

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:

1 (a) A victim, guardian of a victim, or close relative of a
2 deceased victim is entitled to the following rights within the
3 criminal justice system:

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

7 (2) the right to have the magistrate take the safety of
8 the victim or his family into consideration as an element in fixing
9 the amount of bail for the accused;

10 (3) the right, if requested, to be informed:

11 (A) by the attorney representing the state of
12 relevant court proceedings, including appellate proceedings, and
13 to be informed if those proceedings have been canceled or
14 rescheduled prior to the event; and

15 (B) by an appellate court of decisions of the
16 court, after the decisions are entered but before the decisions are
17 made public;

18 (4) the right to be informed, when requested, by a
19 peace officer concerning the defendant's right to bail and the
20 procedures in criminal investigations and by the district
21 attorney's office concerning the general procedures in the criminal
22 justice system, including general procedures in guilty plea
23 negotiations and arrangements, restitution, and the appeals and
24 parole process;

25 (5) the right to provide pertinent information to a
26 probation department conducting a presentencing investigation
27 concerning the impact of the offense on the victim and his family by

1 testimony, written statement, or any other manner prior to any
2 sentencing of the offender;

3 (6) the right to receive information regarding
4 compensation to victims of crime as provided by Subchapter B,
5 including information related to the costs that may be compensated
6 under that subchapter and the amount of compensation, eligibility
7 for compensation, and procedures for application for compensation
8 under that subchapter, the payment for a medical examination for a
9 victim of a sexual assault under Article [56.06](#) or [56.065](#) or for a
10 victim of a strangulation [~~sexual~~] assault under Article 56.066 or
11 56.067, and when requested, to referral to available social service
12 agencies that may offer additional assistance;

13 (7) the right to be informed, upon request, of parole
14 procedures, to participate in the parole process, to be notified,
15 if requested, of parole proceedings concerning a defendant in the
16 victim's case, to provide to the Board of Pardons and Paroles for
17 inclusion in the defendant's file information to be considered by
18 the board prior to the parole of any defendant convicted of any
19 crime subject to this subchapter, and to be notified, if requested,
20 of the defendant's release;

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

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

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

9 (11) the right to request victim-offender mediation
10 coordinated by the victim services division of the Texas Department
11 of Criminal Justice;

12 (12) the right to be informed of the uses of a victim
13 impact statement and the statement's purpose in the criminal
14 justice system, to complete the victim impact statement, and to
15 have the victim impact statement considered:

16 (A) by the attorney representing the state and
17 the judge before sentencing or before a plea bargain agreement is
18 accepted; and

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

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

1 continuance; and

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

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

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

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

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

16 Art. 56.066. MEDICAL EXAMINATION FOR STRANGULATION ASSAULT
17 VICTIM WHO HAS REPORTED ASSAULT; COSTS. (a) If a strangulation
18 assault is reported to a law enforcement agency within 120 hours of
19 the assault, the law enforcement agency, with the consent of the
20 victim, a person authorized to act on behalf of the victim, or an
21 employee of the Department of Family and Protective Services, shall
22 request a forensic medical examination of the victim of the alleged
23 assault for use in the investigation or prosecution of the offense.
24 A law enforcement agency may decline to request a forensic medical
25 examination under this subsection only if the person reporting the
26 strangulation assault has made one or more false reports of
27 offenses involving family violence, as defined by Section 71.004,

1 Family Code, to any law enforcement agency and if there is no other
2 evidence to corroborate the current allegations of strangulation
3 assault.

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

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

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

1 kit if the examination was performed by a forensic nurse.

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

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

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

11 Art. 56.067. MEDICAL EXAMINATION FOR STRANGULATION ASSAULT
12 VICTIM WHO HAS NOT REPORTED ASSAULT; COSTS. (a) In this article:

13 (1) "Crime laboratory" has the meaning assigned by
14 Article 38.35.

15 (2) "Department" means the Department of Public
16 Safety.

17 (b) This article applies to the following health care
18 facilities that provide diagnosis or treatment services to victims
19 of strangulation assault:

20 (1) a general or special hospital licensed under
21 Chapter 241, Health and Safety Code;

22 (2) a general or special hospital owned by this state;

23 (3) an outpatient clinic; and

24 (4) a private physician's office.

25 (c) Except as provided by Subsection (f), a health care
26 facility shall conduct a forensic medical examination of the victim
27 of an alleged strangulation assault if:

1 (1) the victim arrives at the facility within 120
2 hours after the assault occurred;

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

4 (3) at the time of the examination the victim has not
5 reported the assault to a law enforcement agency.

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

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

25 (f) If a health care facility does not provide diagnosis or
26 treatment services to victims of strangulation assault, the
27 facility shall refer a victim seeking a forensic medical

1 examination under Subsection (c) to a health care facility that
2 provides services to those victims.

3 (g) The department may develop procedures regarding the
4 submission or collection of additional evidence of the alleged
5 strangulation assault other than through an examination as
6 described by this article. The department shall develop procedures
7 for the transfer and preservation of evidence collected under this
8 article to a crime laboratory or other suitable location designated
9 by the public safety director of the department.

10 (h) The victim may not be required to:

11 (1) participate in the investigation or prosecution of
12 an offense as a condition of receiving a forensic medical
13 examination under this article; or

14 (2) pay for the forensic portion of the medical
15 examination or for the strangulation assault evidence collection
16 kit.

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

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

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

27 (2) information concerning the victimization of the

1 person.

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

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

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

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

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

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

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

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

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

27 (4) the address, phone number, and name of the crime

1 victim assistance coordinator of the office of the attorney
2 representing the state;

3 (5) the following statement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (8) notification of the right of a victim, guardian of
15 a victim, or close relative of a deceased victim, as defined by
16 Section 508.117, Government Code, to appear in person before a
17 member of the Board of Pardons and Paroles as provided by Section
18 508.153, Government Code.

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

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

23 (1) reimburse a law enforcement agency for the
24 reasonable costs of a forensic medical examination that are
25 incurred by the agency under Article 56.06, [~~or~~] 56.065, 56.066, or
26 56.067; [~~and~~]

27 (2) make a payment to or on behalf of an individual for

1 the reasonable costs incurred for medical care provided under
2 Article 56.06 or 56.065 in accordance with Section 323.004, Health
3 and Safety Code;

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

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

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

13 (a) A victim, guardian of a victim, or close relative of a
14 deceased victim is entitled to the following rights within the
15 juvenile justice system:

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

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

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

27 (4) the right to be informed, when requested, by the

1 court or a person appointed by the court concerning the procedures
2 in the juvenile justice system, including general procedures
3 relating to:

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

6 (B) the appeal of the case;

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

12 (6) the right to receive information regarding
13 compensation to victims as provided by Subchapter B, Chapter 56,
14 Code of Criminal Procedure, including information related to the
15 costs that may be compensated under that subchapter and the amount
16 of compensation, eligibility for compensation, and procedures for
17 application for compensation under that subchapter, the payment of
18 medical expenses for a victim of a sexual assault under Article
19 [Section] 56.06 or 56.065, Code of Criminal Procedure, or for a
20 victim of a strangulation assault under Article 56.066 or 56.067,
21 Code of Criminal Procedure [~~for a victim of a sexual assault~~], and
22 when requested, to referral to available social service agencies
23 that may offer additional assistance;

24 (7) the right to be informed, upon request, of
25 procedures for release under supervision or transfer of the person
26 to the custody of the Texas Department of Criminal Justice for
27 parole, to participate in the release or transfer for parole

1 process, to be notified, if requested, of the person's release,
2 escape, or transfer for parole proceedings concerning the person,
3 to provide to the Texas Juvenile Justice Department for inclusion
4 in the person's file information to be considered by the department
5 before the release under supervision or transfer for parole of the
6 person, and to be notified, if requested, of the person's release or
7 transfer for parole;

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

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

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

24 (11) the right to be present at all public court
25 proceedings related to the conduct of the child as provided by
26 Section [54.08](#), subject to that section; and

27 (12) any other right appropriate to the victim that a

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1 victim of criminal conduct has under Article 56.02 or 56.021, Code
2 of Criminal Procedure.

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