

By: Perry, Zaffirini

S.B. No. 295

A BILL TO BE ENTITLED

AN ACT

relating to the confidential and privileged communications and records of victims of certain sexual assault offenses.

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

SECTION 1. The heading to Subchapter D, Chapter 420, Government Code, is amended to read as follows:

SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS AND RECORDS

SECTION 2. The heading to Section 420.071, Government Code, is amended to read as follows:

Sec. 420.071. CONFIDENTIAL COMMUNICATIONS AND RECORDS;  
PRIVILEGE.

SECTION 3. Section 420.071, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (c-1) to read as follows:

(a) Any [A] communication, including an oral or written communication, between an advocate and a survivor~~[, or a person claiming to be a survivor,~~] that is made in the course of advising, counseling, or assisting ~~[providing sexual assault advocacy services to]~~ the survivor is confidential ~~[and may not be disclosed except as provided by this subchapter].~~

(b) Any [A] record created by, provided to, or maintained by an advocate is confidential if the record relates to the services provided to a survivor or contains ~~[of]~~ the identity, personal history, or background information of the ~~[a]~~ survivor or

1 information concerning the victimization of the [a] survivor [~~that~~  
2 ~~is created by or provided to an advocate or maintained by a sexual~~  
3 ~~assault program is confidential and may not be disclosed except as~~  
4 ~~provided by this subchapter~~].

5 (c) In any civil, criminal, administrative, or legislative  
6 proceeding, subject to Section 420.072, a survivor has a privilege  
7 to refuse to disclose and to prevent another from disclosing, for  
8 any purpose, a communication or record that is confidential under  
9 this section. [~~A person who receives information from a~~  
10 ~~confidential communication or record as described by this~~  
11 ~~subchapter may not disclose the information except to the extent~~  
12 ~~that disclosure is consistent with the authorized purposes for~~  
13 ~~which the information was obtained.~~]

14 (c-1) Except as provided by this subsection, the  
15 unauthorized disclosure of a portion of a confidential  
16 communication or record does not constitute a waiver of the  
17 privilege provided by Subsection (c). If a portion of a  
18 confidential communication or record is disclosed, a party to the  
19 relevant court or administrative proceeding may make a motion  
20 requesting that the privilege be waived with respect to the  
21 disclosed portion. The court or administrative hearing officer, as  
22 applicable, may determine that the privilege has been waived only  
23 if:

24 (1) the disclosed portion is relevant to a disputed  
25 matter at the proceeding; and

26 (2) waiver is necessary for a witness to be able to  
27 respond to questioning concerning the disclosed portion.

1 SECTION 4. Section 420.072, Government Code, is amended to  
2 read as follows:

3 Sec. 420.072. DISCLOSURE OF CONFIDENTIAL COMMUNICATION OR  
4 RECORD [~~EXCEPTIONS~~]. (a) A communication ~~or~~ [~~a~~] record [~~or~~  
5 ~~evidence~~] that is confidential under Section 420.071 [~~this~~  
6 ~~subchapter~~] may only be disclosed [~~in court or in an administrative~~  
7 ~~proceeding~~] if:

8 (1) the communication or record [~~proceeding is brought~~  
9 ~~by the survivor against an advocate or a sexual assault program or~~  
10 ~~is a criminal proceeding or a certification revocation proceeding~~  
11 ~~in which disclosure~~] is relevant to the claims or defense of an  
12 [~~the~~] advocate or sexual assault program in a proceeding brought by  
13 the survivor against the advocate or program; [~~or~~]

14 (2) the survivor has waived the privilege established  
15 under Section 420.071(c) with respect to the communication or  
16 record;

17 (3) the survivor or other appropriate person consents  
18 in writing to the disclosure as provided by Section 420.073;

19 (4) an [~~or 420.0735, as applicable.~~]

20 [~~(b) A communication, a record, or evidence that is~~  
21 ~~confidential under this subchapter may be disclosed only to:~~

22 [~~(1) medical or law enforcement personnel if the~~]  
23 advocate determines that, unless the disclosure is made, there is a  
24 probability of:

25 (A) imminent physical danger to any person; or

26 (B) [~~for whom the communication, record, or~~  
27 ~~evidence is relevant or if there is a probability of~~] immediate

1 mental or emotional injury to the survivor;

2 (5) [~~(2) a governmental agency if~~] the disclosure is  
3 necessary:

4 (A) to comply with:

5 (i) Chapter 261, Family Code; or

6 (ii) Chapter 48, Human Resources Code; or

7 (B) [~~required or authorized by law;~~

8 [~~(3) a qualified person to the extent necessary~~] for a  
9 management audit, a financial audit, a program evaluation, or  
10 research, except that a report of the [~~research,~~] audit, [~~or~~]  
11 evaluation, or research may not directly or indirectly identify a  
12 survivor;

13 [~~(4) a person authorized to receive the disclosure as~~  
14 ~~a result of written consent obtained under Section 420.073 or~~  
15 ~~420.0735;~~] or

16 (6) the disclosure is made to an employee or volunteer  
17 of the sexual assault program after [~~(5)]~~ an advocate or a person  
18 under the supervision of a counseling supervisor who is  
19 participating in the evaluation or counseling of or the provision  
20 of services to [~~advocacy for~~] the survivor determines that the  
21 disclosure is necessary to facilitate the provision of services to  
22 the survivor.

23 (b) Regardless of whether written consent has been given by  
24 a parent or legal guardian under Section 420.073(a), a person may  
25 not disclose a [~~(c) A~~] communication or [~~a~~] record [~~, or evidence~~]  
26 that is confidential under Section 420.071 [~~this subchapter may not~~  
27 be disclosed] to a parent or legal guardian of a survivor who is a

1 minor or to a guardian appointed under Title 3, Estates Code, of an  
2 adult survivor, if applicable, if the person [~~an advocate or a~~  
3 ~~sexual assault program~~] knows or has reason to believe that the  
4 parent or guardian of the survivor is a suspect or accomplice in the  
5 sexual assault of the survivor.

6 (c) Notwithstanding Subsections (a) and (b), the Texas  
7 Rules of Evidence govern the disclosure of a communication or  
8 record that is confidential under Section 420.071 in a criminal or  
9 civil proceeding by an expert witness who relies on facts or data  
10 from the communication or record to form the basis of the expert's  
11 opinion.

12 SECTION 5. Section 420.074, Government Code, is repealed.

13 SECTION 6. The change in law made by this Act applies to any  
14 communication or record described by Section 420.071, Government  
15 Code, as amended by this Act, regardless of the date the  
16 communication is made or the record is created.

17 SECTION 7. This Act takes effect September 1, 2021.