

CHAPTER 811

H.B. No. 2650

AN ACT

relating to requiring persons indicted for or convicted of sexual assault, aggravated sexual assault, or indecency with a child and juveniles adjudicated delinquent for violations of those offenses to undergo certain medical procedures and tests to detect sexually transmitted diseases, and to the rights of victims of those offenses to counseling and testing for certain of those diseases.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Article 21.31(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person *who is* indicted for *or who waives indictment for* an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable

causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense. If the person refuses to submit voluntarily to the procedure or test, the court *shall* [may] require the person to submit to the procedure or test. *The court may require a defendant previously required under this article to undergo a medical procedure or test on indictment for an offense to undergo a subsequent medical procedure or test following conviction of the offense.* The person performing the procedure or test 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 result to the victim of the alleged offense *and to the defendant.* The state may not use the fact that a medical procedure or test was performed on a person under this subsection or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

SECTION 2. Chapter 54, Family Code, is amended by adding Section 54.033 to read as follows:

*Sec. 54.033. SEXUALLY TRANSMITTED DISEASE, AIDS, AND HIV TESTING. (a) A child found at the conclusion of an adjudication hearing under Section 54.03 of this code to have engaged in delinquent conduct that included a violation of Sections 21.11(a)(1), 22.011, or 22.021, Penal Code, shall undergo a medical procedure or test at the direction of the juvenile court designed to show or help show whether the child has a sexually transmitted disease, acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the child to undergo the procedure or test on the court's own motion or on the request of the victim of the delinquent conduct.*

*(b) If the child or another person who has the power to consent to medical treatment for the child refuses to submit voluntarily or consent to the procedure or test, the court shall require the child to submit to the procedure or test.*

*(c) The person performing the procedure or test shall make the test results available to the local health authority. The local health authority shall be required to notify the victim of the delinquent conduct and the person found to have engaged in the delinquent conduct of the test result.*

*(d) The state may not use the fact that a medical procedure or test was performed on a child under this section or use the results of the procedure or test in any proceeding arising out of the delinquent conduct.*

*(e) Testing under this section 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 child and the victim of the delinquent conduct.*

*(f) Nothing in this section allows a court to release a test result to anyone other than a person specifically authorized under this section. Section 81.103(d), Health and Safety Code, may not be construed to allow the disclosure of test results under this section except as provided by this section.*

SECTION 3. Article 56.02(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 law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;

(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;

(3) the right, if requested, to be informed of relevant court proceedings and to be informed if those court proceedings have been canceled or rescheduled prior to the event;

(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office 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 probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;

(6) the right to receive information regarding compensation to victims of crime as provided by the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes), including information related to the costs that may be compensated under that Act and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that Act, the payment for a medical examination under Article 56.06 of this code for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;

(7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this Act, and to be notified, if requested, of the defendant's release;

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

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

(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause; and

(11) *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 21.11(a)(1), 22.011, or 22.021, Penal Code.*

SECTION 4. (a) The change in law made by Section 1 of this Act to Article 21.31(a), Code of Criminal Procedure, requiring a person indicted for an offense under Section 21.11(a)(1), Penal Code, to undergo certain medical procedures and tests, applies only to a person indicted for an offense committed on or after the effective date of this Act.

(b) The change in law made by Section 1 of this Act to Article 21.31(a), Code of Criminal Procedure, requiring persons convicted of certain offenses under the Penal Code to undergo certain medical procedures and tests, applies only to a person convicted of an offense committed on or after the effective date of this Act.

(c) The change in law made by Section 2 of this Act to the Family Code, adding Section 54.033 to the code and requiring that children found at the conclusion of an adjudication hearing to have engaged in juvenile conduct that included violations of certain sections of the Penal Code undergo certain medical procedures and tests, applies only to a child who engages in the delinquent conduct on or after the effective date of this Act.

(d) For the purposes of this section, an offense is committed or delinquent conduct that includes a violation of an offense is engaged in before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 5. This Act takes effect September 1, 1993.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1993, by a non-record vote; passed by the Senate on May 29, 1993: Yeas 31, Nays 0.

Approved June 18, 1993.

Effective Sept. 1, 1993.