

1-1 By: Neave, et al. (Senate Sponsor - Paxton) H.B. No. 2462
 1-2 (In the Senate - Received from the House April 8, 2021;
 1-3 April 12, 2021, read first time and referred to Committee on
 1-4 Criminal Justice; May 21, 2021, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
 1-6 May 21, 2021, 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 COMMITTEE SUBSTITUTE FOR H.B. No. 2462 By: Whitmire

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the reporting of a sexual assault and to the collection
 1-20 and submission of evidence with respect to that offense.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Article 56A.052(a), Code of Criminal Procedure,
 1-23 is amended to conform to Section 2, Chapter 1037 (H.B. 616), Acts of
 1-24 the 86th Legislature, Regular Session, 2019, and is further amended
 1-25 to read as follows:

1-26 (a) If the offense is a sexual assault, a victim, guardian
 1-27 of a victim, or close relative of a deceased victim is entitled to
 1-28 the following rights within the criminal justice system:

1-29 (1) if requested, the right to a disclosure of
 1-30 information regarding:

1-31 (A) any evidence that was collected during the
 1-32 investigation of the offense, unless disclosing the information
 1-33 would interfere with the investigation or prosecution of the
 1-34 offense, in which event the victim, guardian, or relative shall be
 1-35 informed of the estimated date on which that information is
 1-36 expected to be disclosed; and

1-37 (B) the status of any analysis being performed of
 1-38 any evidence described by Paragraph (A);

1-39 (2) if requested, the right to be notified:

1-40 (A) at the time a request is submitted to a crime
 1-41 laboratory to process and analyze any evidence that was collected
 1-42 during the investigation of the offense;

1-43 (B) at the time of the submission of a request to
 1-44 compare any biological evidence collected during the investigation
 1-45 of the offense with DNA profiles maintained in a state or federal
 1-46 DNA database; and

1-47 (C) of the results of the comparison described by
 1-48 Paragraph (B), unless disclosing the results would interfere with
 1-49 the investigation or prosecution of the offense, in which event the
 1-50 victim, guardian, or relative shall be informed of the estimated
 1-51 date on which those results are expected to be disclosed;

1-52 (3) if requested, the right to counseling regarding
 1-53 acquired immune deficiency syndrome (AIDS) and human
 1-54 immunodeficiency virus (HIV) infection; and

1-55 (4) for the victim, the right to:

1-56 (A) testing for acquired immune deficiency
 1-57 syndrome (AIDS), human immunodeficiency virus (HIV) infection,
 1-58 antibodies to HIV, or infection with any other probable causative
 1-59 agent of AIDS; and

1-60 (B) a forensic medical examination to the extent

2-1 provided by Subchapters F and G if, within 120 ~~[96]~~ hours of the
2-2 offense:

2-3 (i) the offense is reported to a law
2-4 enforcement agency; or

2-5 (ii) a forensic medical examination is
2-6 otherwise conducted at a health care provider ~~[facility]~~.

2-7 SECTION 2. Subchapter F, Chapter 56A, Code of Criminal
2-8 Procedure, is amended to conform to Section 3, Chapter 1037 (H.B.
2-9 616), Acts of the 86th Legislature, Regular Session, 2019, by
2-10 adding Article 56A.2505 and further amending that article to read
2-11 as follows:

2-12 Art. 56A.2505. APPLICABILITY. This subchapter applies to
2-13 health care providers described by Article 56A.302.

2-14 SECTION 3. Subchapter F, Chapter 56A, Code of Criminal
2-15 Procedure, is amended by adding Article 56A.2506 to read as
2-16 follows:

2-17 Art. 56A.2506. DEFINITION. In this subchapter, "reported
2-18 sexual assault" means a sexual assault that has been reported to a
2-19 law enforcement agency.

2-20 SECTION 4. Article 56A.251, Code of Criminal Procedure, is
2-21 amended to conform to Section 3, Chapter 1037 (H.B. 616), Acts of
2-22 the 86th Legislature, Regular Session, 2019, and is further amended
2-23 to read as follows:

2-24 Art. 56A.251. REQUEST FOR FORENSIC MEDICAL EXAMINATION.

2-25 (a) ~~If [Except as provided by Subsection (b), if]~~ a sexual assault
2-26 is reported to a law enforcement agency within 120 ~~[96]~~ hours after
2-27 the assault, the law enforcement agency, with the consent of the
2-28 victim of the reported ~~[alleged]~~ assault, a person authorized to
2-29 act on behalf of the victim, or an employee of the Department of
2-30 Family and Protective Services, shall request a forensic medical
2-31 examination of the victim for use in the investigation or
2-32 prosecution of the offense.

2-33 (b) If a sexual assault is not reported within the period
2-34 described by Subsection (a) and the victim is a minor as defined by
2-35 Section 101.003, Family Code, on receiving the consent described by
2-36 Subsection (a) or the consent described by Section 32.003 or
2-37 32.005, Family Code, a law enforcement agency shall request a
2-38 forensic medical examination of the victim for use in the
2-39 investigation or prosecution of the offense [A law enforcement
2-40 agency may decline to request a forensic medical examination under
2-41 Subsection (a) only if:

2-42 ~~[(1) the person reporting the sexual assault has made~~
2-43 ~~one or more false reports of sexual assault to any law enforcement~~
2-44 ~~agency; and~~

2-45 ~~[(2) there is no other evidence to corroborate the~~
2-46 ~~current allegations of sexual assault].~~

2-47 (c) If a sexual assault is not reported within the period
2-48 described by Subsection (a) and the victim is not a minor as defined
2-49 by Section 101.003, Family Code, on receiving the consent described
2-50 by Subsection (a), [that subsection] a law enforcement agency may
2-51 request a forensic medical examination of a victim of a reported [an
2-52 alleged] sexual assault for use in the investigation or prosecution
2-53 of the offense if:

2-54 (1) based on the circumstances of the reported
2-55 assault, the agency believes a forensic medical examination would
2-56 further that investigation or prosecution; or

2-57 (2) after a medical evaluation by a physician, sexual
2-58 assault examiner, or sexual assault nurse examiner, the physician
2-59 or examiner notifies the agency that a forensic medical examination
2-60 should be conducted [as considered appropriate by the agency].

2-61 (d) If a sexual assault is reported to a law enforcement
2-62 agency as provided by Subsection (a), (b), or (c), the law
2-63 enforcement agency shall document, in the form and manner required
2-64 by the attorney general, whether the agency requested a forensic
2-65 medical examination. The law enforcement agency shall:

2-66 (1) provide the documentation of the agency's decision
2-67 regarding a request for a forensic medical examination to:

2-68 (A) the health care provider and the physician,
2-69 sexual assault examiner, or sexual assault nurse examiner, as

3-1 applicable, who provides services to the victim that are related to
 3-2 the sexual assault; and

3-3 (B) the victim or the person who consented to the
 3-4 forensic medical examination on behalf of the victim; and

3-5 (2) maintain the documentation of the agency's
 3-6 decision in accordance with the agency's record retention policies.

3-7 SECTION 5. Article 56A.252, Code of Criminal Procedure, is
 3-8 amended to conform to Sections 3 and 8, Chapter 1037 (H.B. 616),
 3-9 Acts of the 86th Legislature, Regular Session, 2019, and is further
 3-10 amended to read as follows:

3-11 Art. 56A.252. PAYMENT OF COSTS OF EXAMINATION. (a) ~~[A law~~
 3-12 ~~enforcement agency that requests a forensic medical examination~~
 3-13 ~~under Article 56A.251 shall pay all costs of the examination.]~~ On
 3-14 application to the attorney general, a health care provider that
 3-15 provides a forensic medical examination to a sexual assault
 3-16 survivor in accordance with this subchapter, or the [law
 3-17 enforcement agency is entitled to be reimbursed for the reasonable
 3-18 costs of the examination if the examination was performed by a
 3-19 physician or by a] sexual assault examiner or sexual assault nurse
 3-20 examiner who conducts that examination, as applicable, is entitled
 3-21 to be reimbursed in an amount set by attorney general rule for:

3-22 (1) the reasonable costs of the forensic portion of
 3-23 that examination; and

3-24 (2) the evidence collection kit [defined by Section
 3-25 420.003, Government Code].

3-26 (b) The application under Subsection (a) must be in the form
 3-27 and manner prescribed by the attorney general and must include:

3-28 (1) the documentation that the law enforcement agency
 3-29 requested the forensic medical examination, as required under
 3-30 Article 56A.251(d); and

3-31 (2) a complete and itemized bill of the reasonable
 3-32 costs of the forensic portion of the examination.

3-33 (c) A health care provider or a sexual assault examiner or
 3-34 sexual assault nurse examiner, as applicable, who applies for
 3-35 reimbursement under Subsection (a) shall accept reimbursement from
 3-36 the attorney general as payment for the costs unless:

3-37 (1) the health care provider or the sexual assault
 3-38 examiner or sexual assault nurse examiner, as applicable:

3-39 (A) requests, in writing, additional
 3-40 reimbursement from the attorney general; and

3-41 (B) provides documentation in support of the
 3-42 additional reimbursement, as reasonably requested by the attorney
 3-43 general; and

3-44 (2) the attorney general determines that there is a
 3-45 reasonable justification for additional reimbursement.

3-46 (d) A health care provider is not entitled to reimbursement
 3-47 under this article unless the forensic medical examination was
 3-48 conducted by a physician, sexual assault examiner, or sexual
 3-49 assault nurse examiner.

3-50 (e) On request, the attorney general may provide training to
 3-51 a health care provider regarding the process for applying for
 3-52 reimbursement under this article.

3-53 SECTION 6. Article 56A.302, Code of Criminal Procedure, is
 3-54 amended to read as follows:

3-55 Art. 56A.302. APPLICABILITY. This subchapter applies to
 3-56 the following health care providers ~~[facilities]~~ that provide
 3-57 diagnosis or treatment services to victims of sexual assault:

3-58 (1) a general or special hospital licensed under
 3-59 Chapter 241, Health and Safety Code;

3-60 (2) a general or special hospital owned by this state;

3-61 (3) an outpatient clinic; and

3-62 (4) a private physician's office.

3-63 SECTION 7. Article 56A.303, Code of Criminal Procedure, is
 3-64 amended to conform to Section 4, Chapter 1037 (H.B. 616), Acts of
 3-65 the 86th Legislature, Regular Session, 2019, and is further amended
 3-66 to read as follows:

3-67 Art. 56A.303. FORENSIC MEDICAL EXAMINATION. (a) In
 3-68 accordance with Subchapter B, Chapter 420, Government Code, and
 3-69 except as provided by Subsection (b), a health care provider

4-1 [~~facility~~] shall conduct a forensic medical examination of a victim
4-2 of a [~~an alleged~~] sexual assault if:

4-3 (1) the victim arrives at the provider [~~facility~~]
4-4 within 120 [~~96~~] hours after the assault occurred;

4-5 (2) the victim consents to the examination; and

4-6 (3) at the time of the examination the victim has not
4-7 reported the assault to a law enforcement agency.

4-8 (b) If a health care provider [~~facility~~] does not provide
4-9 diagnosis or treatment services to victims of sexual assault, the
4-10 provider [~~facility~~] shall refer a victim of a [~~an alleged~~] sexual
4-11 assault who seeks a forensic medical examination under Subsection
4-12 (a) to a health care provider [~~facility~~] that provides services to
4-13 those victims.

4-14 (c) A victim of a [~~an alleged~~] sexual assault may not be
4-15 required to participate in the investigation or prosecution of an
4-16 offense as a condition of receiving a forensic medical examination
4-17 under this article.

4-18 SECTION 8. Article 56A.304, Code of Criminal Procedure, is
4-19 amended to conform to Sections 4 and 8, Chapter 1037 (H.B. 616),
4-20 Acts of the 86th Legislature, Regular Session, 2019, and is further
4-21 amended to read as follows:

4-22 Art. 56A.304. PAYMENT OF FEES RELATED TO EXAMINATION. (a)
4-23 On application to the [~~The department shall pay the appropriate~~
4-24 ~~fees, as set by~~] attorney general [~~rule~~], a health care provider
4-25 that provides [~~for the forensic portion of~~] a forensic medical
4-26 examination to a sexual assault survivor in accordance with this
4-27 subchapter, or the [~~conducted under Article 56A.303(a) and for the~~
4-28 ~~evidence collection kit if a physician,~~] sexual assault examiner
4-29 [~~7~~] or sexual assault nurse examiner who conducts that [~~the~~
4-30 ~~forensic portion of the~~] examination, as applicable, within 120
4-31 [~~96~~] hours after the [~~alleged~~] sexual assault occurred is entitled
4-32 to be reimbursed in an amount set by attorney general rule for:

4-33 (1) the reasonable costs of the forensic portion of
4-34 that examination; and

4-35 (2) the evidence collection kit.

4-36 (b) The application under Subsection (a) must be in the form
4-37 and manner prescribed by the attorney general and must include:

4-38 (1) certification that the examination was conducted
4-39 in accordance with the requirements of Article 56A.303(a); and

4-40 (2) a complete and itemized bill of the reasonable
4-41 costs of the forensic portion of the examination [~~attorney general~~
4-42 ~~shall reimburse the department for fees paid under Subsection (a)].~~

4-43 (c) A health care provider or a sexual assault examiner or
4-44 sexual assault nurse examiner, as applicable, who applies for
4-45 reimbursement under Subsection (a) shall accept reimbursement from
4-46 the attorney general as payment for the costs unless:

4-47 (1) the health care provider or sexual assault
4-48 examiner or sexual assault nurse examiner, as applicable:

4-49 (A) requests, in writing, additional
4-50 reimbursement from the attorney general; and

4-51 (B) provides documentation in support of the
4-52 additional reimbursement, as reasonably requested by the attorney
4-53 general; and

4-54 (2) the attorney general determines that there is a
4-55 reasonable justification for additional reimbursement.

4-56 (d) A health care provider is not entitled to reimbursement
4-57 under this article unless the forensic medical examination was
4-58 conducted at the provider by a physician, sexual assault examiner,
4-59 or sexual assault nurse examiner.

4-60 (e) On request, the attorney general may provide training to
4-61 a health care provider regarding the process for applying for
4-62 reimbursement under this article.

4-63 (f) A victim of a [~~an alleged~~] sexual assault may not be
4-64 required to pay for:

4-65 (1) the forensic portion of the forensic medical
4-66 examination; or

4-67 (2) the evidence collection kit.

4-68 SECTION 9. Article 56A.307, Code of Criminal Procedure, is
4-69 amended to read as follows:

5-1 Art. 56A.307. PROCEDURES FOR SUBMISSION OR COLLECTION OF
5-2 ADDITIONAL EVIDENCE. The department, consistent with Chapter 420,
5-3 Government Code, may develop procedures regarding the submission or
5-4 collection of additional evidence of a ~~[an alleged]~~ sexual assault
5-5 other than through a forensic medical examination as described by
5-6 Article 56A.303(a).

5-7 SECTION 10. Article 56B.453(d), Code of Criminal Procedure,
5-8 is amended to conform to Section 5, Chapter 1037 (H.B. 616), Acts of
5-9 the 86th Legislature, Regular Session, 2019, and is further amended
5-10 to read as follows:

5-11 (d) The attorney general may use the fund to:

5-12 (1) reimburse a health care provider or a sexual
5-13 assault examiner or sexual assault nurse examiner for certain costs
5-14 of a forensic medical examination that are incurred by the provider
5-15 or the examiner ~~[law enforcement agency for the reasonable costs of~~
5-16 ~~a forensic medical examination that are incurred by the agency]~~
5-17 under Subchapter F or G, Chapter 56A, as provided by those
5-18 subchapters; and

5-19 (2) make a payment to or on behalf of an individual for
5-20 the reasonable costs incurred for medical care provided under
5-21 Subchapter F or G, Chapter 56A, in accordance with Section 323.004,
5-22 Health and Safety Code.

5-23 SECTION 11. To the extent of any conflict, this Act prevails
5-24 over another Act of the 87th Legislature, Regular Session, 2021,
5-25 relating to nonsubstantive additions to and corrections in enacted
5-26 codes.

5-27 SECTION 12. The change in law made by this Act applies only
5-28 to a sexual assault reported on or after the effective date of this
5-29 Act. A sexual assault reported before the effective date of this
5-30 Act is governed by the law in effect on the date the sexual assault
5-31 was reported, and the former law is continued in effect for that
5-32 purpose.

5-33 SECTION 13. This Act takes effect September 1, 2021.

5-34 * * * * *