

By: Garcia, Hinojosa

S.B. No. 1851

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. Section 420.071, Government Code, is amended to read as follows:

Sec. 420.071. CONFIDENTIAL COMMUNICATIONS AND RECORDS; PRIVILEGE. (a) Any [A] communication, including an oral or written communication, between an employee or volunteer of a sexual assault program [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 employee or volunteer of a sexual assault program 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 information concerning the victimization of the [a] survivor [that is created by or provided to an advocate or maintained by a sexual assault

1 ~~program is confidential and may not be disclosed except as provided~~
2 ~~by this subchapter].~~

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

12 (d) This subchapter governs a confidential communication or
13 record concerning a survivor regardless of when the survivor
14 received the services of a [an advocate or] sexual assault program.

15 SECTION 3. Section 420.072, Government Code, is amended to
16 read as follows:

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

22 (1) the communication or record [~~proceeding is brought~~
23 ~~by the survivor against an advocate or a sexual assault program or~~
24 ~~is a criminal proceeding or a certification revocation proceeding~~
25 ~~in which disclosure~~] is relevant to the claims or defense of a [the
26 ~~advocate or]~~ sexual assault program in a proceeding brought by the
27 survivor against the program; [~~or~~]

1 (2) the privilege is waived with respect to the
2 communication or record [~~survivor or other appropriate person~~
3 ~~consents in writing to the disclosure~~] as provided by Section
4 420.073;

5 (3) a court orders the disclosure under Section
6 420.074;

7 (4) an employee or volunteer of a sexual assault
8 program [~~or 420.0735, as applicable.~~

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

11 ~~[(1) medical or law enforcement personnel if the~~
12 ~~advocate] determines that there is a probability of:~~

13 (A) imminent physical danger to any person to
14 [for] whom the communication or [r] record relates; or

15 (B) [~~or evidence is relevant or if there is a~~
16 ~~probability of]~~ immediate mental or emotional injury to the
17 survivor;

18 (5) [~~(2) a governmental agency if the]~~ disclosure is
19 necessary:

20 (A) to comply with:

21 (i) Chapter 261, Family Code; or

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

23 (B) [~~required or authorized by law,~~

24 ~~[(3) a qualified person to the extent necessary]~~ for a
25 management audit, a financial audit, a program evaluation, or
26 research, except that a report of the [research,] audit, [or]
27 evaluation, or research may not directly or indirectly identify a

1 survivor; or

2 (6) an employee or volunteer of a sexual assault
3 program, [(4) a person authorized to receive the disclosure as a
4 result of written consent obtained under Section 420.073 or
5 420.0735; or

6 [(5) an advocate] or a person under the supervision of
7 a counseling supervisor who is participating in the evaluation or
8 counseling of or the provision of services to the survivor,
9 determines that the disclosure is necessary to facilitate the
10 provision of services to the survivor, if the disclosure was made
11 only to an employee or volunteer of the sexual assault program [the
12 evaluation or counseling of or advocacy for the survivor].

13 (b) Notwithstanding a waiver by a parent or legal guardian
14 under Section 420.073(a), an employee or volunteer of a sexual
15 assault program may not disclose a [(c) A] communication or [a]
16 record [or evidence] that is confidential under Section 420.071
17 [this subchapter may not be disclosed] to a parent or legal guardian
18 of a survivor who is a minor if the employee or volunteer [an
19 advocate or a sexual assault program] knows or has reason to believe
20 that the parent or legal guardian of the survivor is a suspect in
21 the sexual assault of the survivor.

22 SECTION 4. The heading to Section 420.073, Government Code,
23 is amended to read as follows:

24 Sec. 420.073. WAIVER OF PRIVILEGE [CONSENT FOR RELEASE OF
25 CERTAIN CONFIDENTIAL INFORMATION].

26 SECTION 5. Section 420.073, Government Code, is amended by
27 amending Subsection (a) and adding Subsection (a-1) to read as

1 follows:

2 (a) The privilege provided by Section 420.071(c) may be
3 waived only [~~Consent for the release of confidential information~~
4 ~~other than evidence contained in an evidence collection kit must be~~
5 ~~in writing and signed~~] by the survivor, a parent or legal guardian
6 if the survivor is a minor, a legal guardian if the survivor has
7 been adjudicated incompetent to manage the survivor's personal
8 affairs, an attorney ad litem appointed for the survivor, or a
9 personal representative if the survivor is deceased. The waiver
10 [~~written consent~~] must:

- 11 (1) be in writing and signed; and
12 (2) specify [~~+~~
13 [~~(1)~~] the communication [~~information~~] or record for
14 which privilege is waived [~~records covered by the release,~~
15 [~~(2) the reason or purpose for the release, and~~
16 [~~(3) the person to whom the information is to be~~
17 ~~released~~].

18 (a-1) Except as provided by this subsection, the
19 unauthorized disclosure of a portion of a confidential
20 communication or record does not constitute a waiver of the
21 privilege provided by Section 420.071(c). If a portion of a
22 confidential communication or record is disclosed, a party to the
23 relevant court or administrative proceeding may make a motion
24 requesting that the privilege be waived with respect to the
25 disclosed portion. The court or administrative hearing officer, as
26 applicable, may determine that the privilege has been waived only
27 if:

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

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

5 SECTION 6. Section 420.074, Government Code, is amended to
6 read as follows:

7 Sec. 420.074. DISCLOSURE IN CRIMINAL PROCEEDING
8 [SUBPOENA]. (a) Notwithstanding any other provision of this
9 chapter, a defendant [person shall disclose a communication, a
10 record, or evidence that is confidential under this chapter for
11 use] in a criminal [investigation or] proceeding may make a motion
12 requesting that the court in which the proceeding is pending order
13 the disclosure of a communication or record that is confidential
14 under Section 420.071. The motion must be supported by an affidavit
15 stating reasonable grounds to believe the communication or record
16 contains exculpatory evidence. The defendant must serve a copy of
17 the motion on the attorney representing the state and the survivor
18 who is the subject of the communication or record [in response to a
19 subpoena issued in accordance with law].

20 (b) The court shall order the communication or record
21 produced for an in camera review by the court if, based on the
22 defendant's affidavit, the court finds by a preponderance of the
23 evidence that:

24 (1) the defendant has a good faith, specific, and
25 reasonable belief that the communication or record is relevant,
26 material, and exculpatory; and

27 (2) the communication or record is not cumulative of

1 other evidence or information available to the defendant.

2 (c) The court shall order the communication or record
3 disclosed to the defendant and the attorney representing the state
4 if the court determines that, after a review under Subsection (b),
5 the communication or record is exculpatory.

6 SECTION 7. Sections 420.073(b) and (c), Government Code,
7 are repealed.

8 SECTION 8. (a) Except as provided by Subsection (b) of this
9 section, the change in law made by this Act applies to any
10 communication or record described by Section 420.071, Government
11 Code, as amended by this Act, regardless of the date the
12 communication is made or the record is created.

13 (b) Section 420.074, Government Code, as amended by this
14 Act, applies only to a criminal proceeding that commences on or
15 after the effective date of this Act. A criminal proceeding that
16 commenced before the effective date of this Act is governed by the
17 law in effect on the date the proceeding commenced, and the former
18 law is continued in effect for that purpose.

19 SECTION 9. This Act takes effect September 1, 2017.