

1-1 By: Neave, et al. (Senate Sponsor - Nelson) H.B. No. 616
 1-2 (In the Senate - Received from the House April 23, 2019;
 1-3 April 29, 2019, read first time and referred to Committee on
 1-4 Criminal Justice; May 17, 2019, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
 1-6 May 17, 2019, 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 H.B. No. 616 By: Whitmire

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

1-19 relating to reimbursement for a certain portion of a forensic
 1-20 medical examination of a sexual assault survivor and for the
 1-21 evidence collection kit required for the examination.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Article 56.01, Code of Criminal Procedure, is
 1-24 amended by adding Subdivision (2-b) to read as follows:

1-25 (2-b) "Sexual assault examiner" and "sexual assault
 1-26 nurse examiner" have the meanings assigned by Section 420.003,
 1-27 Government Code.

1-28 SECTION 2. Article 56.021(a), Code of Criminal Procedure,
 1-29 is amended to read as follows:

1-30 (a) In addition to the rights enumerated in Article 56.02,
 1-31 if the offense is a sexual assault, the victim, guardian of a
 1-32 victim, or close relative of a deceased victim is entitled to the
 1-33 following rights within the criminal justice system:

1-34 (1) if requested, the right to a disclosure of
 1-35 information regarding any evidence that was collected during the
 1-36 investigation of the offense, unless disclosing the information
 1-37 would interfere with the investigation or prosecution of the
 1-38 offense, in which event the victim, guardian, or relative shall be
 1-39 informed of the estimated date on which that information is
 1-40 expected to be disclosed;

1-41 (2) if requested, the right to a disclosure of
 1-42 information regarding the status of any analysis being performed of
 1-43 any evidence that was collected during the investigation of the
 1-44 offense;

1-45 (3) if requested, the right to be notified:

1-46 (A) at the time a request is submitted to a crime
 1-47 laboratory to process and analyze any evidence that was collected
 1-48 during the investigation of the offense;

1-49 (B) at the time of the submission of a request to
 1-50 compare any biological evidence collected during the investigation
 1-51 of the offense with DNA profiles maintained in a state or federal
 1-52 DNA database; and

1-53 (C) of the results of the comparison described by
 1-54 Paragraph (B), unless disclosing the results would interfere with
 1-55 the investigation or prosecution of the offense, in which event the
 1-56 victim, guardian, or relative shall be informed of the estimated
 1-57 date on which those results are expected to be disclosed;

1-58 (4) if requested, the right to counseling regarding
 1-59 acquired immune deficiency syndrome (AIDS) and human
 1-60 immunodeficiency virus (HIV) infection;

2-1 (5) for the victim of the offense, testing for
2-2 acquired immune deficiency syndrome (AIDS), human immunodeficiency
2-3 virus (HIV) infection, antibodies to HIV, or infection with any
2-4 other probable causative agent of AIDS; and

2-5 (6) to the extent provided by Articles 56.06 and
2-6 56.065, for the victim of the offense, the right to a forensic
2-7 medical examination if, within 120 [96] hours of the offense, the
2-8 offense is reported to a law enforcement agency or a forensic
2-9 medical examination is otherwise conducted at a health care
2-10 facility.

2-11 SECTION 3. Article 56.06, Code of Criminal Procedure, is
2-12 amended by amending Subsections (a) and (b) and adding Subsections
2-13 (a-1), (b-1), (b-2), (b-3), (b-4), (b-5), (g), and (h) to read as
2-14 follows:

2-15 (a) This article applies to health care facilities
2-16 described by Article 56.065.

2-17 (a-1) If a sexual assault is reported to a law enforcement
2-18 agency within 120 [96] hours of the assault, the law enforcement
2-19 agency, with the consent of the victim, a person authorized to act
2-20 on behalf of the victim, or an employee of the Department of Family
2-21 and Protective Services, shall request a forensic medical
2-22 examination of the victim of the alleged assault for use in the
2-23 investigation or prosecution of the offense. A law enforcement
2-24 agency may decline to request a forensic medical examination under
2-25 this subsection only if the person reporting the sexual assault has
2-26 made one or more false reports of sexual assault to any law
2-27 enforcement agency and if there is no other evidence to corroborate
2-28 the current allegations of sexual assault.

2-29 (b) If a sexual assault is not reported within the period
2-30 described by Subsection (a-1) [~~(a)~~], on receiving the consent
2-31 described by that subsection the law enforcement agency may request
2-32 a forensic medical examination of a victim of an alleged sexual
2-33 assault as considered appropriate by the agency.

2-34 (b-1) If a sexual assault is reported to a law enforcement
2-35 agency as provided by Subsection (a-1) or (b), the law enforcement
2-36 agency shall document, in the form and manner required by the
2-37 attorney general, whether the agency requested a forensic medical
2-38 examination. The law enforcement agency shall:

2-39 (1) provide the documentation of the agency's decision
2-40 regarding a request for a forensic medical examination to:

2-41 (A) the health care facility and the sexual
2-42 assault examiner or sexual assault nurse examiner, as applicable,
2-43 who provides services to the victim that are related to the sexual
2-44 assault; and

2-45 (B) the victim or the person who consented to the
2-46 forensic medical examination on behalf of the victim; and

2-47 (2) maintain the documentation of the agency's
2-48 decision in accordance with the agency's record retention policies.

2-49 (b-2) On application to the attorney general, a health care
2-50 facility that provides a forensic medical examination to a sexual
2-51 assault survivor in accordance with this article, or the sexual
2-52 assault examiner or sexual assault nurse examiner who conducts that
2-53 examination, as applicable, is entitled to be reimbursed in an
2-54 amount set by attorney general rule for:

2-55 (1) the reasonable costs of the forensic portion of
2-56 that examination; and

2-57 (2) the evidence collection kit.

2-58 (b-3) The application under Subsection (b-2) must be in the
2-59 form and manner prescribed by the attorney general and must
2-60 include:

2-61 (1) the documentation that the law enforcement agency
2-62 requested the forensic medical examination, as required under
2-63 Subsection (b-1); and

2-64 (2) a complete and itemized bill of the reasonable
2-65 costs of the forensic portion of the examination.

2-66 (b-4) A health care facility or a sexual assault examiner or
2-67 sexual assault nurse examiner, as applicable, who applies for
2-68 reimbursement under Subsection (b-2) shall accept reimbursement
2-69 from the attorney general as payment for the costs unless:

3-1 (1) the health care facility or sexual assault
3-2 examiner or sexual assault nurse examiner, as applicable:

3-3 (A) requests, in writing, additional
3-4 reimbursement from the attorney general; and

3-5 (B) provides documentation in support of the
3-6 additional reimbursement, as reasonably requested by the attorney
3-7 general; and

3-8 (2) the attorney general determines that there is a
3-9 reasonable justification for additional reimbursement.

3-10 (b-5) A health care facility is not entitled to
3-11 reimbursement under this article unless the forensic medical
3-12 examination was conducted at the facility by a physician, sexual
3-13 assault examiner, or sexual assault nurse examiner.

3-14 (g) The attorney general shall adopt rules necessary to
3-15 implement this article.

3-16 (h) On request, the attorney general may provide training to
3-17 a health care facility regarding the process for applying for
3-18 reimbursement under this article.

3-19 SECTION 4. Article 56.065, Code of Criminal Procedure, is
3-20 amended by amending Subsection (c) and adding Subsections (c-1),
3-21 (c-2), (c-3), (c-4), and (l) to read as follows:

3-22 (c) In accordance with Subchapter B, Chapter 420,
3-23 Government Code, and except as provided by Subsection (e), a health
3-24 care facility shall conduct a forensic medical examination of the
3-25 victim of an alleged sexual assault if:

3-26 (1) the victim arrives at the facility within 120 [~~96~~]
3-27 hours after the assault occurred;

3-28 (2) the victim consents to the examination; and

3-29 (3) at the time of the examination the victim has not
3-30 reported the assault to a law enforcement agency.

3-31 (c-1) On application to the attorney general, a health care
3-32 facility that provides a forensic medical examination to a sexual
3-33 assault survivor in accordance with this article, or the sexual
3-34 assault examiner or sexual assault nurse examiner who conducts that
3-35 examination, as applicable, within 120 hours after the alleged
3-36 sexual assault occurred is entitled to be reimbursed in an amount
3-37 set by attorney general rule for:

3-38 (1) the reasonable costs of the forensic portion of
3-39 that examination; and

3-40 (2) the evidence collection kit.

3-41 (c-2) The application under Subsection (c-1) must be in the
3-42 form and manner prescribed by the attorney general and must
3-43 include:

3-44 (1) certification that the examination was conducted
3-45 in accordance with the requirements of Subsection (c); and

3-46 (2) a complete and itemized bill of the reasonable
3-47 costs of the forensic portion of the examination.

3-48 (c-3) A health care facility or a sexual assault examiner or
3-49 sexual assault nurse examiner, as applicable, who applies for
3-50 reimbursement under Subsection (c-1) shall accept reimbursement
3-51 from the attorney general as payment for the costs unless:

3-52 (1) the health care facility or sexual assault
3-53 examiner or sexual assault nurse examiner, as applicable:

3-54 (A) requests, in writing, additional
3-55 reimbursement from the attorney general; and

3-56 (B) provides documentation in support of the
3-57 additional reimbursement, as reasonably requested by the attorney
3-58 general; and

3-59 (2) the attorney general determines that there is a
3-60 reasonable justification for additional reimbursement.

3-61 (c-4) A health care facility is not entitled to
3-62 reimbursement under this article unless the forensic medical
3-63 examination was conducted at the facility by a physician, sexual
3-64 assault examiner, or sexual assault nurse examiner.

3-65 (l) On request, the attorney general may provide training to
3-66 a health care facility regarding the process for applying for
3-67 reimbursement under this article.

3-68 SECTION 5. Article 56.54(k), Code of Criminal Procedure, is
3-69 amended to read as follows:

4-1 (k) The attorney general may use the compensation to victims
4-2 of crime fund to:

4-3 (1) reimburse a health care facility or a sexual
4-4 assault examiner or sexual assault nurse examiner for certain costs
4-5 of a forensic medical examination that are incurred by the facility
4-6 or the examiner [~~reimburse a law enforcement agency for the~~
4-7 ~~reasonable costs of a forensic medical examination that are~~
4-8 ~~incurred by the agency]~~ under Article 56.06 or 56.065, as provided
4-9 by those articles; and

4-10 (2) make a payment to or on behalf of an individual for
4-11 the reasonable costs incurred for medical care provided under
4-12 Article 56.06 or 56.065 in accordance with Section 323.004, Health
4-13 and Safety Code.

4-14 SECTION 6. Section 323.005(a), Health and Safety Code, is
4-15 amended to read as follows:

4-16 (a) The department shall develop a standard information
4-17 form for sexual assault survivors that must include:

4-18 (1) a detailed explanation of the forensic medical
4-19 examination required to be provided by law, including a statement
4-20 that photographs may be taken of the genitalia;

4-21 (2) information regarding treatment of sexually
4-22 transmitted infections and pregnancy, including:

4-23 (A) generally accepted medical procedures;

4-24 (B) appropriate medications; and

4-25 (C) any contraindications of the medications
4-26 prescribed for treating sexually transmitted infections and
4-27 preventing pregnancy;

4-28 (3) information regarding drug-facilitated sexual
4-29 assault, including the necessity for an immediate urine test for
4-30 sexual assault survivors who may have been involuntarily drugged;

4-31 (4) information regarding crime victims compensation,
4-32 including:

4-33 (A) a statement that public agencies are
4-34 responsible for paying for the forensic portion of an examination
4-35 conducted under Article 56.06 or 56.065, Code of Criminal
4-36 Procedure, and for the evidence collection kit used in connection
4-37 with the examination and that the health care facility or provider,
4-38 as applicable, is responsible for seeking reimbursement for those
4-39 costs[-

4-40 [~~(i) a law enforcement agency will pay for~~
4-41 ~~the forensic portion of an examination requested by the agency~~
4-42 ~~under Article 56.06, Code of Criminal Procedure, and for the~~
4-43 ~~evidence collection kit; or~~

4-44 [~~(ii) the Department of Public Safety will~~
4-45 ~~pay the appropriate fees for the forensic portion of an examination~~
4-46 ~~conducted under Article 56.065, Code of Criminal Procedure, and for~~
4-47 ~~the evidence collection kit]; and~~

4-48 (B) [~~reimbursement~~] information regarding the
4-49 reimbursement of the survivor for the medical portion of the
4-50 examination;

4-51 (5) an explanation that consent for the forensic
4-52 medical examination may be withdrawn at any time during the
4-53 examination;

4-54 (6) the name and telephone number of sexual assault
4-55 crisis centers statewide; and

4-56 (7) information regarding postexposure prophylaxis
4-57 for HIV infection.

4-58 SECTION 7. Section 323.0051(a), Health and Safety Code, is
4-59 amended to read as follows:

4-60 (a) The department shall develop a standard information
4-61 form for sexual assault survivors who arrive at a health care
4-62 facility that is not a SAFE-ready facility. The information form
4-63 must include:

4-64 (1) information regarding the benefits of a forensic
4-65 medical examination conducted by a sexual assault forensic
4-66 examiner;

4-67 (2) the Internet website address to the department's
4-68 list of SAFE-ready facilities that includes the facilities'
4-69 physical addresses as required by Section 323.008;

5-1 (3) the following statements:

5-2 (A) "As a survivor of sexual assault, you have
5-3 the right to receive a forensic medical examination at this
5-4 hospital emergency room if you are requesting the examination not
5-5 later than 120 [~~96~~] hours after the assault.";

5-6 (B) "A report to law enforcement is not required,
5-7 but if you make a report, law enforcement must first authorize the
5-8 examination."; and

5-9 (C) "Call 1-800-656-HOPE to be connected to a
5-10 rape crisis center for free and confidential assistance."; and

5-11 (4) information on the procedure for submitting a
5-12 complaint against the health care facility.

5-13 SECTION 8. The following provisions are repealed:

5-14 (1) Article 56.06(c), Code of Criminal Procedure;

5-15 (2) Articles 56.065(a)(3) and (d), Code of Criminal
5-16 Procedure; and

5-17 (3) Section 420.031(d), Government Code.

5-18 SECTION 9. The change in law made by this Act applies to a
5-19 forensic medical examination that occurs on or after the effective
5-20 date of this Act. A forensic medical examination that occurs before
5-21 the effective date of this Act is governed by the law as it existed
5-22 immediately before that date, and the former law is continued in
5-23 effect for that purpose.

5-24 SECTION 10. This Act takes effect September 1, 2019.

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