

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; and  
23 (4) a reasonable time limitation during which the  
24 information or records may be released.

25 (d) For purposes of Subsection (a), a written consent signed  
26 by an adult survivor with a guardian appointed under Title 3,  
27 Estates Code, is effective regardless of whether the adult

1 survivor's guardian, guardian ad litem, or other legal agent signs  
2 the release. If the adult survivor agrees to the release but is  
3 unable to provide a signature and the guardian, guardian ad litem,  
4 or other legal agent is unavailable or declines to sign the release,  
5 the person seeking the release of confidential information may  
6 petition a court with probate jurisdiction in the county in which  
7 the adult survivor resides for an emergency order authorizing the  
8 release of the information, in the manner provided by Section  
9 48.208, Human Resources Code.

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

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

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

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

27 (1) to have a copy of the guardianship order and

1 letters of guardianship and contact information for the probate  
2 court that issued the order and letters;

3 (2) to have a guardianship that encourages the  
4 development or maintenance of maximum self-reliance and  
5 independence in the ward with the eventual goal, if possible, of  
6 self-sufficiency;

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

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

13 (5) to consideration of the ward's current and  
14 previously stated personal preferences, desires, medical and  
15 psychiatric treatment preferences, religious beliefs, living  
16 arrangements, and other preferences and opinions;

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

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

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

25 (9) to control the ward's personal environment based  
26 on the ward's preferences;

27 (10) to complain or raise concerns regarding the

1 guardian or guardianship to the court, including living  
2 arrangements, retaliation by the guardian, conflicts of interest  
3 between the guardian and service providers, or a violation of any  
4 rights under this section;

5 (11) to receive notice in the ward's native language,  
6 or preferred mode of communication, and in a manner accessible to  
7 the ward, of a court proceeding to continue, modify, or terminate  
8 the guardianship and the opportunity to appear before the court to  
9 express the ward's preferences and concerns regarding whether the  
10 guardianship should be continued, modified, or terminated;

11 (12) to have a court investigator, guardian ad litem,  
12 or attorney ad litem appointed by the court to investigate a  
13 complaint received by the court from the ward or any person about  
14 the guardianship;

15 (13) to participate in social, religious, and  
16 recreational activities, training, employment, education,  
17 habilitation, and rehabilitation of the ward's choice in the most  
18 integrated setting;

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

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

27 (16) to unimpeded, private, and uncensored

1 communication and visitation with persons of the ward's choice,  
2 except that if the guardian determines that certain communication  
3 or visitation causes substantial harm to the ward:

4 (A) the guardian may limit, supervise, or  
5 restrict communication or visitation, but only to the extent  
6 necessary to protect the ward from substantial harm; and

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

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

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

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

22 (20) to be informed of the name, address, phone  
23 number, and purpose of Disability Rights Texas, an organization  
24 whose mission is to protect the rights of, and advocate for, persons  
25 with disabilities, and to communicate and meet with representatives  
26 of that organization;

27 (21) to be informed of the name, address, phone

1 number, and purpose of an independent living center, an area agency  
2 on aging, an aging and disability resource center, and the local  
3 mental health and intellectual and developmental disability  
4 center, and to communicate and meet with representatives from these  
5 agencies and organizations;

6 (22) to be informed of the name, address, phone  
7 number, and purpose of the Judicial Branch Certification Commission  
8 and the procedure for filing a complaint against a certified  
9 guardian;

10 (23) to contact the Department of Family and  
11 Protective Services to report abuse, neglect, exploitation, or  
12 violation of personal rights without fear of punishment,  
13 interference, coercion, or retaliation; ~~and~~

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

18 (25) to make decisions related to sexual assault  
19 crisis services, including consenting to a forensic medical  
20 examination and treatment, authorizing the collection of forensic  
21 evidence, consenting to the release of evidence contained in an  
22 evidence collection kit and disclosure of related confidential  
23 information, and receiving counseling and other support services.

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



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President of the Senate

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Speaker of the House

I certify that H.B. No. 4531 was passed by the House on May 8, 2019, by the following vote: Yeas 148, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 4531 on May 23, 2019, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 4531 was passed by the Senate, with amendments, on May 20, 2019, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor