

BILL ANALYSIS

Senate Research Center

H.B. 4136
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, medical records are generally protected under law by the Health Insurance Portability and Accountability Act (HIPAA). However, when medical records are admitted into a court's record, they become part of the open record of the court. This makes the medical records accessible to anyone who would like to view the court's files at any time. Because the information in the medical records often includes a victim's name, birth date, Social Security number, any type of medical condition, and even distinguishing marks, it is necessary to provide for the sealing of these records to protect the victims.

H.B. 4136 requires a court, on its own motion or on a motion filed by an attorney representing the state, a defendant, a parent or guardian of a child victim, or a victim, to seal the medical records of a child who is a victim of certain violent or sexual offenses.

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 Title 1, Code of Criminal Procedure, by adding Chapter 57C, as follows:

CHAPTER 57C. SEALING OF COURT RECORDS CONTAINING MEDICAL INFORMATION FOR CERTAIN CHILD VICTIMS

Art. 57C.01. DEFINITIONS. Defines "child" and "medical records."

Art. 57C.02. SEALING OF RECORDS. (a) Requires the court, except as provided by Subsection (c), on a motion filed by a person described by Subsection (b), to seal the medical records of a child who is a victim of an offense described by Section 1 (relating to certain offenses where a child younger than 13 years of age would be unavailable to testify in the presence of the defendant), Article 38.071 (Testimony of Child Who Is Victim of Offense).

(b) Authorizes a motion under this article to be filed on the court's own motion or by the attorney representing the state, the defendant, or the parent or guardian of the victim or, if the victim is no longer a child, the victim.

(c) Provides that the court is not required to seal the records described by this article on a finding of good cause after a hearing held under Subsection (d).

(d) Requires the court to grant the motion without a hearing unless the motion is contested not later than the seventh day after the date the motion is filed.

(e) Provides that medical records sealed under this chapter are not open for inspection by any person except under certain conditions.

(f) Provides that a clerk of court is not liable for any failure to seal medical records after a motion under this chapter is granted, except on a showing of bad faith.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.