboratory to process and analyze any evidence that was collected
3-29 during the investigation of the offense;

3-30 (B) at the time of the submission of a request to
3-31 compare any biological evidence collected during the investigation
3-32 of the offense with DNA profiles maintained in a state or federal
3-33 DNA database; and

3-34 (C) of the results of the comparison described by
3-35 Paragraph (B), unless disclosing the results would interfere with
3-36 the investigation of the offense, in which event the victim,
3-37 guardian, or relative shall be informed of the estimated date on
3-38 which those results are expected to be disclosed;

3-39 (4) if requested, the right to counseling regarding
3-40 acquired immune deficiency syndrome (AIDS) and human
3-41 immunodeficiency virus (HIV) infection;

3-42 (5) for the victim of the offense, testing for
3-43 acquired immune deficiency syndrome (AIDS), human immunodeficiency
3-44 virus (HIV) infection, antibodies to HIV, or infection with any
3-45 other probable causative agent of AIDS; and

3-46 (6) to the extent provided by Articles 56.06 and
3-47 56.065, for the victim of the offense, the right to a forensic
3-48 medical examination if, within 96 hours of the offense, the offense
3-49 is reported to a law enforcement agency or a forensic medical
3-50 examination is otherwise conducted at a health care facility.

3-51 (b) A victim, guardian, or relative who requests to be
3-52 notified under Subsection (a)(3) must provide a current address and
3-53 phone number to the attorney representing the state and the law
3-54 enforcement agency that is investigating the offense. The victim,
3-55 guardian, or relative must inform the attorney representing the
3-56 state and the law enforcement agency of any change in the address or
3-57 phone number.

3-58 (c) A victim, guardian, or relative may designate a person,
3-59 including an entity that provides services to victims of sexual
3-60 assault, to receive any notice requested under Subsection (a)(3).

3-61 SECTION 4. Subsection (b), Article 56.03, Code of Criminal
3-62 Procedure, is amended to read as follows:

3-63 (b) The victim impact statement must be in a form designed
3-64 to inform a victim, guardian of a victim, or a close relative of a
3-65 deceased victim with a clear statement of rights provided by
3-66 Articles [Article] 56.02 and 56.021 and to collect the following
3-67 information:

3-68 (1) the name of the victim of the offense or, if the
3-69 victim has a legal guardian or is deceased, the name of a guardian

4-1 or close relative of the victim;

4-2 (2) the address and telephone number of the victim,

4-3 guardian, or relative through which the victim, guardian of a

4-4 victim, or a close relative of a deceased victim, may be contacted;

4-5 (3) a statement of economic loss suffered by the

4-6 victim, guardian, or relative as a result of the offense;

4-7 (4) a statement of any physical or psychological

4-8 injury suffered by the victim, guardian, or relative as a result of

4-9 the offense, as described by the victim, guardian, relative, or by a

4-10 physician or counselor;

4-11 (5) a statement of any psychological services

4-12 requested as a result of the offense;

4-13 (6) a statement of any change in the victim's,

4-14 guardian's, or relative's personal welfare or familial relationship

4-15 as a result of the offense;

4-16 (7) a statement as to whether or not the victim,

4-17 guardian, or relative wishes to be notified in the future of any

4-18 parole hearing for the defendant and an explanation as to the

4-19 procedures by which the victim, guardian, or relative may obtain

4-20 information concerning the release of the defendant from the Texas

4-21 Department of Criminal Justice; and

4-22 (8) any other information, other than facts related to

4-23 the commission of the offense, related to the impact of the offense

4-24 on the victim, guardian, or relative.

4-25 SECTION 5. Subsection (b), Article 56.04, Code of Criminal

4-26 Procedure, is amended to read as follows:

4-27 (b) The duty of the victim assistance coordinator is to

4-28 ensure that a victim, guardian of a victim, or close relative of a

4-29 deceased victim is afforded the rights granted victims, guardians,

4-30 and relatives by Articles [Article] 56.02 and 56.021 [of this

4-31 ~~code]~~. The victim assistance coordinator shall work closely with

4-32 appropriate law enforcement agencies, prosecuting attorneys, the

4-33 Board of Pardons and Paroles, and the judiciary in carrying out that

4-34 duty.

4-35 SECTION 6. Subsections (b) and (f), Article 56.045, Code of

4-36 Criminal Procedure, are amended to read as follows:

4-37 (b) The advocate may only provide the injured person with:

4-38 (1) counseling and other support services; and

4-39 (2) information regarding the rights of crime victims

4-40 under Articles [Article] 56.02 and 56.021.

4-41 (f) If a person alleging to have sustained injuries as the

4-42 victim of a sexual assault was confined in a penal institution, as

4-43 defined by Section 1.07, Penal Code, at the time of the alleged

4-44 assault, the penal institution shall provide, at the person's

4-45 request, a representative to be present with the person at any

4-46 forensic medical examination conducted for the purpose of

4-47 collecting and preserving evidence related to the investigation or

4-48 prosecution of the alleged assault. The representative may only

4-49 provide the injured person with counseling and other support

4-50 services and with information regarding the rights of crime victims

4-51 under Articles [Article] 56.02 and 56.021 and may not delay or

4-52 otherwise impede the screening or stabilization of an emergency

4-53 medical condition. The representative must be approved by the

4-54 penal institution and must be a:

4-55 (1) psychologist;

4-56 (2) sociologist;

4-57 (3) chaplain;

4-58 (4) social worker;

4-59 (5) case manager; or

4-60 (6) volunteer who has completed a sexual assault

4-61 training program described by Section 420.011(b), Government Code.

4-62 SECTION 7. Subsection (a), Article 56.07, Code of Criminal

4-63 Procedure, is amended to read as follows:

4-64 (a) At the initial contact or at the earliest possible time

4-65 after the initial contact between the victim of a reported crime and

4-66 the law enforcement agency having the responsibility for

4-67 investigating that crime, that agency shall provide the victim a

4-68 written notice containing:

4-69 (1) information about the availability of emergency

5-1 and medical services, if applicable;

5-2 (2) notice that the victim has the right to receive
5-3 information regarding compensation to victims of crime as provided
5-4 by Subchapter B, Chapter 56, including information about:

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

5-8 (B) the payment for a medical examination for a
5-9 victim of a sexual assault under Article 56.06 of this code; and

5-10 (C) referral to available social service
5-11 agencies that may offer additional assistance;

5-12 (3) the name, address, and phone number of the law
5-13 enforcement agency's victim assistance liaison;

5-14 (4) the address, phone number, and name of the crime
5-15 victim assistance coordinator of the office of the attorney
5-16 representing the state;

5-17 (5) the following statement:

5-18 "You may call the law enforcement agency's telephone number
5-19 for the status of the case and information about victims' rights";
5-20 and

5-21 (6) the rights of crime victims under Articles
5-22 [~~Article~~] 56.02 and 56.021 [~~of this code~~].

5-23 SECTION 8. Subsection (a), Section 57.002, Family Code, is
5-24 amended to read as follows:

5-25 (a) A victim, guardian of a victim, or close relative of a
5-26 deceased victim is entitled to the following rights within the
5-27 juvenile justice system:

5-28 (1) the right to receive from law enforcement agencies
5-29 adequate protection from harm and threats of harm arising from
5-30 cooperation with prosecution efforts;

5-31 (2) the right to have the court or person appointed by
5-32 the court take the safety of the victim or the victim's family into
5-33 consideration as an element in determining whether the child should
5-34 be detained before the child's conduct is adjudicated;

5-35 (3) the right, if requested, to be informed of
5-36 relevant court proceedings, including appellate proceedings, and
5-37 to be informed in a timely manner if those court proceedings have
5-38 been canceled or rescheduled;

5-39 (4) the right to be informed, when requested, by the
5-40 court or a person appointed by the court concerning the procedures
5-41 in the juvenile justice system, including general procedures
5-42 relating to:

5-43 (A) the preliminary investigation and deferred
5-44 prosecution of a case; and

5-45 (B) the appeal of the case;

5-46 (5) the right to provide pertinent information to a
5-47 juvenile court conducting a disposition hearing concerning the
5-48 impact of the offense on the victim and the victim's family by
5-49 testimony, written statement, or any other manner before the court
5-50 renders its disposition;

5-51 (6) the right to receive information regarding
5-52 compensation to victims as provided by Subchapter B, Chapter 56,
5-53 Code of Criminal Procedure, including information related to the
5-54 costs that may be compensated under that subchapter and the amount
5-55 of compensation, eligibility for compensation, and procedures for
5-56 application for compensation under that subchapter, the payment of
5-57 medical expenses under Section 56.06, Code of Criminal Procedure,
5-58 for a victim of a sexual assault, and when requested, to referral to
5-59 available social service agencies that may offer additional
5-60 assistance;

5-61 (7) the right to be informed, upon request, of
5-62 procedures for release under supervision or transfer of the person
5-63 to the custody of the Texas Department of Criminal Justice for
5-64 parole, to participate in the release or transfer for parole
5-65 process, to be notified, if requested, of the person's release,
5-66 escape, or transfer for parole proceedings concerning the person,
5-67 to provide to the Texas Juvenile Justice Department [~~Texas Youth~~
5-68 ~~Commission~~] for inclusion in the person's file information to be
5-69 considered by the commission before the release under supervision

6-1 or transfer for parole of the person, and to be notified, if
6-2 requested, of the person's release or transfer for parole;

6-3 (8) the right to be provided with a waiting area,
6-4 separate or secure from other witnesses, including the child
6-5 alleged to have committed the conduct and relatives of the child,
6-6 before testifying in any proceeding concerning the child, or, if a
6-7 separate waiting area is not available, other safeguards should be
6-8 taken to minimize the victim's contact with the child and the
6-9 child's relatives and witnesses, before and during court
6-10 proceedings;

6-11 (9) the right to prompt return of any property of the
6-12 victim that is held by a law enforcement agency or the attorney for
6-13 the state as evidence when the property is no longer required for
6-14 that purpose;

6-15 (10) the right to have the attorney for the state
6-16 notify the employer of the victim, if requested, of the necessity of
6-17 the victim's cooperation and testimony in a proceeding that may
6-18 necessitate the absence of the victim from work for good cause;

6-19 (11) the right to be present at all public court
6-20 proceedings related to the conduct of the child as provided by
6-21 Section 54.08, subject to that section; and

6-22 (12) any other right appropriate to the victim that a
6-23 victim of criminal conduct has under Article 56.02 or 56.021, Code
6-24 of Criminal Procedure.

6-25 SECTION 9. To allow the Texas Crime Victim Clearinghouse
6-26 sufficient time to update the victim impact statement form as
6-27 required by Subsection (h), Article 56.03, Code of Criminal
6-28 Procedure, a law enforcement agency, prosecutor, or other
6-29 participant in the criminal justice system is not required to use a
6-30 victim impact statement form that complies with Article 56.03, Code
6-31 of Criminal Procedure, as amended by this Act, until January 1,
6-32 2014.

6-33 SECTION 10. This Act takes effect September 1, 2013.

6-34 * * * * *