

BILL ANALYSIS

H.B. 4136
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 4136 amends the Code of Criminal Procedures to require a court, on a motion filed by an attorney representing the state, a defendant, or a parent or guardian of a child victim or, if the victim is no longer a child, a victim, to seal the medical records of a child who is a victim of murder, capital murder, manslaughter, aggravated kidnapping, indecency with a child, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, prohibited sexual conduct, aggravated robbery, sexual performance by a child, continuous sexual abuse of a young child or children, or injury to a child if the conduct is committed intentionally or knowingly. The bill authorizes a motion for the sealing of the records 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. The bill 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 and provides that the court is not required to seal the records on a finding of good cause after a hearing of a contested motion. The bill provides that the sealed medical records are not open for inspection by any person except on further order of the court after notice to a parent or guardian of the victim or, if the victim is no longer a child, notice to the victim and after a finding of good cause; in connection with a criminal or civil proceeding as otherwise provided by law; or on request of a parent or legal guardian of the victim or, if the victim is no longer a child, on request of the victim. The bill provides that a clerk of court is not liable for any failure to seal medical records after a motion for the sealing is granted, except on a showing of bad faith. The bill defines "child" and "medical records."

EFFECTIVE DATE

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