

BILL ANALYSIS

Senate Research Center
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H.B. 616
By: Neave et al. (Nelson)
Criminal Justice
5/14/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 616 amends current law relating to reimbursement for a certain portion of a forensic medical examination of a sexual assault survivor and for the evidence collection kit required for the examination.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas attorney general in SECTION 3 (Section 56.06, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 56.01, Code of Criminal Procedure, by adding Subdivision (2-b) to define "sexual assault examiner" and "sexual assault nurse examiner."

SECTION 2. Amends Article 56.021(a), Code of Criminal Procedure, as follows:

(a) Entitles the victim, guardian of a victim, or close relative of a deceased victim, in addition to the rights enumerated in Article 56.02 (Crime Victims' Rights), if the offense is a sexual assault, to certain rights within the criminal justice system, including to the extent provided by Articles 56.06 (Forensic Medical Examination For Sexual Assault Who Has Reported Assault; Costs) and 56.065 (Medical Examination For Sexual Assault Victim Who Has Not Reported Assault; Costs), for the victim of the offense, the right to a forensic medical examination if, within 120 hours, rather than 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. Amends Article 56.06, Code of Criminal Procedure, 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), as follows:

(a) Provides that this article applies to health care facilities described by Article 56.065.

(a-1) Creates this subsection from existing Subsection (a) and makes conforming and nonsubstantive changes. Authorizes a law enforcement agency to decline to request a forensic medical examination under this subsection only if certain conditions are met, including that the sexual assault was not reported to the law enforcement agency within the period described by this subsection.

(b) Makes a nonsubstantive change. Authorizes the law enforcement agency, if a sexual assault is not reported within the period described by Subsection (a-1), on receiving the consent described by that subsection, to request a forensic medical examination of a victim of an alleged sexual assault as considered necessary, rather than considered appropriate, by the agency.

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

(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

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

(b-2) Provides that, 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) Requires the application under Subsection (b-2) to be in the form and manner prescribed by the attorney general and to 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) Requires a health care facility or a sexual assault examiner or sexual assault nurse examiner, as applicable, that applies for reimbursement under Subsection (b-2) to 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.

(b-5) Provides that 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) Authorizes the attorney general to make a payment to or on behalf of an individual for the reasonable and necessary costs, rather than reasonable costs, incurred for medical care provided in accordance with Section 323.004 (Minimum Standards For Emergency Services), Health and Safety Code.

(g) Requires the attorney general to adopt rules necessary to implement this article.

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

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

(c) Requires a health care facility, in accordance with Subchapter B (Collection, Preservation, and Tracking of Evidence), Chapter 420, Government Code, and except as provided by Subsection (e), to conduct a forensic medical examination of the victim of an

alleged sexual assault if certain conditions are met, including the victim arrives at the facility within 120 hours, rather than 96 hours, after the assault occurred.

(c-1) Provides that, 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, 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) Requires the application under Subsection (c-1) to be in the form and manner prescribed by the attorney general and to 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) Requires a health care facility or a sexual assault examiner or sexual assault nurse examiner, as applicable, that applies for reimbursement under Subsection (c-1) to 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) Provides that 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.

(k) Makes a conforming change to this subsection.

(l) Authorizes the attorney general, on request, to provide training to a health care facility regarding the process for applying for reimbursement under this article.

SECTION 5. Amends Article 56.54(k), Code of Criminal Procedure, as follows:

(k) Authorizes the attorney general to 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 under Article 56.06 or 56.065, as provided by those articles, rather than 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; and
- (2) makes no changes to this subdivision.

SECTION 6. Amends Section 323.005(a), Health and Safety Code, as follows:

(a) Requires the Department of State Health Services (DSHS) to develop a standard information form for sexual assault survivors that is required to include:

- (1)–(3) makes no changes to these subdivisions; and
- (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; and

(B) information regarding the reimbursement of the survivor for the medical portion of the examination, rather than information for the medical portion of the examination; and

(5)–(7) makes no changes to these subdivisions.

Deletes existing text requiring DSHS to develop a standard information form for sexual assault survivors that is required to include information regarding crime victims compensation, including a statement that 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 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.

SECTION 7. Amends Section 323.0051(a), Health and Safety Code, as follows:

(a) Requires DSHS to 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 is required to include:

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

(3) makes a conforming change to this subdivision; and

(4) makes no changes to this subdivision.

SECTION 8. Repealer: Article 56.06(c) (relating to requiring a law enforcement agency that requests a forensic medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense to pay all costs of the examination), Code of Criminal Procedure;

Repealer: Article 56.065(a)(3) (relating to the definitions of "sexual assault examiner" and "sexual assault nurse examiner"), Code of Criminal Procedure;

Repealer: Article 56.065(d) (relating to DPS paying certain fees associated with the forensic portion of the medical examination and for the evidence collection kit), Code of Criminal Procedure; and

Repealer: Section 420.031(d) (relating to requiring a law enforcement agency that requests a forensic medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense to pay all costs of the examination), Government Code.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2019.