

By: Neave, Raymond, Muñoz, Jr.

H.B. No. 4531

A BILL TO BE ENTITLED

AN ACT

relating to the rights and treatment of and services provided to certain adult sexual assault survivors.

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

SECTION 1. Section 323.004(c), Health and Safety Code, is amended to read as follows:

(c) A health care facility must obtain documented consent before providing the forensic medical examination and treatment. The facility shall presume that an adult sexual assault survivor requesting a forensic medical examination and treatment is competent.

SECTION 2. Chapter 323, Health and Safety Code, is amended by adding Section 323.0044 to read as follows:

Sec. 323.0044. PROVISION OF EMERGENCY SERVICES TO CERTAIN ADULT SEXUAL ASSAULT SURVIVORS. (a) A health care facility shall provide a forensic medical examination and treatment to an adult sexual assault survivor for whom a guardian is appointed under Title 3, Estates Code, without the consent of the survivor's guardian, guardian ad litem, or other legal agent if:

(1) the health care facility determines the survivor understands the nature of the forensic medical examination and treatment; and

(2) the survivor agrees to receive the forensic medical examination and treatment.

1 (b) Subject to Subsection (c), if an adult sexual assault
2 survivor requests a forensic medical examination and treatment and
3 a health care facility determines the survivor potentially is
4 incapable of consenting to the forensic medical examination and
5 treatment, the health care facility may:

6 (1) obtain consent from a relative or caretaker of the
7 survivor on the survivor's behalf;

8 (2) obtain consent from the survivor's guardian,
9 guardian ad litem, or other legal agent; or

10 (3) petition a court with probate jurisdiction in the
11 county in which the facility is located for an emergency order
12 authorizing the forensic medical examination and treatment, in the
13 manner provided by Section 48.208, Human Resources Code.

14 (c) If personnel of a health care facility know or have
15 reason to believe that the survivor's relative, caretaker,
16 guardian, guardian ad litem, or other legal agent is a suspect or
17 accomplice in the sexual assault of the survivor, the health care
18 facility may not contact the survivor's relative, caretaker,
19 guardian, guardian ad litem, or other legal agent.

20 (d) A health care facility may not provide a forensic
21 medical examination to an adult sexual assault survivor for whom a
22 guardian is appointed under Title 3, Estates Code, if the survivor
23 refuses the examination, regardless of whether the survivor's
24 guardian requests or consents to the examination.

25 SECTION 3. Section 420.072(c), Government Code, is amended
26 to read as follows:

27 (c) A communication, a record, or evidence that is

1 confidential under this subchapter may not be disclosed to a parent
2 or legal guardian of a survivor who is a minor or to a guardian
3 appointed under Title 3, Estates Code, of an adult survivor, if
4 applicable, if an advocate or a sexual assault program knows or has
5 reason to believe that the parent or ~~legal~~ guardian of the
6 survivor is a suspect or accomplice in the sexual assault of the
7 survivor.

8 SECTION 4. Section 420.073, Government Code, is amended by
9 amending Subsection (a) and adding Subsection (d) to read as
10 follows:

11 (a) Consent for the release of confidential information
12 other than evidence contained in an evidence collection kit must be
13 in writing and signed by the survivor, a parent or legal guardian if
14 the survivor is a minor, ~~[a legal guardian if the survivor has been~~
15 ~~adjudicated incompetent to manage the survivor's personal~~
16 ~~affairs,~~] an attorney ad litem appointed for the survivor, or a
17 personal representative if the survivor is deceased. The written
18 consent must specify:

- 19 (1) the information or records covered by the release;
20 (2) the reason or purpose for the release; and
21 (3) the person to whom the information is to be
22 released.

23 (d) For purposes of Subsection (a), a written consent signed
24 by an adult survivor with a guardian appointed under Title 3,
25 Estates Code, is effective regardless of whether the adult
26 survivor's guardian, guardian ad litem, or other legal agent signs
27 the release. If the adult survivor agrees to the release but is

1 unable to provide a signature and the guardian, guardian ad litem,
2 or other legal agent is unavailable or declines to sign the release,
3 then a notary may sign the release in the manner provided by Section
4 406.0165.

5 SECTION 5. Section 420.0735(b), Government Code, is amended
6 to read as follows:

7 (b) For purposes of Subsection (a)(1), a written consent
8 signed by an adult survivor with a guardian appointed under Title 3
9 ~~[incapacitated person, as that term is defined by Chapter 1002]~~,
10 Estates Code, is effective regardless of whether the adult
11 survivor's ~~[incapacitated person's]~~ guardian, guardian ad litem, or
12 other legal agent signs the release. If the adult survivor with an
13 appointed guardian agrees to the release but ~~[incapacitated person]~~
14 is unable to provide a signature and the guardian, guardian ad
15 litem, or other legal agent is unavailable or declines to sign the
16 release, then the investigating law enforcement officer may sign
17 the release.

18 SECTION 6. Section 1151.351(b), Estates Code, is amended to
19 read as follows:

20 (b) Unless limited by a court or otherwise restricted by
21 law, a ward is authorized to the following:

22 (1) to have a copy of the guardianship order and
23 letters of guardianship and contact information for the probate
24 court that issued the order and letters;

25 (2) to have a guardianship that encourages the
26 development or maintenance of maximum self-reliance and
27 independence in the ward with the eventual goal, if possible, of

1 self-sufficiency;

2 (3) to be treated with respect, consideration, and
3 recognition of the ward's dignity and individuality;

4 (4) to reside and receive support services in the most
5 integrated setting, including home-based or other community-based
6 settings, as required by Title II of the Americans with
7 Disabilities Act (42 U.S.C. Section 12131 et seq.);

8 (5) to consideration of the ward's current and
9 previously stated personal preferences, desires, medical and
10 psychiatric treatment preferences, religious beliefs, living
11 arrangements, and other preferences and opinions;

12 (6) to financial self-determination for all public
13 benefits after essential living expenses and health needs are met
14 and to have access to a monthly personal allowance;

15 (7) to receive timely and appropriate health care and
16 medical treatment that does not violate the ward's rights granted
17 by the constitution and laws of this state and the United States;

18 (8) to exercise full control of all aspects of life not
19 specifically granted by the court to the guardian;

20 (9) to control the ward's personal environment based
21 on the ward's preferences;

22 (10) to complain or raise concerns regarding the
23 guardian or guardianship to the court, including living
24 arrangements, retaliation by the guardian, conflicts of interest
25 between the guardian and service providers, or a violation of any
26 rights under this section;

27 (11) to receive notice in the ward's native language,

1 or preferred mode of communication, and in a manner accessible to
2 the ward, of a court proceeding to continue, modify, or terminate
3 the guardianship and the opportunity to appear before the court to
4 express the ward's preferences and concerns regarding whether the
5 guardianship should be continued, modified, or terminated;

6 (12) to have a court investigator, guardian ad litem,
7 or attorney ad litem appointed by the court to investigate a
8 complaint received by the court from the ward or any person about
9 the guardianship;

10 (13) to participate in social, religious, and
11 recreational activities, training, employment, education,
12 habilitation, and rehabilitation of the ward's choice in the most
13 integrated setting;

14 (14) to self-determination in the substantial
15 maintenance, disposition, and management of real and personal
16 property after essential living expenses and health needs are met,
17 including the right to receive notice and object about the
18 substantial maintenance, disposition, or management of clothing,
19 furniture, vehicles, and other personal effects;

20 (15) to personal privacy and confidentiality in
21 personal matters, subject to state and federal law;

22 (16) to unimpeded, private, and uncensored
23 communication and visitation with persons of the ward's choice,
24 except that if the guardian determines that certain communication
25 or visitation causes substantial harm to the ward:

26 (A) the guardian may limit, supervise, or
27 restrict communication or visitation, but only to the extent

1 necessary to protect the ward from substantial harm; and

2 (B) the ward may request a hearing to remove any
3 restrictions on communication or visitation imposed by the guardian
4 under Paragraph (A);

5 (17) to petition the court and retain counsel of the
6 ward's choice who holds a certificate required by Subchapter E,
7 Chapter 1054, to represent the ward's interest for capacity
8 restoration, modification of the guardianship, the appointment of a
9 different guardian, or for other appropriate relief under this
10 subchapter, including a transition to a supported decision-making
11 agreement, except as limited by Section 1054.006;

12 (18) to vote in a public election, marry, and retain a
13 license to operate a motor vehicle, unless restricted by the court;

14 (19) to personal visits from the guardian or the
15 guardian's designee at least once every three months, but more
16 often, if necessary, unless the court orders otherwise;

17 (20) to be informed of the name, address, phone
18 number, and purpose of Disability Rights Texas, an organization
19 whose mission is to protect the rights of, and advocate for, persons
20 with disabilities, and to communicate and meet with representatives
21 of that organization;

22 (21) to be informed of the name, address, phone
23 number, and purpose of an independent living center, an area agency
24 on aging, an aging and disability resource center, and the local
25 mental health and intellectual and developmental disability
26 center, and to communicate and meet with representatives from these
27 agencies and organizations;

1 (22) to be informed of the name, address, phone
2 number, and purpose of the Judicial Branch Certification Commission
3 and the procedure for filing a complaint against a certified
4 guardian;

5 (23) to contact the Department of Family and
6 Protective Services to report abuse, neglect, exploitation, or
7 violation of personal rights without fear of punishment,
8 interference, coercion, or retaliation; ~~and~~

9 (24) to have the guardian, on appointment and on
10 annual renewal of the guardianship, explain the rights delineated
11 in this subsection in the ward's native language, or preferred mode
12 of communication, and in a manner accessible to the ward; and

13 (25) to make decisions related to sexual assault
14 crisis services, including consenting to a forensic medical
15 examination and treatment, authorizing the collection of forensic
16 evidence, consenting to the release of evidence contained in an
17 evidence collection kit and disclosure of related confidential
18 information, and receiving counseling and other support services.

19 SECTION 7. This Act takes effect September 1, 2019.