By:  Paxton, et al. S.B. No. 1573

A BILL TO BE ENTITLED

AN ACT

relating to the reporting of sexual assault and other sex offenses and to the collection, analysis, tracking, and preservation of evidence of those offenses.

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

SECTION 1.  Articles 21.31(a), (c), and (d), Code of Criminal Procedure, are amended to read as follows:

(a)  A person who is indicted for or who waives indictment for an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court on the court's own motion or on the request of the victim of the reported [~~alleged~~] offense, undergo a standard diagnostic test approved by the United States Food and Drug Administration for human immunodeficiency virus (HIV) infection and other sexually transmitted diseases. If the person refuses to submit voluntarily to the test, the court shall require the person to submit to the test. On request of the victim of the reported [~~alleged~~] offense, the court shall order the defendant to undergo the test not later than 48 hours after an indictment for the offense is presented against the defendant or the defendant waives indictment. Except as provided by Subsection (b-1), the court may require a defendant previously required under this article to undergo a diagnostic test on indictment for an offense to undergo a subsequent test only after conviction of the offense. A person performing a test under this subsection shall make the test results available to the local health authority, and the local health authority shall be required to make the notification of the test results to the victim of the reported [~~alleged~~] offense and to the defendant.

(c)  The state may not use the fact that a test was performed on a person under Subsection (a) or use the results of a test conducted under Subsection (a) in any criminal proceeding arising out of the reported [~~alleged~~] offense.

(d)  Testing under this article shall be conducted in accordance with written infectious disease control protocols adopted by the Texas Board of Health that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the person accused and any victim of the reported [~~alleged~~] offense.

SECTION 2.  Article 38.07, Code of Criminal Procedure, is amended to read as follows:

Art. 38.07.  TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE. (a) A conviction under Chapter 21, Section 20A.02(a)(3), (4), (7), or (8), Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the reported [~~alleged~~] offense within one year after the date on which the reported incident [~~offense is alleged to have~~] occurred.

(b)  The requirement that the victim inform another person of an [~~alleged~~] offense as described by Subsection (a) does not apply if at the time of the [~~alleged~~] offense the victim was a person:

(1)  17 years of age or younger;

(2)  65 years of age or older; or

(3)  18 years of age or older who by reason of age or physical or mental disease, defect, or injury was substantially unable to satisfy the person's need for food, shelter, medical care, or protection from harm.

SECTION 3.  Article 56A.051(a), Code of Criminal Procedure, is amended to read as follows:

(a)  A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1)  the right to receive from a law enforcement agency adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2)  the right to have the magistrate consider the safety of the victim or the victim's family in setting the amount of bail for the defendant;

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

(A)  by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled before the event; and

(B)  by an appellate court of the court's decisions, after the decisions are entered but before the decisions are made public;

(4)  when requested, the right to be informed:

(A)  by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations; and

(B)  by the office of the attorney representing the state concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;

(5)  the right to provide pertinent information to a community supervision and corrections department conducting a presentencing investigation concerning the impact of the offense on the victim and the victim's family by testimony, written statement, or any other manner before any sentencing of the defendant;

(6)  the right to receive information regarding compensation to victims of crime as provided by Chapter 56B, including information related to the costs that may be compensated under that chapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that chapter, the payment for a forensic medical examination under Article 56A.252 for a victim of a reported [~~an alleged~~] sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7)  the right to:

(A)  be informed, on request, of parole procedures;

(B)  participate in the parole process;

(C)  provide to the board for inclusion in the defendant's file information to be considered by the board before the parole of any defendant convicted of any offense subject to this chapter; and

(D)  be notified, if requested, of parole proceedings concerning a defendant in the victim's case and of the defendant's release;

(8)  the right to be provided with a waiting area, separate or secure from other witnesses, including the defendant and relatives of the defendant, before testifying in any proceeding concerning the defendant; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the defendant and the defendant's relatives and witnesses, before and during court proceedings;

(9)  the right to the prompt return of any of the victim's property that is held by a law enforcement agency or the attorney representing the state as evidence when the property is no longer required for that purpose;

(10)  the right to have the attorney representing the state notify the victim's employer, if requested, that the victim's cooperation and testimony is necessary in a proceeding that may require the victim to be absent from work for good cause;

(11)  the right to request victim-offender mediation coordinated by the victim services division of the department;

(12)  the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system as described by Subchapter D, to complete the victim impact statement, and to have the victim impact statement considered:

(A)  by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and

(B)  by the board before a defendant is released on parole;

(13)  for a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by Section 71.004, Family Code, the right to have the court consider the impact on the victim of a continuance requested by the defendant; if requested by the attorney representing the state or by the defendant's attorney, the court shall state on the record the reason for granting or denying the continuance; and

(14)  if the offense is a capital felony, the right to:

(A)  receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist;

(B)  not be contacted by the victim outreach specialist unless the victim, guardian, or relative has consented to the contact by providing a written notice to the court; and

(C)  designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

SECTION 4.  Article 56A.251, Code of Criminal Procedure, is amended to conform to Section 3, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and is further amended to read as follows:

Art. 56A.251.  REQUEST FOR FORENSIC MEDICAL EXAMINATION. (a) If [~~Except as provided by Subsection (b), if~~] a sexual assault is reported to a law enforcement agency within 120 [~~96~~] hours after the assault, the law enforcement agency, with the consent of the victim of the reported [~~alleged~~] assault, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services, shall request a forensic medical examination of the victim for use in the investigation or prosecution of the offense.

(b)  If a sexual assault is not reported within the period described by Subsection (a) and the victim is a minor as defined by Section 101.003, Family Code, on receiving the consent described by Subsection (a) or the consent described by Section 32.003 or 32.005, Family Code, a law enforcement agency shall request a forensic medical examination of the victim for use in the investigation or prosecution of the offense [~~A law enforcement agency may decline to request a forensic medical examination under Subsection (a) only if:~~

[~~(1)  the person reporting the sexual assault has made one or more false reports of sexual assault to any law enforcement agency; and~~

[~~(2)  there is no other evidence to corroborate the current allegations of sexual assault~~].

(c)  If a sexual assault is not reported within the period described by Subsection (a) and the victim is not a minor as defined by Section 101.003, Family Code, on receiving the consent described by Subsection (a), [~~that subsection~~] a law enforcement agency may request a forensic medical examination of a victim of a reported [~~an alleged~~] sexual assault for use in the investigation or prosecution of the offense if:

(1)  based on the circumstances of the reported assault, the agency believes a forensic medical examination would further that investigation or prosecution; or

(2)  after a medical evaluation by a physician, sexual assault examiner, or sexual assault nurse examiner, the physician or examiner notifies the agency that a forensic medical examination should be conducted [~~as considered appropriate by the agency~~].

(d)  If a sexual assault is reported to a law enforcement agency as provided by Subsection (a), (b), or (c), 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 physician, 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

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

SECTION 5.  Article 56A.303, Code of Criminal Procedure, is amended to conform to Section 4, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and is further amended to read as follows:

Art. 56A.303.  FORENSIC MEDICAL EXAMINATION. (a) In accordance with Subchapter B, Chapter 420, Government Code, and except as provided by Subsection (b), a health care facility shall conduct a forensic medical examination of a victim of a [~~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.

(b)  If a health care facility does not provide diagnosis or treatment services to victims of sexual assault, the facility shall refer a victim of a [~~an alleged~~] sexual assault who seeks a forensic medical examination under Subsection (a) to a health care facility that provides services to those victims.

(c)  A victim of a [~~an alleged~~] sexual assault may not be required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination under this article.

SECTION 6.  (a) Articles 56A.304(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a)  The department shall pay the appropriate fees, as set by attorney general rule, for the forensic portion of a forensic medical examination conducted under Article 56A.303(a) and for the evidence collection kit if a physician, sexual assault examiner, or sexual assault nurse examiner conducts the forensic portion of the examination within 120 [~~96~~] hours after the [~~alleged~~] sexual assault occurred.

(b)  A victim of a [~~an alleged~~] sexual assault may not be required to pay for:

(1)  the forensic portion of the forensic medical examination; or

(2)  the evidence collection kit.

(c)  It is the intent of the 87th Legislature, Regular Session, 2021, that the amendments made by this section be harmonized with another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 7.  Article 56A.307, Code of Criminal Procedure, is amended to read as follows:

Art. 56A.307.  PROCEDURES FOR SUBMISSION OR COLLECTION OF ADDITIONAL EVIDENCE. The department, consistent with Chapter 420, Government Code, may develop procedures regarding the submission or collection of additional evidence of a [~~an alleged~~] sexual assault other than through a forensic medical examination as described by Article 56A.303(a).

SECTION 8.  Article 56A.351(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Before conducting a forensic medical examination of a victim who consents to the examination for the collection of evidence for a [~~an alleged~~] sexual assault, the physician or other medical services personnel conducting the examination shall offer the victim the opportunity to have an advocate from a sexual assault program as defined by Section 420.003, Government Code, be present with the victim during the examination, if the advocate is available at the time of the examination. The advocate must have completed a sexual assault training program described by Section 420.011(b), Government Code.

SECTION 9.  Article 56A.352(b), Code of Criminal Procedure, is amended to read as follows:

(b)  If a victim reporting [~~alleging~~] to have sustained injuries as the victim of a sexual assault was confined in a penal institution at the time of the reported [~~alleged~~] assault, the penal institution shall provide, at the victim's request, a representative to be present with the victim at any forensic medical examination conducted for the purpose of collecting and preserving evidence related to the investigation or prosecution of the reported [~~alleged~~] assault. The representative must:

(1)  be approved by the penal institution; and

(2)  be a:

(A)  psychologist;

(B)  sociologist;

(C)  chaplain;

(D)  social worker;

(E)  case manager; or

(F)  volunteer who has completed a sexual assault training program described by Section 420.011(b), Government Code.

SECTION 10.  Article 56A.401, Code of Criminal Procedure, is amended to read as follows:

Art. 56A.401.  NOTIFICATION OF RIGHTS. At the initial contact or at the earliest possible time after the initial contact between a victim of a reported offense and the law enforcement agency having the responsibility for investigating the offense, the agency shall provide the victim a written notice containing:

(1)  information about the availability of emergency and medical services, if applicable;

(2)  information about the rights of crime victims under Subchapter B;

(3)  notice that the victim has the right to receive information regarding compensation to victims of crime as provided by Chapter 56B, including information about:

(A)  the costs that may be compensated under that chapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that chapter;

(B)  the payment for a forensic medical examination under Article 56A.252 for a victim of a reported [~~an alleged~~] sexual assault; and

(C)  referral to available social service agencies that may offer additional assistance;

(4)  the name, address, and phone number of the law enforcement agency's crime victim liaison;

(5)  the name, address, and phone number of the victim assistance coordinator of the office of the attorney representing the state; and

(6)  the following statement:

"You may call the law enforcement agency's telephone number for the status of the case and information about victims' rights."

SECTION 11.  Article 56A.451(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, the attorney representing the state shall give to each victim of the offense a written notice containing:

(1)  the case number and assigned court for the case;

(2)  a brief general statement of each procedural stage in the processing of a criminal case, including bail, plea bargaining, parole restitution, and appeal;

(3)  suggested steps the victim may take if the victim is subjected to threats or intimidation;

(4)  the name, address, and phone number of the local victim assistance coordinator; and

(5)  notification of:

(A)  the rights and procedures under this chapter, Chapter 56B, and Subchapter B, Chapter 58;

(B)  the right to file a victim impact statement with the office of the attorney representing the state and the department;

(C)  the right to receive information regarding compensation to victims of crime as provided by Chapter 56B, including information about:

(i)  the costs that may be compensated under that chapter, eligibility for compensation, and procedures for application for compensation under that chapter;

(ii)  the payment for a forensic medical examination under Article 56A.252 for a victim of a reported [~~an alleged~~] sexual assault; and

(iii)  referral to available social service agencies that may offer additional assistance; and

(D)  the right of a victim, guardian of a victim, or close relative of a deceased victim, as defined by Section 508.117, Government Code, to appear in person before a member of the board as provided by Section 508.153, Government Code.

SECTION 12.  Section 420.032(a)(3), Government Code, is amended to read as follows:

(3)  "Photo documentation" means video or photographs of a child [~~alleged to be the~~] victim of a sexual assault that are taken with a colposcope or other magnifying camera during the forensic portion of a medical examination of the child.

SECTION 13.  Sections 420.032(b) and (e), Government Code, are amended to read as follows:

(b)  In a county with a population of three million or more, the forensic portion of a medical examination of a child [~~alleged to be the~~] victim of a sexual assault must include the production of photo documentation unless the medical professional examining the child determines that good cause for refraining from producing photo documentation exists.

(e)  The fact that the medical professional examining the child did not produce photo documentation in the forensic portion of a medical examination of a child [~~alleged to be the~~] victim of a sexual assault and the reasons behind the lack of photo documentation are admissible at the trial of the [~~alleged~~] sexual assault, but the lack of photo documentation will not affect the admissibility of other evidence in the case.

SECTION 14.  Sections 420.034(a) and (c), Government Code, are amended to read as follows:

(a)  For purposes of this section, "evidence" means evidence collected during the investigation of a [~~an alleged~~] sexual assault or other sex offense, including:

(1)  evidence from an evidence collection kit used to collect and preserve evidence of a sexual assault or other sex offense; and

(2)  other biological evidence of a sexual assault or other sex offense.

(c)  The tracking system must:

(1)  include all evidence collected in relation to a sexual assault or other sex offense, regardless of whether evidence of the offense is collected in relation to an individual who is alive or deceased;

(2)  track the location and status of each item of evidence through the criminal justice process, including the initial collection of the item of evidence in a forensic medical examination, receipt and storage of the item of evidence at a law enforcement agency, receipt and analysis of the item of evidence at an accredited crime laboratory, and storage and destruction of the item of evidence after the item is analyzed;

(3) [~~(2)~~]  allow a facility or entity performing a forensic medical examination of a survivor, law enforcement agency, accredited crime laboratory, prosecutor, or other entity providing a chain of custody for an item of evidence to update and track the status and location of the item; and

(4) [~~(3)~~]  allow a survivor to anonymously track or receive updates regarding the status and location of each item of evidence collected in relation to the offense.

SECTION 15.  Section 420.045, Government Code, is transferred to Section 420.034, Government Code, redesignated as Subsection (h) of that section, and amended to read as follows:

(h)  Not later than December 1 of each year, the department [~~Sec. 420.045. REPORT OF UNANALYZED EVIDENCE OF SEXUAL ASSAULT OR OTHER SEX OFFENSE. Each law enforcement agency and public accredited crime laboratory~~] shall submit a [~~quarterly~~] report to the governor and members of the legislature [~~department~~] identifying the number of sexual assault evidence collection kits that have [~~the law enforcement agency has~~] not yet been submitted for laboratory analysis or for which the [~~crime~~] laboratory analysis has not yet been completed [~~an analysis~~], as applicable. The report must be titled "Statewide Electronic Tracking System Report".

SECTION 16.  Section 420.035(a), Government Code, as added by Chapter 408 (H.B. 8), Acts of the 86th Legislature, Regular Session, 2019, is amended to read as follows:

(a)  If a health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense receives signed, written consent to release the evidence as provided by Section 420.0735, the facility or entity shall:

(1)  promptly notify any law enforcement agency investigating the [~~alleged~~] offense; and

(2)  not later than 24 hours after the conclusion of the examination, enter the identification number of the evidence collection kit into the statewide electronic tracking system under Section 420.034.

SECTION 17.  Section 420.046, Government Code, is amended to read as follows:

Sec. 420.046.  NONCOMPLIANCE. Failure to comply with the requirements of Subchapter B or this subchapter may be used to determine eligibility for receiving grant funds from the department, the office of the governor, or another state agency.

SECTION 18.  The heading to Chapter 323, Health and Safety Code, is amended to read as follows:

CHAPTER 323. EMERGENCY SERVICES AND FORENSIC EXAMINATION PROGRAMS FOR SURVIVORS OF SEXUAL ASSAULT

SECTION 19.  Chapter 323, Health and Safety Code, is amended by designating Sections 323.001 through 323.008 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. EMERGENCY SERVICES FOR SURVIVORS OF SEXUAL ASSAULT

SECTION 20.  Section 323.004(a), Health and Safety Code, is amended to read as follows:

(a)  Except as otherwise provided by Subsection (a-2), after a sexual assault survivor arrives at a health care facility following a [~~an alleged~~] sexual assault, the facility shall provide care to the survivor in accordance with Subsection (b).

SECTION 21.  Chapter 323, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. SEXUAL ASSAULT FORENSIC EXAMINATION PROGRAMS

Sec. 323.051.  DEFINITIONS. In this subchapter:

(1)  "Health facility" means a health facility licensed under Subtitle B, Title 4.

(2)  "Physician" means a physician licensed under Subtitle B, Title 3, Occupations Code.

(3)  "SAFE program" means a program that meets the requirements prescribed by Section 323.052.

(4)  "SAFE-ready facility" means a health care facility designated as a sexual assault forensic exam-ready facility under Section 323.0015 or a SAFE program, as defined by Section 323.101(3) and designated under Section 323.102.

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

Sec. 323.052.  OPERATION OF SAFE PROGRAM; DESIGNATION OF SAFE PROGRAM AS SAFE-READY FACILITY. (a) A health facility may operate a SAFE program only if:

(1)  the program meets the minimum standards established under Section 323.053; and

(2)  the facility provides forensic medical examinations to sexual assault survivors in accordance with Section 323.054.

(b)  The Health and Human Services Commission shall designate a health facility operating a SAFE program described by Subsection (a) as a SAFE-ready facility if the facility notifies the commission that the facility employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation to a licensed nurse or physician during a sexual assault forensic medical examination.

Sec. 323.053.  MINIMUM STANDARDS FOR SAFE PROGRAMS. A SAFE program must:

(1)  operate under the active oversight of a medical director who is a physician in good standing with the Texas Medical Board;

(2)  provide medical treatment under a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by Texas Medical Board rules;

(3)  employ or contract with a sexual assault examiner or a sexual assault nurse examiner;

(4)  provide access to a sexual assault program advocate, as required by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(5)  ensure a sexual assault survivor has access to a private treatment room;

(6)  if indicated by a survivor's history or on a survivor's request, provide:

(A)  HIV testing and prophylactic medication to the survivor or a referral for the testing and medication; and

(B)  counseling and prophylactic medications for exposure to sexually transmitted infections and pregnancy;

(7)  provide to survivors the name and telephone number of the nearest sexual assault program that provides to survivors the minimum services described by Subchapter A, Chapter 420, Government Code;

(8)  provide to survivors the information form required by Section 323.005 or 323.0052, as applicable;

(9)  collaborate with any sexual assault program that provides services to survivors in the county;

(10)  continually engage in efforts to improve the quality of the program;

(11)  maintain capacity for immediate triage or have agreements with other health facilities to assure that a survivor receives the appropriate level of care indicated for the survivor's medical and mental health needs;

(12)  prioritize the safety and well-being of survivors;

(13)  provide a trauma-informed approach in the forensic medical care provided to survivors; and

(14)  collaborate with:

(A)  law enforcement agencies and attorneys representing the state with jurisdiction in the county;

(B)  any available local sexual assault response team; and

(C)  other interested persons in the community.

Sec. 323.054.  FORENSIC MEDICAL EXAMINATION BY SAFE PROGRAM; INFORMED CONSENT. (a) A SAFE program shall provide to a sexual assault survivor under the care of the program a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure, or if the examination is performed in accordance with Subchapter G, Chapter 56A, Code of Criminal Procedure.

(b)  Only a sexual assault examiner or a sexual assault nurse examiner may perform a forensic medical examination under a SAFE program.

(c)  A sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program must obtain a sexual assault survivor's informed, written consent before performing a forensic medical examination or providing medical treatment to the survivor.

(d)  A sexual assault survivor who receives a forensic medical examination from a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program may not be required to:

(1)  participate in the investigation or prosecution of an offense as a prerequisite to receiving the forensic medical examination or medical treatment; or

(2)  pay for the costs of the forensic portion of the forensic medical examination or for the evidence collection kit.

SECTION 22.  Except as otherwise provided by this Act, to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 23.  The change in law made by this Act applies only to sexual assault evidence and evidence of other sex offenses collected on or after the effective date of this Act. Evidence collected before the effective date of this Act is governed by the law in effect on the date the evidence was collected, and the former law is continued in effect for that purpose.

SECTION 24.  This Act takes effect September 1, 2021.