

House Bill 616
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Article 56.01, Code of Criminal Procedure, is amended by adding Subdivision (2-b) to read as follows:

(2-b) "Sexual assault examiner" and "sexual assault nurse examiner" have the meanings assigned by Section 420.003, Government Code.

SECTION 2. Article 56.021(a), Code of Criminal Procedure, is amended to read as follows:

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

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

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

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

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

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

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SECTION 1. Same as House version.

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(C) of the results of the comparison described by Paragraph (B), unless disclosing the results would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which those results are expected to be disclosed;

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

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

(6) to the extent provided by Articles 56.06 and 56.065, for the victim of the offense, the right to a forensic medical examination if, within 120 [~~96~~] hours of the offense, the offense is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility.

SECTION 3. Article 56.06, Code of Criminal Procedure, is amended by amending Subsections (a), (b), and (f) and adding Subsections (a-1), (b-1), (b-2), (b-3), (b-4), (b-5), (g), and (h) to read as follows:

(a) This article applies to health care facilities described by Article 56.065.

(a-1) If a sexual assault is reported to a law enforcement agency within 120 [~~96~~] hours of the assault, the law enforcement agency, with the consent of the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall

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SECTION 3. Article 56.06, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (b-1), (b-2), (b-3), (b-4), (b-5), (g), and (h) to read as follows:

(a) This article applies to health care facilities described by Article 56.065.

(a-1) If a sexual assault is reported to a law enforcement agency within 120 [~~96~~] hours of the assault, the law enforcement agency, with the consent of the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall

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request a forensic medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a forensic medical examination under this subsection only if:

(1) the sexual assault was not reported to the law enforcement agency within the period described by this subsection; or

(2) the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and ~~if~~ there is no other evidence to corroborate the current allegations of sexual assault.

(b) If a sexual assault is not reported within the period described by Subsection (a-1) [~~+~~], on receiving the consent described by that subsection the law enforcement agency may request a forensic medical examination of a victim of an alleged sexual assault as considered necessary [~~appropriate~~] by the agency.

(b-1) If a sexual assault is reported to a law enforcement agency as provided by Subsection (a-1) or (b), the law enforcement agency shall document, in the form and manner required by the attorney general, whether the agency requested a forensic medical examination. The law enforcement agency shall:

(1) provide the documentation of the agency's decision regarding a request for a forensic medical examination to:

(A) the health care facility and the sexual assault examiner or sexual assault nurse examiner, as applicable, that provides services to the victim that are related to the sexual assault; and

(B) the victim or the person who consented to the forensic medical examination on behalf of the victim; and

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request a forensic medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense. A law enforcement agency may decline to request a forensic medical examination under this subsection only if

the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency and ~~if~~ there is no other evidence to corroborate the current allegations of sexual assault.

(b) If a sexual assault is not reported within the period described by Subsection (a-1) [~~+~~], on receiving the consent described by that subsection the law enforcement agency may request a forensic medical examination of a victim of an alleged sexual assault as considered appropriate by the agency.

(b-1) If a sexual assault is reported to a law enforcement agency as provided by Subsection (a-1) or (b), the law enforcement agency shall document, in the form and manner required by the attorney general, whether the agency requested a forensic medical examination. The law enforcement agency shall:

(1) provide the documentation of the agency's decision regarding a request for a forensic medical examination to:

(A) the health care facility and the sexual assault examiner or sexual assault nurse examiner, as applicable, who provides services to the victim that are related to the sexual assault; and

(B) the victim or the person who consented to the forensic medical examination on behalf of the victim; and

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(2) maintain the documentation of the agency's decision in accordance with the agency's record retention policies.

(b-2) On application to the attorney general, a health care facility that provides a forensic medical examination to a sexual assault survivor in accordance with this article, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, as applicable, is entitled to be reimbursed in an amount set by attorney general rule for:

(1) the reasonable costs of the forensic portion of that examination; and

(2) the evidence collection kit.

(b-3) The application under Subsection (b-2) must be in the form and manner prescribed by the attorney general and must include:

(1) the documentation that the law enforcement agency requested the forensic medical examination, as required under Subsection (b-1); and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(b-4) A health care facility or a sexual assault examiner or sexual assault nurse examiner, as applicable, that applies for reimbursement under Subsection (b-2) shall accept reimbursement from the attorney general as payment for the costs unless an investigation of the costs by the attorney general determines that there is a reasonable health care justification for a deviation.

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(2) maintain the documentation of the agency's decision in accordance with the agency's record retention policies.

(b-2) On application to the attorney general, a health care facility that provides a forensic medical examination to a sexual assault survivor in accordance with this article, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, as applicable, is entitled to be reimbursed in an amount set by attorney general rule for:

(1) the reasonable costs of the forensic portion of that examination; and

(2) the evidence collection kit.

(b-3) The application under Subsection (b-2) must be in the form and manner prescribed by the attorney general and must include:

(1) the documentation that the law enforcement agency requested the forensic medical examination, as required under Subsection (b-1); and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(b-4) A health care facility or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (b-2) shall accept reimbursement from the attorney general as payment for the costs unless:

(1) the health care facility or sexual assault examiner or sexual assault nurse examiner, as applicable:

(A) requests, in writing, additional reimbursement from the attorney general; and

(B) provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and

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(b-5) A health care facility is not entitled to reimbursement under this article unless the forensic medical examination was conducted at the facility by a physician, sexual assault examiner, or sexual assault nurse examiner.

(f) The attorney general may make a payment to or on behalf of an individual for the reasonable and necessary costs incurred for medical care provided in accordance with Section 323.004, Health and Safety Code.

(g) The attorney general shall adopt rules necessary to implement this article.

(h) On request, the attorney general may provide training to a health care facility regarding the process for applying for reimbursement under this article.

SECTION 4. Article 56.065, Code of Criminal Procedure, is amended by amending Subsections (c) and (k) and adding Subsections (c-1), (c-2), (c-3), (c-4), and (l) to read as follows:

(c) In accordance with Subchapter B, Chapter 420, Government Code, and except as provided by Subsection (e), a health care facility shall conduct a forensic medical examination of the victim of an alleged sexual assault if:

- (1) the victim arrives at the facility within 120 [96] hours after the assault occurred;
- (2) the victim consents to the examination; and
- (3) at the time of the examination the victim has not reported the assault to a law enforcement agency.

(c-1) On application to the attorney general, a health care facility that provides a forensic medical examination to a

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(2) the attorney general determines that there is a reasonable justification for additional reimbursement.

(b-5) A health care facility is not entitled to reimbursement under this article unless the forensic medical examination was conducted at the facility by a physician, sexual assault examiner, or sexual assault nurse examiner.

(g) The attorney general shall adopt rules necessary to implement this article.

(h) On request, the attorney general may provide training to a health care facility regarding the process for applying for reimbursement under this article.

SECTION 4. Article 56.065, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), (c-3), (c-4), and (l) to read as follows:

(c) In accordance with Subchapter B, Chapter 420, Government Code, and except as provided by Subsection (e), a health care facility shall conduct a forensic medical examination of the victim of an alleged sexual assault if:

- (1) the victim arrives at the facility within 120 [96] hours after the assault occurred;
- (2) the victim consents to the examination; and
- (3) at the time of the examination the victim has not reported the assault to a law enforcement agency.

(c-1) On application to the attorney general, a health care facility that provides a forensic medical examination to a

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sexual assault survivor in accordance with this article, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, as applicable, within 120 hours after the alleged sexual assault occurred is entitled to be reimbursed in an amount set by attorney general rule for:
(1) the reasonable costs of the forensic portion of that examination; and

(2) the evidence collection kit.

(c-2) The application under Subsection (c-1) must be in the form and manner prescribed by the attorney general and must include:

(1) certification that the examination was conducted in accordance with the requirements of Subsection (c); and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(c-3) A health care facility or a sexual assault examiner or sexual assault nurse examiner, as applicable, that applies for reimbursement under Subsection (c-1) shall accept reimbursement from the attorney general as payment for the costs unless an investigation of the costs by the attorney general determines that there is a reasonable health care justification for a deviation.

(c-4) A health care facility is not entitled to reimbursement under this article unless the forensic medical examination

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sexual assault survivor in accordance with this article, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, as applicable, within 120 hours after the alleged sexual assault occurred is entitled to be reimbursed in an amount set by attorney general rule for:
(1) the reasonable costs of the forensic portion of that examination; and

(2) the evidence collection kit.

(c-2) The application under Subsection (c-1) must be in the form and manner prescribed by the attorney general and must include:

(1) certification that the examination was conducted in accordance with the requirements of Subsection (c); and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(c-3) A health care facility or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (c-1) shall accept reimbursement from the attorney general as payment for the costs unless:

(1) the health care facility or sexual assault examiner or sexual assault nurse examiner, as applicable:

(A) requests, in writing, additional reimbursement from the attorney general; and

(B) provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and

(2) the attorney general determines that there is a reasonable justification for additional reimbursement.

(c-4) A health care facility is not entitled to reimbursement under this article unless the forensic medical examination

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was conducted at the facility by a physician, sexual assault examiner, or sexual assault nurse examiner.

(k) The attorney general may make a payment to or on behalf of an individual for the reasonable and necessary costs incurred for medical care provided in accordance with Section 323.004, Health and Safety Code.

(1) On request, the attorney general may provide training to a health care facility regarding the process for applying for reimbursement under this article.

SECTION 5. Article 56.54(k), Code of Criminal Procedure, is amended to read as follows:

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

(1) reimburse a health care facility or a sexual assault examiner or sexual assault nurse examiner for certain costs of a forensic medical examination that are incurred by the facility or the examiner ~~reimburse a law enforcement agency for the reasonable costs of a forensic medical examination that are incurred by the agency~~ under Article 56.06 or 56.065, as provided by those articles; and

(2) make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided under Article 56.06 or 56.065 in accordance with Section 323.004, Health and Safety Code.

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

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

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was conducted at the facility by a physician, sexual assault examiner, or sexual assault nurse examiner.

(1) On request, the attorney general may provide training to a health care facility regarding the process for applying for reimbursement under this article.

SECTION 5. Same as House version.

SECTION 6. Same as House version.

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- (1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;
- (2) information regarding treatment of sexually transmitted infections and pregnancy, including:
 - (A) generally accepted medical procedures;
 - (B) appropriate medications; and
 - (C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;
- (3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;
- (4) information regarding crime victims compensation, including:
 - (A) a statement that public agencies are responsible for paying for the forensic portion of an examination conducted under Article 56.06 or 56.065, Code of Criminal Procedure, and for the evidence collection kit used in connection with the examination and that the health care facility or provider, as applicable, is responsible for seeking reimbursement for those costs[:
 - ~~[(i) a law enforcement agency will pay for the forensic portion of an examination requested by the agency under Article 56.06, Code of Criminal Procedure, and for the evidence collection kit; or~~
 - ~~[(ii) the Department of Public Safety will pay the appropriate fees for the forensic portion of an examination conducted under Article 56.065, Code of Criminal Procedure, and for the evidence collection kit];~~ and

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- (B) ~~[reimbursement]~~ information regarding the reimbursement of the survivor for the medical portion of the examination;
- (5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;
- (6) the name and telephone number of sexual assault crisis centers statewide; and
- (7) information regarding postexposure prophylaxis for HIV infection.

SECTION 7. Section 323.0051(a), Health and Safety Code, is amended to read as follows:

- (a) The department shall develop a standard information form for sexual assault survivors who arrive at a health care facility that is not a SAFE-ready facility. The information form must include:
- (1) information regarding the benefits of a forensic medical examination conducted by a sexual assault forensic examiner;
- (2) the Internet website address to the department's list of SAFE-ready facilities that includes the facilities' physical addresses as required by Section 323.008;
- (3) the following statements:
- (A) "As a survivor of sexual assault, you have the right to receive a forensic medical examination at this hospital emergency room if you are requesting the examination not later than 120 ~~[96]~~ hours after the assault.";
- (B) "A report to law enforcement is not required, but if you make a report, law enforcement must first authorize the examination."; and

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(C) "Call 1-800-656-HOPE to be connected to a rape crisis center for free and confidential assistance."; and
(4) information on the procedure for submitting a complaint against the health care facility.

SECTION 8. The following provisions are repealed:

- (1) Article 56.06(c), Code of Criminal Procedure;
- (2) Articles 56.065(a)(3) and (d), Code of Criminal Procedure; and
- (3) Section 420.031(d), Government Code.

SECTION 9. The change in law made by this Act applies to a forensic medical examination that occurs on or after the effective date of this Act. A forensic medical examination that occurs before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

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

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SECTION 8. Same as House version.

SECTION 9. Same as House version.

SECTION 10. Same as House version.

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