

1-1 By: Neave, Raymond, Muñoz, Jr. H.B. No. 4531  
 1-2 (Senate Sponsor - Zaffirini)  
 1-3 (In the Senate - Received from the House May 8, 2019;  
 1-4 May 10, 2019, read first time and referred to Committee on Criminal  
 1-5 Justice; May 17, 2019, reported favorably by the following vote:  
 1-6 Yeas 6, Nays 0; 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 A BILL TO BE ENTITLED  
 1-17 AN ACT

1-18 relating to the rights and treatment of and services provided to  
 1-19 certain adult sexual assault survivors.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 323.004(c), Health and Safety Code, is  
 1-22 amended to read as follows:

1-23 (c) A health care facility must obtain documented consent  
 1-24 before providing the forensic medical examination and treatment.  
 1-25 The facility shall presume that an adult sexual assault survivor  
 1-26 requesting a forensic medical examination and treatment is  
 1-27 competent.

1-28 SECTION 2. Chapter 323, Health and Safety Code, is amended  
 1-29 by adding Section 323.0044 to read as follows:

1-30 Sec. 323.0044. PROVISION OF EMERGENCY SERVICES TO CERTAIN  
 1-31 ADULT SEXUAL ASSAULT SURVIVORS. (a) A health care facility shall  
 1-32 provide a forensic medical examination and treatment to an adult  
 1-33 sexual assault survivor for whom a guardian is appointed under  
 1-34 Title 3, Estates Code, without the consent of the survivor's  
 1-35 guardian, guardian ad litem, or other legal agent if:

1-36 (1) the health care facility determines the survivor  
 1-37 understands the nature of the forensic medical examination and  
 1-38 treatment; and

1-39 (2) the survivor agrees to receive the forensic  
 1-40 medical examination and treatment.

1-41 (b) Subject to Subsection (c), if an adult sexual assault  
 1-42 survivor requests a forensic medical examination and treatment and  
 1-43 a health care facility determines the survivor potentially is  
 1-44 incapable of consenting to the forensic medical examination and  
 1-45 treatment, the health care facility may:

1-46 (1) obtain consent from a relative or caretaker of the  
 1-47 survivor on the survivor's behalf;

1-48 (2) obtain consent from the survivor's guardian,  
 1-49 guardian ad litem, or other legal agent; or

1-50 (3) petition a court with probate jurisdiction in the  
 1-51 county in which the facility is located for an emergency order  
 1-52 authorizing the forensic medical examination and treatment, in the  
 1-53 manner provided by Section 48.208, Human Resources Code.

1-54 (c) If personnel of a health care facility know or have  
 1-55 reason to believe that the survivor's relative, caretaker,  
 1-56 guardian, guardian ad litem, or other legal agent is a suspect or  
 1-57 accomplice in the sexual assault of the survivor, the health care  
 1-58 facility may not contact the survivor's relative, caretaker,  
 1-59 guardian, guardian ad litem, or other legal agent.

1-60 (d) A health care facility may not provide a forensic  
 1-61 medical examination to an adult sexual assault survivor for whom a

2-1 guardian is appointed under Title 3, Estates Code, if the survivor  
 2-2 refuses the examination, regardless of whether the survivor's  
 2-3 guardian requests or consents to the examination.

2-4 SECTION 3. Section 420.072(c), Government Code, is amended  
 2-5 to read as follows:

2-6 (c) A communication, a record, or evidence that is  
 2-7 confidential under this subchapter may not be disclosed to a parent  
 2-8 or legal guardian of a survivor who is a minor or to a guardian  
 2-9 appointed under Title 3, Estates Code, of an adult survivor, if  
 2-10 applicable, if an advocate or a sexual assault program knows or has  
 2-11 reason to believe that the parent or [legal] guardian of the  
 2-12 survivor is a suspect or accomplice in the sexual assault of the  
 2-13 survivor.

2-14 SECTION 4. Section 420.073, Government Code, is amended by  
 2-15 amending Subsection (a) and adding Subsection (d) to read as  
 2-16 follows:

2-17 (a) Consent for the release of confidential information  
 2-18 other than evidence contained in an evidence collection kit must be  
 2-19 in writing and signed by the survivor, a parent or legal guardian if  
 2-20 the survivor is a minor, ~~[a legal guardian if the survivor has been~~  
 2-21 ~~adjudicated incompetent to manage the survivor's personal~~  
 2-22 ~~affairs,]~~ an attorney ad litem appointed for the survivor, or a  
 2-23 personal representative if the survivor is deceased. The written  
 2-24 consent must specify:

- 2-25 (1) the information or records covered by the release;
  - 2-26 (2) the reason or purpose for the release; and
  - 2-27 (3) the person to whom the information is to be
- 2-28 released.

2-29 (d) For purposes of Subsection (a), a written consent signed  
 2-30 by an adult survivor with a guardian appointed under Title 3,  
 2-31 Estates Code, is effective regardless of whether the adult  
 2-32 survivor's guardian, guardian ad litem, or other legal agent signs  
 2-33 the release. If the adult survivor agrees to the release but is  
 2-34 unable to provide a signature and the guardian, guardian ad litem,  
 2-35 or other legal agent is unavailable or declines to sign the release,  
 2-36 then a notary may sign the release in the manner provided by Section  
 2-37 406.0165.

2-38 SECTION 5. Section 420.0735(b), Government Code, is amended  
 2-39 to read as follows:

2-40 (b) For purposes of Subsection (a)(1), a written consent  
 2-41 signed by an adult survivor with a guardian appointed under Title 3  
 2-42 ~~[incapacitated person, as that term is defined by Chapter 1002],~~  
 2-43 Estates Code, is effective regardless of whether the adult  
 2-44 survivor's [incapacitated person's] guardian, guardian ad litem, or  
 2-45 other legal agent signs the release. If the adult survivor with an  
 2-46 appointed guardian agrees to the release but [incapacitated person]  
 2-47 is unable to provide a signature and the guardian, guardian ad  
 2-48 litem, or other legal agent is unavailable or declines to sign the  
 2-49 release, then the investigating law enforcement officer may sign  
 2-50 the release.

2-51 SECTION 6. Section 1151.351(b), Estates Code, is amended to  
 2-52 read as follows:

2-53 (b) Unless limited by a court or otherwise restricted by  
 2-54 law, a ward is authorized to the following:

- 2-55 (1) to have a copy of the guardianship order and
- 2-56 letters of guardianship and contact information for the probate
- 2-57 court that issued the order and letters;
- 2-58 (2) to have a guardianship that encourages the
- 2-59 development or maintenance of maximum self-reliance and
- 2-60 independence in the ward with the eventual goal, if possible, of
- 2-61 self-sufficiency;
- 2-62 (3) to be treated with respect, consideration, and
- 2-63 recognition of the ward's dignity and individuality;
- 2-64 (4) to reside and receive support services in the most
- 2-65 integrated setting, including home-based or other community-based
- 2-66 settings, as required by Title II of the Americans with
- 2-67 Disabilities Act (42 U.S.C. Section 12131 et seq.);
- 2-68 (5) to consideration of the ward's current and
- 2-69 previously stated personal preferences, desires, medical and

3-1 psychiatric treatment preferences, religious beliefs, living  
3-2 arrangements, and other preferences and opinions;

3-3 (6) to financial self-determination for all public  
3-4 benefits after essential living expenses and health needs are met  
3-5 and to have access to a monthly personal allowance;

3-6 (7) to receive timely and appropriate health care and  
3-7 medical treatment that does not violate the ward's rights granted  
3-8 by the constitution and laws of this state and the United States;

3-9 (8) to exercise full control of all aspects of life not  
3-10 specifically granted by the court to the guardian;

3-11 (9) to control the ward's personal environment based  
3-12 on the ward's preferences;

3-13 (10) to complain or raise concerns regarding the  
3-14 guardian or guardianship to the court, including living  
3-15 arrangements, retaliation by the guardian, conflicts of interest  
3-16 between the guardian and service providers, or a violation of any  
3-17 rights under this section;

3-18 (11) to receive notice in the ward's native language,  
3-19 or preferred mode of communication, and in a manner accessible to  
3-20 the ward, of a court proceeding to continue, modify, or terminate  
3-21 the guardianship and the opportunity to appear before the court to  
3-22 express the ward's preferences and concerns regarding whether the  
3-23 guardianship should be continued, modified, or terminated;

3-24 (12) to have a court investigator, guardian ad litem,  
3-25 or attorney ad litem appointed by the court to investigate a  
3-26 complaint received by the court from the ward or any person about  
3-27 the guardianship;

3-28 (13) to participate in social, religious, and  
3-29 recreational activities, training, employment, education,  
3-30 habilitation, and rehabilitation of the ward's choice in the most  
3-31 integrated setting;

3-32 (14) to self-determination in the substantial  
3-33 maintenance, disposition, and management of real and personal  
3-34 property after essential living expenses and health needs are met,  
3-35 including the right to receive notice and object about the  
3-36 substantial maintenance, disposition, or management of clothing,  
3-37 furniture, vehicles, and other personal effects;

3-38 (15) to personal privacy and confidentiality in  
3-39 personal matters, subject to state and federal law;

3-40 (16) to unimpeded, private, and uncensored  
3-41 communication and visitation with persons of the ward's choice,  
3-42 except that if the guardian determines that certain communication  
3-43 or visitation causes substantial harm to the ward:

3-44 (A) the guardian may limit, supervise, or  
3-45 restrict communication or visitation, but only to the extent  
3-46 necessary to protect the ward from substantial harm; and

3-47 (B) the ward may request a hearing to remove any  
3-48 restrictions on communication or visitation imposed by the guardian  
3-49 under Paragraph (A);

3-50 (17) to petition the court and retain counsel of the  
3-51 ward's choice who holds a certificate required by Subchapter E,  
3-52 Chapter 1054, to represent the ward's interest for capacity  
3-53 restoration, modification of the guardianship, the appointment of a  
3-54 different guardian, or for other appropriate relief under this  
3-55 subchapter, including a transition to a supported decision-making  
3-56 agreement, except as limited by Section 1054.006;

3-57 (18) to vote in a public election, marry, and retain a  
3-58 license to operate a motor vehicle, unless restricted by the court;

3-59 (19) to personal visits from the guardian or the  
3-60 guardian's designee at least once every three months, but more  
3-61 often, if necessary, unless the court orders otherwise;

3-62 (20) to be informed of the name, address, phone  
3-63 number, and purpose of Disability Rights Texas, an organization  
3-64 whose mission is to protect the rights of, and advocate for, persons  
3-65 with disabilities, and to communicate and meet with representatives  
3-66 of that organization;

3-67 (21) to be informed of the name, address, phone  
3-68 number, and purpose of an independent living center, an area agency  
3-69 on aging, an aging and disability resource center, and the local

4-1 mental health and intellectual and developmental disability  
4-2 center, and to communicate and meet with representatives from these  
4-3 agencies and organizations;

4-4 (22) to be informed of the name, address, phone  
4-5 number, and purpose of the Judicial Branch Certification Commission  
4-6 and the procedure for filing a complaint against a certified  
4-7 guardian;

4-8 (23) to contact the Department of Family and  
4-9 Protective Services to report abuse, neglect, exploitation, or  
4-10 violation of personal rights without fear of punishment,  
4-11 interference, coercion, or retaliation; ~~and~~

4-12 (24) to have the guardian, on appointment and on  
4-13 annual renewal of the guardianship, explain the rights delineated  
4-14 in this subsection in the ward's native language, or preferred mode  
4-15 of communication, and in a manner accessible to the ward; and

4-16 (25) to make decisions related to sexual assault  
4-17 crisis services, including consenting to a forensic medical  
4-18 examination and treatment, authorizing the collection of forensic  
4-19 evidence, consenting to the release of evidence contained in an  
4-20 evidence collection kit and disclosure of related confidential  
4-21 information, and receiving counseling and other support services.

4-22 SECTION 7. This Act takes effect September 1, 2019.

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