

## **BILL ANALYSIS**

C.S.H.B. 2626  
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Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, the federal Violence Against Women Act (VAWA), as reauthorized in 2005, requires states to verify that victims of sexual assault are not obligated to involve law enforcement in order to be provided with a forensic medical exam, to be reimbursed for charges incurred for such an exam, or both.

States were given until January 2009 to comply with this federal law or face losing federal funds. Texas is currently not in compliance with this federal requirement and is at risk of losing \$6.2 million in federal VAWA S.T.O.P. (Services-Training-Officers-Prosecutors) grants and \$9 million in VAWA funds as part of the American Recovery and Reinvestment Act of 2009.

C.S.H.B. 2626 requires certain health care facilities to provide a forensic medical examination to sexual assault victims at the victim's request, without requiring the victim to report the assault to a law enforcement authority. The bill requires the Department of Public Safety (DPS) to pay for appropriate fees for the forensic portion of the medical examination and the evidence collection kit and requires the attorney general to reimburse DPS for these fees.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general and the Department of Public Safety in SECTIONS 3 and 6 of this bill.

### **ANALYSIS**

C.S.H.B. 2626 amends the Code of Criminal Procedure to add to the list of rights within the criminal justice system to which a victim is entitled, for a victim of a sexual assault, the right to a forensic medical examination conducted at a health care facility within 96 hours of the sexual assault. The bill requires a health care facility to conduct in accordance with the Sexual Assault Prevention and Crisis Services Act, a forensic medical examination of the victim of an alleged sexual assault if: the victim arrives at the facility within 96 hours after the assault occurred; the victim consents to the examination; and the victim has not reported the assault to a law enforcement agency at the time of the examination.

C.S.H.B. 2626 requires the Department of Public Safety (DPS) to pay the appropriate fees, as set by attorney general rule, of the forensic portion of the medical examination and for the evidence collection kit if a physician, sexual assault examiner, or sexual assault nurse examiner conducts the forensic portion of the examination within 96 hours after the alleged sexual assault occurred. The bill requires the attorney general to reimburse DPS for any fees paid.

C.S.H.B. 2626 requires a health care facility that does not provide diagnosis or treatment services to victims of sexual assault to refer a victim seeking a forensic medical examination to a health care facility that provides services to those victims. The bill authorizes DPS to develop procedures regarding the submission or collection of additional evidence of the alleged sexual assault other than through a forensic medical examination conducted at a health care facility and

requires DPS to develop procedures for the transfer and preservation of evidence collected during such a forensic medical examination to a crime laboratory or other suitable location designated by the public safety director of DPS. The bill requires the receiving entity to preserve the evidence until the earlier of the second anniversary of the date the evidence was collected or the date the victim or a legal representative of the victim signs a written consent to release the evidence.

C.S.H.B. 2626 prohibits a victim from being required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination or to pay for the cost of the forensic portion of the medical examination or for the evidence collection kit. The bill requires the attorney general and DPS, as soon as practicable after the effective date of the bill, to adopt rules as necessary to implement the requirements regarding the forensic medical examination for sexual assault victims who have not reported the assault to a law enforcement agency. The bill specifies the types of health care facilities to which the requirements apply.

C.S.H.B. 2626 amends the Health and Safety Code to require the statement included in a standard form for sexual assault survivors developed by DPS, to include that a law enforcement agency will pay, in addition to the forensic portion of an examination requested by the agency, for the evidence collection kit and to make conforming changes.

C.S.H.B. 2626 defines "crime laboratory," "department," "sexual assault examiner," and "sexual assault nurse examiner."

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2626 removes the provision in the original allowing a legal representative of a victim of sexual assault to give consent for a forensic medical examination on behalf of the victim. The substitute removes the requirement in the original that a physician determine that the conducting of a forensic medical examination is not detrimental to the victim's health, before the health care facility is required to conduct the examination. The substitute differs from the original by requiring DPS to pay the appropriate fees, as set by attorney general rule, for the forensic portion of the examination, whereas the original required DPS to pay reasonable costs for the forensic portion of the examination. The substitute adds a provision not in the original authorizing DPS to develop procedures for the submission or collection of additional evidence of the alleged sexual assault other than through a forensic medical examination conducted by a health care facility.

C.S.H.B. 2626 requires DPS to develop procedures for the transfer and preservation of the evidence collected in a forensic medical examination, whereas the original only requires DPS to develop procedures for the transfer of such evidence. The substitute differs from the original by allowing the evidence to be transferred and preserved to a designated crime laboratory, or to a suitable location designated by the public safety director, whereas the original only allows for the transfer of evidence to a designated crime laboratory. The substitute, in the provision requiring the entity receiving the evidence to preserve the evidence until the earlier of two specified dates, changes the date that is the second anniversary of the date the laboratory received the evidence in the original to the second anniversary of the date the evidence was collected in the substitute.

C.S.H.B. 2626 differs from the original by changing the effective date of the bill from September 1, 2009, to on passage, or, if the bill does not receive the required vote, September 1, 2009.