

BILL ANALYSIS

Senate Research Center
83R23011 MAW-F

C.S.S.B. 1192
By: Davis
Criminal Justice
4/18/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1192 seeks to allow victims of sexual assault, the guardian of a victim, or a close relative of a deceased victim various rights in regard to notification about evidence that was collected from their assaults, including when evidence collected during the investigation of the assault is submitted to a crime lab for analysis.

The survivor has the right to decide whether to exercise these rights. A survivor who chooses to be notified must provide the attorney representing the state and the law enforcement agency investigating the crime with a current address and phone number. Additionally, the survivor is allowed to designate an entity, including an entity that provides services to victims of sexual assault, to receive the notifications instead of the survivor.

C.S.S.B. 1192 amends current law relating to the rights of certain victims of sexual assault.

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 Article 56.01(2-a), Code of Criminal Procedure, to redefine "sexual assault."

SECTION 2. Amends Articles 56.02(a), (c), and (d), Code of Criminal Procedure, as follows:

(a) Entitles a victim, guardian of a victim, or close relative of a deceased victim to certain rights within the criminal justice system. Deletes existing text entitling a victim, guardian of a victim, or close relative of a deceased victim to certain rights within the criminal justice system, including the right to counseling, on request, regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection and 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, if the offense is an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11(a)(1) (relating to providing that a person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex, the person engages in sexual contact with the child or caused the child to engage in sexual contact), 22.011 (Sexual Assault), or 22.021 (Aggravated Sexual Assault), Penal Code; and, to the extent provided by Articles 56.06 (Medical Examination for Sexual Assault Victim Who Has Reported Assault; Costs) and 56.065 (Medical Examination for Sexual Assault Victim Who Has Not Reported Assault; Costs), for a victim of a sexual assault, the right to a forensic medical examination if, within 96 hours of the sexual assault, the assault is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility. Makes nonsubstantive changes.

(c) Requires the office of the attorney representing the state, and the sheriff, police, and other law enforcement agencies to ensure to the extent practicable that a victim, guardian

of a victim, or close relative of a deceased victim is afforded the rights granted by this article and Article 56.021, rather than the rights granted by Subsection (a) of this article, and, on request, an explanation of those rights.

(d) Provides that a judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this article or Article 56.021. Prohibits the failure or inability of any person to provide a right or service enumerated in this article or Article 56.021 from being used by a defendant in a criminal case as a ground for appeal, a ground to set aside the conviction or sentence, or a ground in a habeas corpus petition.

SECTION 3. Amends Subchapter A, Chapter 56, Code of Criminal Procedure, by adding Article 56.021, as follows:

Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT. (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 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 of the offense, in which event the victim, guardian, or relative is required to 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

(C) of the results of the comparison described by Paragraph (B), unless disclosing the results would interfere with the investigation of the offense, in which event the victim, guardian, or relative is required to 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 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.

(b) Requires a victim, guardian, or relative who requests to be notified under Subsection (a)(3) to provide a current address and phone number to the attorney representing the state and the law enforcement agency that is investigating the offense. Requires the victim, guardian, or relative to inform the attorney representing the state and the law enforcement agency of any change in the address or phone number.

(c) Authorizes a victim, guardian, or relative to designate a person, including an entity that provides services to victims of sexual assault, to receive any notice requested under Subsection (a)(3).

SECTION 4. Amends Article 56.03(b), Code of Criminal Procedure, as follows:

(b) Requires that the victim impact statement be in a form designed to inform a victim, guardian of a victim, or a close relative of a deceased victim with a clear statement of rights provided by Articles 56.02 and 56.021 and to collect certain information. Makes nonsubstantive changes.

SECTION 5. Amends Article 56.04(b), Code of Criminal Procedure, to provide that the duty of the victim assistance coordinator is to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted victims, guardians, and relatives by Articles 56.02 and 56.021, rather than Article 56.02 of this code.

SECTION 6. Amends Articles 56.045(b) and (f), Code of Criminal Procedure, as follows:

(b) Authorizes the advocate to only provide the injured person with counseling and other support services, and information regarding the rights of crime victims under Articles 56.02 and 56.021. Makes nonsubstantive changes.

(f) Requires the penal institution, if a person alleging to have sustained injuries as the victim of a sexual assault was confined in a penal institution, as defined by Section 1.07, Penal Code, at the time of the alleged assault, to provide, at the person's request, a representative to be present with the person at any forensic medical examination conducted for the purpose of collecting and preserving evidence related to the investigation or prosecution of the alleged assault. Authorizes the representative to only provide the injured person with counseling and other support services and with information regarding the rights of crime victims under Articles 56.02 and 56.021, and prohibits the representative from delaying or otherwise impeding the screening or stabilization of an emergency medical condition. Makes nonsubstantive changes.

SECTION 7. Amends Article 56.07(a), Code of Criminal Procedure, as follows:

(a) Requires the law enforcement agency having the responsibility for investigating that crime, at the initial contact or at the earliest possible time after the initial contact between the victim of a reported crime and that agency, to provide the victim a written notice containing certain information, including the rights of crime victims under Articles 56.02 and 56.021, rather than under Article 56.02 of this code. Makes nonsubstantive changes.

SECTION 8. Amends Section 57.002(a), Family Code, as follows:

(a) Entitles a victim, guardian of a victim, or close relative of a deceased victim to certain rights within the juvenile justice system, including the right to be informed, upon request, of procedures for release under supervision or transfer of the person to the custody of the Texas Department of Criminal Justice (TDCJ) for parole, to participate in the release or transfer for parole process, to be notified, if requested, of the person's release, escape, or transfer for parole proceedings concerning the person, to provide to the Texas Juvenile Justice Department, rather than the Texas Youth Commission, for inclusion in the

person's file information to be considered by the commission before the release under supervision or transfer for parole of the person, and to be notified, if requested, of the person's release or transfer for parole; and any other right appropriate to the victim that a victim of criminal conduct has under Article 56.02 or 56.021, Code of Criminal Procedure.

SECTION 9. Provides that, to allow the Texas Crime Victim Clearinghouse (clearinghouse) sufficient time to update the victim impact statement form as required by Article 56.03(h) (relating to requiring the clearinghouse, not later than December 1 of each odd-numbered year, with the participation of the community justice assistance division of TDCJ and the Board of Pardons and Paroles, to update the victim impact statement form and certain other information, if necessary, to reflect the changes in law relating to criminal justice and the rights of victims and guardians and relatives of victims), Code of Criminal Procedure, a law enforcement agency, prosecutor, or other participant in the criminal justice system is not required to use a victim impact statement form that complies with Article 56.03 (Victim Impact Statement), Code of Criminal Procedure, as amended by this Act, until January 1, 2014.

SECTION 10. Effective date: September 1, 2013.