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By:  Farrar H.B. No. 3566

A BILL TO BE ENTITLED

AN ACT

relating to the forensic examination of a victim of an alleged strangulation assault or sexual assault.

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

SECTION 1.  Article 56.01, Code of Criminal Procedure, is amended by adding Subdivisions (1-a) and (2-b) and amending Subdivision (3) to read as follows:

(1-a)  "Forensic nurse" means a registered nurse who provides care primarily to populations affected by violence and trauma and who has received at least two hours of training on the treatment of victims of family violence and strangulation.

(2-b)  "Strangulation assault" means an offense under Section 22.01, 22.011, 22.02, 22.021, 22.04, or 22.05, Penal Code, that is committed by impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

(3)  "Victim" means a person who is the victim of the offense of assault, aggravated assault, sexual assault, kidnapping, aggravated robbery, trafficking of persons, deadly conduct, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another.

SECTION 2.  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 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 for a victim of a sexual assault under Article 56.06 or 56.065 or for a victim of a strangulation [~~sexual~~] assault under Article 56.066 or 56.067, 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 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 request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice;

(12)  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;

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

(14)  if the offense is a capital felony, the right to:

(A)  receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist;

(B)  not be contacted by the victim outreach specialist unless the victim, guardian, or relative has consented to the contact by providing a written notice to the court; and

(C)  designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

SECTION 3.  Subchapter A, Chapter 56, Code of Criminal Procedure, is amended by adding Articles 56.066 and 56.067 to read as follows:

Art. 56.066.  MEDICAL EXAMINATION FOR STRANGULATION ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS. (a) If a strangulation assault is reported to a law enforcement agency within 120 hours of the assault, the law enforcement agency, with the consent of the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a forensic medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a forensic medical examination under this subsection only if the person reporting the strangulation assault has made one or more false reports of offenses involving family violence, as defined by Section 71.004, Family Code, to any law enforcement agency and if there is no other evidence to corroborate the current allegations of strangulation assault.

(b)  If a strangulation assault is not reported within the period described by Subsection (a), on receiving the consent described by that subsection the law enforcement agency may request a forensic medical examination of a victim of an alleged strangulation assault as considered appropriate by the agency.

(c)  On application to the attorney general, a health care facility that provides a forensic medical examination to a strangulation assault victim in accordance with this article is entitled to be compensated for the reasonable costs of the forensic portion of that examination and for the strangulation assault evidence collection kit, not to exceed the amount the law enforcement agency would otherwise be required to pay under Subsection (d), if the examination was performed by a forensic nurse.

(d)  A law enforcement agency that requests a forensic medical examination of a victim of an alleged strangulation assault for use in the investigation or prosecution of the offense shall pay the costs, less any amount to be paid directly to the health care facility by the attorney general under Subsection (c), of the forensic portion of the examination and of the strangulation assault evidence collection kit. On application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of the forensic portion of that examination and of the strangulation assault evidence collection kit if the examination was performed by a forensic nurse.

(e)  A law enforcement agency or prosecuting attorney's office may pay all costs related to the testimony of a forensic nurse in all criminal proceedings regarding the results of the forensic medical examination or manner in which it was performed.

(f)  This article does not require a law enforcement agency to pay any costs of treatment for injuries.

(g)  The attorney general may make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided to a victim of an alleged strangulation assault.

Art. 56.067.  MEDICAL EXAMINATION FOR STRANGULATION 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.

(b)  This article applies to the following health care facilities that provide diagnosis or treatment services to victims of strangulation 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)  Except as provided by Subsection (f), a health care facility shall conduct a forensic medical examination of the victim of an alleged strangulation assault if:

(1)  the victim arrives at the facility within 120 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)  On application to the attorney general, a health care facility that provides a forensic medical examination to a strangulation assault victim in accordance with this article is entitled to be compensated for the appropriate costs of the forensic portion of that examination and for the strangulation assault evidence collection kit, not to exceed the amount the department would otherwise be required to pay under Subsection (e), if a forensic nurse conducts the forensic portion of the examination within 120 hours after the alleged strangulation assault occurred.

(e)  The department shall pay the appropriate fees, as set by attorney general rule, less any amount to be paid directly to the health care facility by the attorney general under Subsection (d), for the forensic portion of the medical examination and for the strangulation assault evidence collection kit if a forensic nurse conducts the forensic portion of the examination within 120 hours after the alleged strangulation assault occurred. The attorney general shall reimburse the department for fees paid under this subsection.

(f)  If a health care facility does not provide diagnosis or treatment services to victims of strangulation 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.

(g)  The department may develop procedures regarding the submission or collection of additional evidence of the alleged strangulation assault other than through an examination as described by this article. 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.

(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 strangulation assault evidence collection kit.

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

(j)  A communication or record that contains identifying information regarding a person who receives a forensic medical examination under this article and that is created by, provided to, or in the control or possession of the department is confidential for purposes of Section 552.101, Government Code. In this subsection, "identifying information" includes:

(1)  information revealing the identity, personal history, or background of the person; or

(2)  information concerning the victimization of the person.

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

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

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

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

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

(B)  the payment for a medical examination for a victim of a sexual assault under Article 56.06 or 56.065 [~~of this code~~]; [~~and~~]

(C)  the payment for a medical examination for a victim of a strangulation assault under Article 56.066 or 56.067; and

(D)  referral to available social service agencies that may offer additional assistance;

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

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

(5)  the following statement:

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

(6)  the rights of crime victims under Articles 56.02 and 56.021.

SECTION 5.  Article 56.08(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, the attorney representing the state shall give to each victim of the offense a written notice containing:

(1)  a brief general statement of each procedural stage in the processing of a criminal case, including bail, plea bargaining, parole restitution, and appeal;

(2)  notification of the rights and procedures under this chapter;

(3)  suggested steps the victim may take if the victim is subjected to threats or intimidation;

(4)  notification of the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information about:

(A)  the costs that may be compensated under Subchapter B, eligibility for compensation, and procedures for application for compensation under Subchapter B of this chapter;

(B)  the payment for a medical examination for a victim of a sexual assault under Article 56.06 or 56.065; [~~and~~]

(C)  the payment for a medical examination for a victim of a strangulation assault under Article 56.066 or 56.067; and

(D)  referral to available social service agencies that may offer additional assistance;

(5)  the name, address, and phone number of the local victim assistance coordinator;

(6)  the case number and assigned court for the case;

(7)  the right to file a victim impact statement with the office of the attorney representing the state and the Texas Department of Criminal Justice; and

(8)  notification of the right of a victim, guardian of a victim, or close relative of a deceased victim, as defined by Section 508.117, Government Code, to appear in person before a member of the Board of Pardons and Paroles as provided by Section 508.153, Government Code.

SECTION 6.  Article 56.54(k), Code of Criminal Procedure, is amended to read as follows:

(k)  The attorney general may use the compensation to victims of crime fund to:

(1)  reimburse a law enforcement agency for the reasonable costs of a forensic medical examination that are incurred by the agency under Article 56.06, [~~or~~] 56.065, 56.066, or 56.067; [~~and~~]

(2)  make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided under Article 56.06 or 56.065 in accordance with Section 323.004, Health and Safety Code;

(3)  compensate a health care facility for certain costs of a forensic medical examination that are incurred by the facility under Article 56.066 or 56.067, as provided by those articles; and

(4)  make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided under Article 56.066 or 56.067.

SECTION 7.  Section 57.002(a), Family Code, 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 juvenile 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 court or person appointed by the court take the safety of the victim or the victim's family into consideration as an element in determining whether the child should be detained before the child's conduct is adjudicated;

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

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

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

(B)  the appeal of the case;

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

(6)  the right to receive information regarding compensation to victims as provided by Subchapter B, Chapter 56, Code of Criminal Procedure, 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 of medical expenses for a victim of a sexual assault under Article [~~Section~~] 56.06 or 56.065, Code of Criminal Procedure, or for a victim of a strangulation assault under Article 56.066 or 56.067, Code of Criminal Procedure [~~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 procedures for release under supervision or transfer of the person to the custody of the Texas Department of Criminal Justice for parole, to participate in the release or transfer for parole process, to be notified, if requested, of the person's release, escape, or transfer for parole proceedings concerning the person, to provide to the Texas Juvenile Justice Department for inclusion in the person's file information to be considered by the department before the release under supervision or transfer for parole of the person, and to be notified, if requested, of the person's release or transfer for parole;

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

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

SECTION 8.  This Act takes effect September 1, 2019.