

By: Miller

H.B. No. 4461

A BILL TO BE ENTITLED

AN ACT

relating to the rights of victims of sexual assault.

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

SECTION 1. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.022 to read as follows:

Sec. 30.022. TESTIMONY OF SEXUAL ASSAULT VICTIMS. (a) In this section, "sexual assault" has the meaning assigned by Section 420.003, Government Code.

(b) Subject to Subsection (c), in a proceeding in a civil action relating to an alleged sexual assault in which the victim of the alleged offense is testifying, on the request of the victim, the court shall close the proceeding to the public for the duration of the victim's testimony.

(c) The court shall allow the following individuals to remain in a proceeding that is closed to the public under Subsection (b):

(1) a party to the action;

(2) a guardian of the victim or a party to the action;

(3) an immediate family member of the victim or a party to the action;

(4) an attorney representing the person who allegedly committed the sexual assault and any employees of the attorney;

(5) an officer of the court;

(6) a juror;

- (7) a member of the news media;
- (8) a court reporter; and
- (9) a witness designated by the victim.

SECTION 2. Chapter 38, Code of Criminal Procedure, is amended by adding Articles 38.076 and 38.435 to read as follows:

Art. 38.076. TESTIMONY OF SEXUAL ASSAULT VICTIMS. (a)  
Subject to Subsection (b), in a proceeding in the prosecution of an  
offense under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal  
Code, in which the victim of the alleged offense is testifying, on  
the request of the victim, the court shall close the proceeding to  
the public for the duration of the victim's testimony.

(b) The court shall allow the following individuals to  
remain in a proceeding that is closed to the public under Subsection  
(a):

- (1) the defendant;
- (2) a guardian of the victim or the defendant;
- (3) an immediate family member of the victim or the  
defendant;
- (4) an attorney representing the state and any  
employees of the attorney representing the state;
- (5) an attorney representing the defendant and any  
employees of the attorney representing the defendant;
- (6) an officer of the court;
- (7) a juror;
- (8) a member of the news media;
- (9) a court reporter; and
- (10) with the consent of the victim, a witness

1 designated by the attorney representing the state.

2 Art. 38.435. PROHIBITED USE OF EVIDENCE FROM SEXUAL ASSAULT  
3 EXAMINATION. Evidence collected during a forensic medical  
4 examination conducted under Article 56.06 or 56.065 may not be used  
5 to investigate or prosecute a misdemeanor offense, or an offense  
6 under Subchapter D, Chapter 481, Health and Safety Code, alleged to  
7 have been committed by the victim from whom the evidence was  
8 collected.

9 SECTION 3. Article 56.021, Code of Criminal Procedure, is  
10 amended by amending Subsection (a) and adding Subsections (e) and  
11 (f) to read as follows:

12 (a) In addition to the rights enumerated in Article 56.02,  
13 if the offense is a sexual assault, the victim, guardian of a  
14 victim, or close relative of a deceased victim is entitled to the  
15 following rights within the criminal justice system:

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

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

27 (3) if requested, the right to be notified:

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

4 (B) at the time of the submission of a request to  
5 compare any biological evidence collected during the investigation  
6 of the offense with DNA profiles maintained in a state or federal  
7 DNA database; and

8 (C) by the law enforcement agency that requested  
9 ~~[of the results of]~~ the comparison described by Paragraph (B):

10 (i) of the results of that comparison,  
11 through a secure and confidential message in writing that includes  
12 a telephone number of the law enforcement agency that the survivor  
13 may call regarding the results; or

14 (ii) if ~~[, unless]~~ disclosing the results of  
15 that comparison would interfere with the investigation or  
16 prosecution of the offense, ~~[in which event the victim, guardian,~~  
17 ~~or relative shall be informed]~~ of the estimated date on which those  
18 results are expected to be disclosed;

19 (4) if requested, the right to counseling regarding  
20 acquired immune deficiency syndrome (AIDS) and human  
21 immunodeficiency virus (HIV) infection;

22 (5) for the victim of the offense, testing for  
23 acquired immune deficiency syndrome (AIDS), human immunodeficiency  
24 virus (HIV) infection, antibodies to HIV, or infection with any  
25 other probable causative agent of AIDS; and

26 (6) to the extent provided by Articles [56.06](#) and  
27 [56.065](#), for the victim of the offense, the right to a forensic

1 medical examination if, within 96 hours of the offense, the offense  
2 is reported to a law enforcement agency or a forensic medical  
3 examination is otherwise conducted at a health care facility.

4 (e) A victim of a sexual assault may not be required to pay  
5 for:

6 (1) the forensic portion of a forensic medical  
7 examination requested by a law enforcement agency under Article  
8 56.06 or conducted under Article 56.065; or

9 (2) the evidence collection kit required for the  
10 examination.

11 (f) A victim of a sexual assault retains all of the rights  
12 provided to the victim under this article and Article 56.02  
13 regardless of whether the victim:

14 (1) participates in the investigation or prosecution  
15 of the offense; or

16 (2) consents to receiving a forensic medical  
17 examination under Article 56.06 or 56.065.

18 SECTION 4. Subchapter A, Chapter 56, Code of Criminal  
19 Procedure, is amended by adding Article 56.025 to read as follows:

20 Art. 56.025. ACCESS TO REPORT OF LAW ENFORCEMENT AGENCY BY  
21 VICTIM OF SEXUAL ASSAULT. (a) Notwithstanding Section 552.108,  
22 Government Code, and except as provided by Subsection (b), on  
23 request by the victim of a sexual assault, the law enforcement  
24 agency investigating the sexual assault shall provide the victim  
25 complete and unaltered copies of all law enforcement reports  
26 concerning the sexual assault. The law enforcement agency shall  
27 provide the copies not later than the 15th business day after the

1 date the request is submitted. The law enforcement agency may not  
2 charge a fee for providing the copies.

3 (b) A law enforcement agency is not required to release any  
4 portion of a law enforcement report concerning a sexual assault  
5 that would interfere with the investigation or prosecution of the  
6 offense. If a law enforcement agency does not release a portion of a  
7 law enforcement report, the law enforcement agency shall inform the  
8 victim of the estimated date that portion of the report is expected  
9 to be available for release to the victim.

10 SECTION 5. Section 323.004(b), Health and Safety Code, is  
11 amended to read as follows:

12 (b) A health care facility providing care to a sexual  
13 assault survivor shall provide the survivor with:

14 (1) subject to Subsection (b-1), a forensic medical  
15 examination in accordance with Subchapter B, Chapter 420,  
16 Government Code, if the examination has been requested by a law  
17 enforcement agency under Article 56.06, Code of Criminal Procedure,  
18 or is conducted under Article 56.065, Code of Criminal Procedure;

19 (2) a private area, if available, to wait or speak with  
20 the appropriate medical, legal, or sexual assault crisis center  
21 staff or volunteer until a physician, nurse, or physician assistant  
22 is able to treat the survivor;

23 (3) access to a sexual assault program advocate, if  
24 available, as provided by Article 56.045, Code of Criminal  
25 Procedure;

26 (4) the information form required by Section 323.005;

27 (5) a private treatment room, if available;

1           (6) if indicated by the history of contact, access to  
2 appropriate prophylaxis for exposure to sexually transmitted  
3 infections; ~~and~~

4           (7) the name and telephone number of the nearest  
5 sexual assault crisis center; and

6           (8) if the health care facility has shower facilities,  
7 access to a shower at no cost to the survivor after the examination  
8 described by Subdivision (1) or after the survivor declines the  
9 examination, as applicable.

10          SECTION 6. Section 323.005(a), Health and Safety Code, is  
11 amended to read as follows:

12          (a) The department shall develop a standard information  
13 form for sexual assault survivors that must include:

14               (1) a detailed explanation of the forensic medical  
15 examination required to be provided by law, including a statement  
16 that photographs may be taken of the genitalia;

17               (2) information regarding treatment of sexually  
18 transmitted infections and pregnancy, including:

19                       (A) generally accepted medical procedures;

20                       (B) appropriate medications; and

21                       (C) any contraindications of the medications  
22 prescribed for treating sexually transmitted infections and  
23 preventing pregnancy;

24               (3) information regarding drug-facilitated sexual  
25 assault, including the necessity for an immediate urine test for  
26 sexual assault survivors who may have been involuntarily drugged;

27               (4) information regarding crime victims compensation,

1 including:

2 (A) a statement that:

3 (i) a law enforcement agency will pay for  
4 the forensic portion of an examination requested by the agency  
5 under Article 56.06, Code of Criminal Procedure, and for the  
6 evidence collection kit; or

7 (ii) the Department of Public Safety will  
8 pay the appropriate fees for the forensic portion of an examination  
9 conducted under Article 56.065, Code of Criminal Procedure, and for  
10 the evidence collection kit; and

11 (B) reimbursement information for the medical  
12 portion of the examination;

13 (5) an explanation that consent for the forensic  
14 medical examination may be withdrawn at any time during the  
15 examination;

16 (6) the name and telephone number of sexual assault  
17 crisis centers statewide; ~~and~~

18 (7) information regarding postexposure prophylaxis  
19 for HIV infection;

20 (8) information regarding the length of time  
21 biological evidence collected from the forensic medical  
22 examination will be retained and preserved under Article 38.43,  
23 Code of Criminal Procedure; and

24 (9) a statement that the survivor has the right to  
25 access a shower for free after the forensic medical examination or  
26 after the survivor declines the examination, as applicable, if  
27 shower facilities are available at the health care facility.



1           SECTION 7. Section 30.022, Civil Practice and Remedies  
2 Code, and Article 38.076, Code of Criminal Procedure, as added by  
3 this Act, apply to a civil or criminal proceeding that commences on  
4 or after the effective date of this Act. A civil or criminal  
5 proceeding that commences before the effective date of this Act is  
6 governed by the law in effect on the date the proceeding commenced,  
7 and the former law is continued in effect for that purpose.

8           SECTION 8. Article 38.435, Code of Criminal Procedure, and  
9 Section 323.004(b)(8), Health and Safety Code, as added by this  
10 Act, apply to a forensic medical examination that occurs on or after  
11 the effective date of this Act. A forensic medical examination that  
12 occurs before that date is governed by the law in effect on the date  
13 the examination occurred, and the former law is continued in effect  
14 for that purpose.

15           SECTION 9. Article 56.021, Code of Criminal Procedure, as  
16 amended by this Act, and Article 56.025, Code of Criminal  
17 Procedure, as added by this Act, apply only to an offense committed  
18 on or after the effective date of this Act. An offense committed  
19 before the effective date of this Act is governed by the law in  
20 effect on the date the offense was committed, and the former law is  
21 continued in effect for that purpose. For purposes of this section,  
22 an offense was committed before the effective date of this Act if  
23 any element of the offense occurred before that date.

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