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H.B. No. 2706

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the emergency services and care provided to victims of
3 sexual assault and other sex offenses and to the processes
4 associated with preserving and analyzing the evidence of those
5 offenses.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 38, Code of Criminal Procedure, is
8 amended by adding Article 38.435 to read as follows:

9 Art. 38.435. PROHIBITED USE OF EVIDENCE FROM FORENSIC
10 MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT.
11 Evidence collected during a forensic medical examination conducted
12 under Subchapter F or G, Chapter 56A, may not be used to investigate
13 or prosecute a misdemeanor offense, or an offense under Subchapter
14 D, Chapter 481, Health and Safety Code, alleged to have been
15 committed by the victim from whom the evidence was collected.

16 SECTION 2. Article 56A.252, Code of Criminal Procedure, is
17 amended to conform to Sections 3 and 8, Chapter 1037 (H.B. 616),
18 Acts of the 86th Legislature, Regular Session, 2019, and is further
19 amended to read as follows:

20 Art. 56A.252. PAYMENT OF COSTS OF EXAMINATION. (a) [~~A law~~
21 ~~enforcement agency that requests a forensic medical examination~~
22 ~~under Article 56A.251 shall pay all costs of the examination.~~] On
23 application to the attorney general, a health care provider that
24 provides a forensic medical examination to a sexual assault

1 survivor in accordance with this subchapter, or the [law
2 enforcement agency is entitled to be reimbursed for the reasonable
3 costs of the examination if the examination was performed by a
4 physician or by a] sexual assault examiner or sexual assault nurse
5 examiner who conducts the examination, as applicable, is entitled
6 to be reimbursed in an amount set by attorney general rule for:

7 (1) the reasonable costs of the forensic portion of
8 that examination; and

9 (2) the evidence collection kit [defined by Section
10 420.003, Government Code].

11 (b) The application under Subsection (a) must be in the form
12 and manner prescribed by the attorney general and must include:

13 (1) the documentation of the law enforcement agency's
14 request for the forensic medical examination, as required under
15 Article 56A.251(d); and

16 (2) a complete and itemized bill of the reasonable
17 costs of the forensic portion of the examination.

18 (c) A health care provider or a sexual assault examiner or
19 sexual assault nurse examiner, as applicable, who applies for
20 reimbursement under Subsection (a) shall accept reimbursement from
21 the attorney general as payment for the costs unless:

22 (1) the health care provider or sexual assault
23 examiner or sexual assault nurse examiner, as applicable:

24 (A) requests, in writing, additional
25 reimbursement from the attorney general; and

26 (B) provides documentation in support of the
27 additional reimbursement, as reasonably requested by the attorney

1 general; and

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

4 (d) A health care provider is not entitled to reimbursement
5 under this article unless the forensic medical examination is
6 conducted on the premises of the provider by a sexual assault
7 examiner or sexual assault nurse examiner.

8 (e) On request, the attorney general may provide training to
9 a health care provider regarding the process for applying for
10 reimbursement under this article.

11 SECTION 3. Article 56A.254, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 56A.254. PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE.
14 The attorney general may make a payment to or on behalf of an
15 individual for the reasonable costs incurred for medical care
16 provided in accordance with Sections [~~Section~~] 323.004, 323.053,
17 and 323.054, Health and Safety Code.

18 SECTION 4. Article 56A.302, Code of Criminal Procedure, is
19 amended to read as follows:

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

23 (1) a general or special hospital licensed under
24 Chapter 241, Health and Safety Code;

25 (2) a general or special hospital owned by this state;

26 (3) an outpatient clinic; [~~and~~]

27 (4) a private physician's office; and

1 (5) a SAFE program as defined by Section 323.051,
2 Health and Safety Code.

3 SECTION 5. Article 56A.303, Code of Criminal Procedure, is
4 amended to conform to Section 4, Chapter 1037 (H.B. 616), Acts of
5 the 86th Legislature, Regular Session, 2019, and is further amended
6 to read as follows:

7 Art. 56A.303. FORENSIC MEDICAL EXAMINATION. (a) In
8 accordance with Subchapter B, Chapter 420, Government Code, and
9 except as provided by Subsection (b), a health care provider
10 [~~facility~~] shall conduct a forensic medical examination of a victim
11 of a a [~~an alleged~~] sexual assault if:

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

14 (2) the victim consents to the examination; and

15 (3) at the time of the examination the victim has not
16 reported the assault to a law enforcement agency.

17 (b) If a health care provider [~~facility~~] does not provide
18 diagnosis or treatment services to victims of sexual assault, the
19 provider [~~facility~~] shall refer a victim of a a [~~an alleged~~] sexual
20 assault who seeks a forensic medical examination under Subsection
21 (a) to a health care provider [~~facility~~] that provides services to
22 those victims.

23 (c) A victim of a a [~~an alleged~~] sexual assault may not be
24 required to participate in the investigation or prosecution of an
25 offense as a condition of receiving a forensic medical examination
26 under this article.

27 SECTION 6. Article 56A.304, Code of Criminal Procedure, is

1 amended to conform to Sections 4 and 8, Chapter 1037 (H.B. 616),
2 Acts of the 86th Legislature, Regular Session, 2019, and is further
3 amended to read as follows:

4 Art. 56A.304. PAYMENT OF FEES RELATED TO EXAMINATION. (a)
5 On application to the [~~The department shall pay the appropriate~~
6 ~~fees, as set by~~] attorney general [~~rule~~], a health care provider
7 that provides [~~for the forensic portion of~~] a forensic medical
8 examination to a sexual assault survivor in accordance with this
9 subchapter, or the [~~conducted under Article 56A.303(a) and for the~~
10 ~~evidence collection kit if a physician,~~] sexual assault examiner
11 [~~7~~] or sexual assault nurse examiner who conducts that [~~the~~
12 ~~forensic portion of the~~] examination, as applicable, within 120
13 [~~96~~] hours after the [~~alleged~~] sexual assault occurred is entitled
14 to be reimbursed in an amount set by attorney general rule for:

15 (1) the reasonable costs of the forensic portion of
16 that examination; and

17 (2) the evidence collection kit.

18 (b) The application under Subsection (a) must be in the form
19 and manner prescribed by the attorney general and must include:

20 (1) certification that the examination was conducted
21 in accordance with the requirements of Article 56A.303(a); and

22 (2) a complete and itemized bill of the reasonable
23 costs of the forensic portion of the examination [~~attorney general~~
24 ~~shall reimburse the department for fees paid under Subsection (a)].~~

25 (c) A health care provider or a sexual assault examiner or
26 sexual assault nurse examiner, as applicable, who applies for
27 reimbursement under Subsection (a) shall accept reimbursement from

1 the attorney general as payment for the costs unless:

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

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

6 (B) provides documentation in support of the
7 additional reimbursement, as reasonably requested by the attorney
8 general; and

9 (2) the attorney general determines that there is a
10 reasonable justification for additional reimbursement.

11 (d) A health care provider is not entitled to reimbursement
12 under this article unless the forensic medical examination was
13 conducted on the premises of the provider by a sexual assault
14 examiner or sexual assault nurse examiner.

15 (e) On request, the attorney general may provide training to
16 a health care provider regarding the process for applying for
17 reimbursement under this article.

18 (f) A victim of a [an-alleged] sexual assault may not be
19 required to pay for:

20 (1) the forensic portion of the forensic medical
21 examination; or

22 (2) the evidence collection kit.

23 SECTION 7. Article 56A.305, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 56A.305. PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE.

26 The attorney general may make a payment to or on behalf of an
27 individual for the reasonable costs incurred for medical care

1 provided in accordance with Sections [~~Section~~] 323.004, 323.053,
2 and 323.054, Health and Safety Code.

3 SECTION 8. Section 420.003(1-a), Government Code, is
4 amended to read as follows:

5 (1-a) "Active criminal case" means a case:

6 (A) in which:

7 (i) a sexual assault or other sex offense
8 has been reported to a law enforcement agency; [~~and~~]

9 (ii) physical evidence of the offense has
10 been submitted to the agency or an accredited crime laboratory
11 under this chapter for analysis; and

12 (iii) the agency documents that an offense
13 has been committed and reported; and

14 (B) for which:

15 (i) the statute of limitations has not run
16 with respect to the prosecution of the offense; or

17 (ii) a DNA profile was obtained that is
18 eligible under Section 420.043 for comparison with DNA profiles in
19 the state database or CODIS DNA database.

20 SECTION 9. The heading to Chapter 323, Health and Safety
21 Code, is amended to read as follows:

22 CHAPTER 323. EMERGENCY SERVICES AND FORENSIC EXAMINATION PROGRAMS
23 FOR SURVIVORS OF SEXUAL ASSAULT

24 SECTION 10. Chapter 323, Health and Safety Code, is amended
25 by designating Sections 323.001 through 323.008 as Subchapter A and
26 adding a subchapter heading to read as follows:

1 SUBCHAPTER A. EMERGENCY SERVICES FOR SURVIVORS

2 OF SEXUAL ASSAULT

3 SECTION 11. Section 323.001, Health and Safety Code, is
4 amended to read as follows:

5 Sec. 323.001. DEFINITIONS. In this subchapter [~~chapter~~]:

6 (1) "Commission" means the Health and Human Services
7 Commission.

8 (2) "Department" means the Department of State Health
9 Services.

10 (3) "Health care facility" means a general or special
11 hospital licensed under Chapter 241, a general or special hospital
12 owned by this state, or a freestanding emergency medical care
13 facility licensed under Chapter 254.

14 (3-a) "SAFE-ready facility" means a health care
15 facility designated as a sexual assault forensic exam-ready
16 facility under Section 323.0015. The term includes a SAFE program
17 designated as a SAFE-ready facility under Section 323.052.

18 (3-b) "SAFE program" has the meaning assigned by
19 Section 323.051.

20 (4) "Sexual assault" means any act as described by
21 Section 22.011 or 22.021, Penal Code.

22 (4-a) "Sexual assault forensic examiner" means a
23 certified sexual assault nurse examiner or a physician with
24 specialized training on conducting a forensic medical examination.

25 (5) "Sexual assault survivor" means an individual who
26 is a victim of a sexual assault, regardless of whether a report is
27 made or a conviction is obtained in the incident.

1 SECTION 12. Sections 323.004(a), (a-1), and (b), Health and
2 Safety Code, are amended to read as follows:

3 (a) Except as otherwise provided by Subsection (a-2), after
4 a sexual assault survivor arrives at a health care facility
5 following a a [~~an alleged~~] sexual assault, the facility shall
6 provide care to the survivor in accordance with Subsection (b).

7 (a-1) A facility that is not a SAFE-ready facility shall
8 inform the sexual assault survivor that:

9 (1) the facility is not a SAFE-ready facility and
10 provide to the survivor the name and location of nearby [~~the~~
11 ~~closest~~] SAFE-ready facilities [~~facility~~] and the information form
12 required by Section 323.0051; and

13 (2) the survivor is entitled, at the survivor's
14 option:

15 (A) to receive the care described by Subsection
16 (b) at that facility, subject to Subsection (b-1); or

17 (B) to be stabilized and to be referred or
18 transferred to and receive the care described by Subsection (b) at a
19 SAFE-ready facility.

20 (b) A health care facility providing care to a sexual
21 assault survivor shall provide the survivor with:

22 (1) subject to Subsection (b-1), a forensic medical
23 examination in accordance with Subchapter B, Chapter 420,
24 Government Code, if the examination has been requested by a law
25 enforcement agency under Subchapter F, Chapter 56A, Code of
26 Criminal Procedure, or is conducted under Subchapter G, Chapter
27 56A, Code of Criminal Procedure;

1 (2) a private area, if available, to wait or speak with
2 the appropriate medical, legal, or sexual assault crisis center
3 staff or volunteer until a physician, nurse, or physician assistant
4 is able to treat the survivor;

5 (3) access to a sexual assault program advocate, if
6 available, as provided by Subchapter H, Chapter 56A, Code of
7 Criminal Procedure;

8 (4) the information form required by Section 323.005;

9 (5) a private treatment room, if available;

10 (6) if indicated by the history of contact, access to
11 appropriate prophylaxis for exposure to sexually transmitted
12 infections; ~~and~~

13 (7) the name and telephone number of the nearest
14 sexual assault crisis center; and

15 (8) if the health care facility has shower facilities,
16 access to a shower at no cost to the survivor after the examination
17 described by Subdivision (1).

18 SECTION 13. Section 323.005(a), Health and Safety Code, as
19 amended by Chapters 408 (H.B. 8), 469 (H.B. 4173), and 1037 (H.B.
20 616), Acts of the 86th Legislature, Regular Session, 2019, is
21 reenacted and further amended to conform to Chapter 469 (H.B.
22 4173), Acts of the 86th Legislature, Regular Session, 2019, to read
23 as follows:

24 (a) The commission ~~[department]~~ shall develop a standard
25 information form for sexual assault survivors that must include:

26 (1) a detailed explanation of the forensic medical
27 examination required to be provided by law, including a statement

1 that photographs may be taken of the genitalia;

2 (2) information regarding treatment of sexually
3 transmitted infections and pregnancy, including:

4 (A) generally accepted medical procedures;

5 (B) appropriate medications; and

6 (C) any contraindications of the medications
7 prescribed for treating sexually transmitted infections and
8 preventing pregnancy;

9 (3) information regarding drug-facilitated sexual
10 assault, including the necessity for an immediate urine test for
11 sexual assault survivors who may have been involuntarily drugged;

12 (4) information regarding crime victims compensation,
13 including:

14 (A) a statement that public agencies are
15 responsible for paying for the forensic portion of an examination
16 conducted under Subchapter F or G, Chapter 56A [~~Article 56.06 or~~
17 ~~56.065~~], Code of Criminal Procedure, and for the evidence
18 collection kit used in connection with the examination and that the
19 health care facility or provider, as applicable, is responsible for
20 seeking reimbursement for those costs; and

21 (B) information regarding the reimbursement of
22 the survivor for the medical portion of the examination;

23 (5) an explanation that consent for the forensic
24 medical examination may be withdrawn at any time during the
25 examination;

26 (6) the name and telephone number of sexual assault
27 crisis centers statewide; [~~and~~]

1 (7) information regarding postexposure prophylaxis
2 for HIV infection;

3 (8) information regarding the period for which
4 biological evidence collected from the forensic medical
5 examination will be retained and preserved under Article 38.43,
6 Code of Criminal Procedure; and

7 (9) a statement that the survivor has the right to
8 access a shower for free after the forensic medical examination, if
9 shower facilities are available at the health care facility.

10 SECTION 14. Section 323.0051(a), Health and Safety Code, is
11 amended to read as follows:

12 (a) The commission [~~department~~] shall develop a standard
13 information form for sexual assault survivors who arrive at a
14 health care facility that is not a SAFE-ready facility. The
15 information form must include:

16 (1) information regarding the benefits of a forensic
17 medical examination conducted by a sexual assault forensic
18 examiner;

19 (2) the Internet website address to the commission's
20 [~~department's~~] list of SAFE-ready facilities that includes the
21 facilities' physical addresses as required by Section 323.008;

22 (3) the following statements:

23 (A) "As a survivor of sexual assault, you have
24 the right to receive a forensic medical examination at this
25 hospital emergency room if you are requesting the examination not
26 later than 120 hours after the assault.";

27 (B) "A report to law enforcement is not required,

1 but if you make a report, law enforcement must first authorize the
2 examination."; and

3 (C) "Call 1-800-656-HOPE to be connected to a
4 rape crisis center for free and confidential assistance."; and

5 (4) information on the procedure for submitting a
6 complaint against the health care facility.

7 SECTION 15. Section 323.0052(a), Health and Safety Code, is
8 amended to conform to Chapter 469 (H.B. 4173), Acts of the 86th
9 Legislature, Regular Session, 2019, and further amended to read as
10 follows:

11 (a) The commission [~~department~~] shall develop a standard
12 information form that, as described by Subsection (b), is to be
13 provided to sexual assault survivors who have not given signed,
14 written consent to a health care facility to release the evidence as
15 provided by Section 420.0735, Government Code. The form must
16 include the following information:

17 (1) the Department of Public Safety's policy regarding
18 storage of evidence of a sexual assault or other sex offense that is
19 collected under Subchapter G, Chapter 56A [~~Article 56.065~~], Code of
20 Criminal Procedure, including:

21 (A) a statement that the evidence will be stored
22 until the fifth anniversary of the date on which the evidence was
23 collected before the evidence becomes eligible for destruction; and

24 (B) the department's procedures regarding the
25 notification of the survivor before a planned destruction of the
26 evidence;

27 (2) a statement that the survivor may request the

1 release of the evidence to a law enforcement agency and report a
2 sexual assault or other sex offense to the agency at any time;

3 (3) the name, phone number, and e-mail address of the
4 law enforcement agency with jurisdiction over the offense; and

5 (4) the name and phone number of a local rape crisis
6 center.

7 SECTION 16. Section 323.008, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 323.008. DATA PUBLICATION. The commission
10 [~~department~~] shall post on the commission's [~~department's~~] Internet
11 website a list of all hospitals and other health facilities that are
12 designated as SAFE-ready facilities under this chapter and the
13 facilities' physical addresses. The commission [~~department~~] shall
14 update the list quarterly [~~annually~~]. To the extent possible, the
15 commission [~~department~~] shall collect the data required by this
16 section as part of a survey required by the commission [~~department~~]
17 under other law.

18 SECTION 17. Chapter 323, Health and Safety Code, is amended
19 by adding Subchapter B to read as follows:

20 SUBCHAPTER B. SEXUAL ASSAULT FORENSIC EXAMINATION PROGRAMS

21 Sec. 323.051. DEFINITIONS. In this subchapter:

22 (1) "SAFE program" means a program that meets the
23 requirements prescribed by Section 323.052. The term does not
24 include a program operated by a health care facility, as defined by
25 Section 323.001.

26 (2) "Sexual assault examiner," "sexual assault nurse
27 examiner," and "sexual assault program" have the meanings assigned

1 by Section 420.003, Government Code.

2 (3) "Sexual assault forensic examiner" means a
3 certified sexual assault nurse examiner or a physician licensed
4 under Subtitle B, Title 3, Occupations Code, with specialized
5 training on conducting a forensic medical examination.

6 Sec. 323.052. OPERATION OF SAFE PROGRAM; DESIGNATION OF
7 SAFE PROGRAM AS SAFE-READY FACILITY. (a) A person may operate a
8 SAFE program only if:

9 (1) the program meets the minimum standards
10 established under Section 323.053; and

11 (2) the program provides forensic medical
12 examinations to sexual assault survivors in accordance with Section
13 323.054.

14 (b) The Health and Human Services Commission shall
15 designate a SAFE program described by Subsection (a) as a
16 SAFE-ready facility under Section 323.0015 if the program notifies
17 the commission that the program employs or contracts with a sexual
18 assault forensic examiner or uses a telemedicine system of sexual
19 assault forensic examiners to provide consultation during a sexual
20 assault forensic medical examination to a nurse or physician
21 licensed to practice in this state.

22 Sec. 323.053. MINIMUM STANDARDS FOR SAFE PROGRAMS. A SAFE
23 program must:

24 (1) operate under the active oversight of a medical
25 director who is a physician licensed by and in good standing with
26 the Texas Medical Board;

27 (2) provide medical treatment under a physician's

1 order, standing medical order, standing delegation order, or other
2 order or protocol as defined by Texas Medical Board rules;

3 (3) employ or contract with a sexual assault examiner
4 or a sexual assault nurse examiner;

5 (4) provide access to a sexual assault program
6 advocate, as required by Subchapter H, Chapter 56A, Code of
7 Criminal Procedure;

8 (5) ensure a sexual assault survivor has access to a
9 private treatment room;

10 (6) if indicated by a survivor's history or on a
11 survivor's request, provide:

12 (A) HIV testing and prophylactic medication to
13 the survivor or a referral for the testing and medication; and

14 (B) counseling and prophylactic medications for
15 exposure to sexually transmitted infections and pregnancy;

16 (7) provide to survivors the name and telephone number
17 of a nearby sexual assault program that provides to survivors the
18 minimum services described by Subchapter A, Chapter 420, Government
19 Code;

20 (8) provide to survivors the information form required
21 by Section 323.005, 323.0051, or 323.0052, as applicable, and
22 orally communicate the information regarding crime victims
23 compensation under Section 323.005(a)(4);

24 (9) collaborate with any sexual assault program, as
25 defined by Section 420.003, Government Code, that provides services
26 to survivors in the county;

27 (10) engage in efforts to improve the quality of the

1 program;

2 (11) maintain capacity for appropriate triage or have
3 agreements with other health facilities to assure that a survivor
4 receives the appropriate level of care indicated for the survivor's
5 medical and mental health needs;

6 (12) prioritize the safety and well-being of
7 survivors;

8 (13) provide a trauma-informed approach in the
9 forensic medical care provided to survivors; and

10 (14) collaborate with:

11 (A) law enforcement agencies and attorneys
12 representing the state with jurisdiction in the county;

13 (B) any available local sexual assault response
14 team; and

15 (C) other interested persons in the community.

16 Sec. 323.054. FORENSIC MEDICAL EXAMINATION BY SAFE PROGRAM;
17 INFORMED CONSENT. (a) A SAFE program shall provide to a sexual
18 assault survivor under the care of the program a forensic medical
19 examination in accordance with Subchapter B, Chapter 420,
20 Government Code, if the examination has been requested by a law
21 enforcement agency under Subchapter F, Chapter 56A, Code of
22 Criminal Procedure, or if the examination is performed in
23 accordance with Subchapter G, Chapter 56A, Code of Criminal
24 Procedure.

25 (b) Only a sexual assault examiner or a sexual assault nurse
26 examiner may perform a forensic medical examination under a SAFE
27 program.

1 (c) A sexual assault examiner or sexual assault nurse
2 examiner employed by or under contract with a SAFE program must
3 obtain a sexual assault survivor's informed, written consent before
4 performing a forensic medical examination or providing medical
5 treatment to the survivor.

6 (d) A sexual assault survivor who receives a forensic
7 medical examination from a sexual assault examiner or sexual
8 assault nurse examiner employed by or under contract with a SAFE
9 program may not be required to:

10 (1) participate in the investigation or prosecution of
11 an offense as a prerequisite to receiving the forensic medical
12 examination or medical treatment; or

13 (2) pay for the costs of the forensic portion of the
14 forensic medical examination or for the evidence collection kit.

15 SECTION 18. Article 38.435, Code of Criminal Procedure, and
16 Section 323.004(b)(8), Health and Safety Code, as added by this
17 Act, apply to a forensic medical examination that occurs on or after
18 the effective date of this Act. A forensic medical examination that
19 occurs before that date is governed by the law in effect on the date
20 the examination occurred, and the former law is continued in effect
21 for that purpose.

22 SECTION 19. To the extent of any conflict, this Act prevails
23 over another Act of the 87th Legislature, Regular Session, 2021,
24 relating to nonsubstantive additions to and corrections in enacted
25 codes.

26 SECTION 20. This Act takes effect September 1, 2021.