

BILL ANALYSIS

Senate Research Center
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S.B. 761
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Crime victims are granted both constitutional and statutory rights within the criminal justice system and have legal standing to assert those rights. However, these rights hold little value if they cannot be effectively enforced. To safeguard against violations, victims should have access to legal assistance throughout the criminal justice process.

S.B. 761 aims to provide effective access to justice for survivors of sexual assault, including rights adequate notice of plea bargain hearings, rights to counsel, and rights to an advocate during forensic exams and investigative interviews.

As proposed, S.B. 761 amends current law relating to rights of crime victims and the enforcement of those rights and authorizes a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 26.13(e) and (f), Code of Criminal Procedure, as follows:

(e) Requires the court, before accepting a plea of guilty or a plea of nolo contendere, to, as applicable in the case:

(1) makes no changes to this subdivision;

(2) inquire as to whether the attorney representing the state has:

(A) given notice, at least five business days before the date of the presentation of the agreement to the court or otherwise as soon as reasonably practicable, of the existence and terms of any plea bargain agreement to the victim, guardian of a victim, or close relative of a deceased victim, as those terms are defined by Article 56A.001 (Definitions); and

(B) conferred with the victim, guardian of a victim, or close relative of a deceased victim regarding the disposition of the case.

(f) Provides that the failure of the court to comply with Subsection (e) of Article 26.13 (Plea of Guilty):

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) is grounds for the victim, guardian of a victim, or close relative of a deceased victim to petition the court to reset a plea hearing or set aside the plea.

SECTION 2. Amends Article 56A.051(a), Code of Criminal Procedure, as follows:

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

(1)-(2) makes no changes to these subdivisions;

(3) if requested, the right to be informed in the manner provided by Article 56A.0525 (Authorized Form of Notifications):

(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, at least five business days before the date of each proceeding or otherwise as soon as reasonably practicable, and to be informed as soon as possible if those proceedings have been canceled or rescheduled before the event; and

(B) makes no changes to this paragraph; and

(4)-(14) makes no changes to these subdivisions.

SECTION 3. Amends Article 56A.053, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that, subject to Subsection (c), a judge, attorney representing the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right granted by Subchapter B (Crime Victims' Rights). Makes a nonsubstantive change.

(c) Provides that a judge, attorney representing the state, peace officer, or law enforcement agency may be subject to an injunction or writ of mandamus to compel the judge, attorney, officer, or agency to provide a right granted by or a service required under this subchapter.

SECTION 4. Amends Article 56A.0531, Code of Criminal Procedure, as follows:

Art. 56A.0531. ASSERTION OF RIGHTS. (a) Creates this subsection from existing text and makes no further changes.

(b) Authorizes the victim, guardian of a victim, close relative of a deceased victim, the attorney representing the state, or an attorney representing a victim, guardian of a victim, or close relative of a deceased victim to assert a right granted by this subchapter to the victim, guardian, or relative, or request enforcement of the right, by filing a motion, petition for a writ of mandamus, or action for injunctive or declaratory relief in a trial or appellate court with jurisdiction over the case.

(c) Authorizes the attorney representing the state, in an appeal in a criminal case, to assert as error the trial court's denial, in the proceeding to which the appeal relates, of a right granted by this subchapter to the victim, guardian of a victim, or close relative of a deceased victim.

SECTION 5. Amends Article 56A.351, Code of Criminal Procedure, by amending Subsection (e) and adding Subsections (f), (g), (h), and (i), as follows:

(e) Deletes existing text defining "health care facility."

(f) Requires an individual or entity, including a health care facility, that is required to offer a victim the opportunity to have an advocate from a sexual assault program be present with the victim during the forensic medical examination to document whether the offer was extended to the victim, whether the advocate was available at the time of the

examination, and if the offer was not extended to the victim, the reason the offer was not extended to the victim.

(g) Provides that an individual or entity, including a health care facility, that does not offer a victim the opportunity to have an advocate be present, as required by Subsection (a) (relating to the requirement that a victim who consents to a forensic medical examination is offered an advocate), or that otherwise prevents a victim from gaining access to an advocate described by that subsection for a reason other than the unavailability of the advocate, is:

(1) liable to this state for a civil penalty in the amount of \$1,000 for each violation; and

(2) subject to, if the individual or entity is designated as a SAFE-ready facility or SAFE program, as those terms are defined by Section 323.001 (Definitions), Health and Safety Code, removal of the facility's or program's designation by the Health and Human Services Commission or Department of State Health Services, as applicable, under Chapter 323 (Emergency Services and Forensic Examination Programs for Survivors of Sexual Assault), Health and Safety Code.

(h) Authorizes the attorney general to bring an action to recover the civil penalty imposed under Subsection (g)(1).

(i) Provides that, in this article, "health care facility" includes a hospital licensed under Chapter 241, Health and Safety Code.

SECTION 6. Amends Article 56A.3515, Code of Criminal Procedure, by amending Subsections (a), (b), (b-1), (d), and (f) and adding Subsection (b-2), as follows:

(a) Requires the peace officer or other individual conducting an investigative interview with a victim reporting a sexual assault, other than a victim who is a minor as defined by Section 101.003 (Child or Minor; Adult), Family Code, before conducting the interview, to 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 interview, if the advocate is available at the time of the interview.

(b) Makes a conforming change to this subsection.

(b-1) Makes conforming changes to this subsection.

(b-2) Provides that a victim has the right to have an attorney present during an investigative interview with the victim. Prohibits the attorney from unreasonably delaying or otherwise impeding the interview process.

(d) Prohibits the advocate, liaison, officer, or counselor and the sexual assault program or other entity providing the advocate, liaison, officer, or counselor from unreasonably delaying or otherwise impeding the interview process.

(f) Provides that an individual or entity, rather than a peace officer or law enforcement agency, that provides an advocate, liaison, officer, or counselor with access to a victim reporting a sexual assault is not subject to civil or criminal liability for providing that access.

SECTION 7. Amends Article 56A.451, Code of Criminal Procedure, as follows:

Art. 56A.451. NOTIFICATION OF RIGHTS. (a) Requires the attorney representing the state, not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, to give to each victim of the offense a written notice containing:

(1)-(2) makes no changes to these subdivisions;

(3) a statement that the attorney representing the state does not represent the victim, guardian of a victim, or close relative of a deceased victim;

(4)-(5) makes nonsubstantive changes to these subdivisions;

(6) notification of:

(A)-(B) makes no changes to these paragraphs;

(C)-(D) makes nonsubstantive changes to these paragraphs; and

(E) the right of a victim, guardian of a victim, or close relative of a deceased victim to assert the rights granted by this chapter either orally or in writing, individually or through an attorney, as provided by Article 56A.0531 (Assertion of Rights).

Makes a nonsubstantive change to this subsection.

(b) Requires that the brief general statement required by Subsection (a)(2) (relating to a brief general statement of certain procedural stages in a criminal case) that describes the plea bargaining stage in a criminal trial include a statement that:

(1) makes no changes to this subdivision; and

(2) the judge before accepting a plea bargain agreement is required under Article 26.13(e) to ask:

(A)-(B) makes no changes to these paragraphs; and

(C) whether the attorney representing the state has given the victim, guardian of a victim, or close relative of a deceased victim notice of the existence and terms of the plea bargain agreement at least five business days before the date of the presentation of a plea bargain agreement to the court or otherwise as soon as reasonably practicable.

SECTION 8. Amends Article 56A.452, Code of Criminal Procedure, as follows:

Art. 56A.452. NOTIFICATION OF SCHEDULED COURT PROCEEDINGS. (a) Creates this subsection from existing text. Requires the attorney representing the state, if requested by the victim, at least five business days before the date of the court proceeding or the filing of the continuance request or otherwise as soon as reasonably practicable, rather than as far as reasonably practical, to give the victim notice of:

(1) any scheduled court proceedings, rather than any scheduled court proceedings and changes in that schedule; and

(2) makes no changes to this subdivision.

(b) Requires the attorney representing the state, if requested by the victim, to give the victim notice of any changes in scheduled court proceedings as soon as possible.

SECTION 9. Amends Article 56A.453, Code of Criminal Procedure, to make conforming changes.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2025.