

BILL ANALYSIS

Senate Research Center

H.B. 4531
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Vulnerable adults who need appointed guardians are often at risk of being sexually assaulted by their caretakers and guardians. It has been noted that the investigations of such assaults are complicated due to ambiguities in state law over whether forensic evidence can be collected from such an individual or whether information relating to a sexual assault can be disclosed without the consent of the adult sexual assault survivor's guardian. H.B. 4531 seeks to protect these adult survivors from sexual assault and to aid in the prosecution and prevention of these offenses by, among other things, establishing a protocol by which health care facilities may provide a forensic medical examination and treatment to such an individual and by providing for the release of certain information without requiring consent by an applicable guardian.

H.B. 4531 amends current law relating to the rights and treatment of and services provided to certain adult sexual assault survivors.

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 Section 323.004(c), Health and Safety Code, to require the health care facility to presume that an adult sexual assault survivor requesting a forensic medical examination and treatment is competent.

SECTION 2. Amends Chapter 323, Health and Safety Code, by adding Section 323.0044, as follows:

Sec. 323.0044. PROVISION OF EMERGENCY SERVICES TO CERTAIN ADULT SEXUAL ASSAULT SURVIVORS. (a) Requires a health care facility to provide a forensic medical examination and treatment to an adult sexual assault survivor for whom a guardian is appointed under Title 3 (Guardianship and Related Procedures), Estates Code, without the consent of the survivor's guardian, guardian ad litem, or other legal agent if:

(1) the health care facility determines the survivor understands the nature of the forensic medical examination and treatment; and

(2) the survivor agrees to receive the forensic medical examination and treatment.

(b) Authorizes the health care facility, subject to Subsection (c), if an adult sexual assault survivor requests a forensic medical examination and treatment and a health care facility determines the survivor potentially is incapable of consenting to the forensic medical examination and treatment to:

(1) obtain consent from a relative or caretaker of the survivor on the survivor's behalf;

(2) obtain consent from the survivor's guardian, guardian ad litem, or other legal agent; or

(3) petition a court with probate jurisdiction in the county in which the facility is located for an emergency order authorizing the forensic medical examination and treatment, in the manner provided by Section 48.208 (Emergency Order For Protective Services), Human Resources Code.

(c) Prohibits the health care facility, if personnel of a health care facility know or have reason to believe that the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent is a suspect or accomplice in the sexual assault of the survivor, from contacting the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent.

(d) Prohibits a health care facility from providing a forensic medical examination to an adult sexual assault survivor for whom a guardian is appointed under Title 3, Estates Code, if the survivor refuses the examination, regardless of whether the survivor's guardian requests or consents to the examination.

SECTION 3. Amends Section 420.072(c), Government Code, as follows:

(c) Prohibits a communication, a record, or evidence that is confidential under this subchapter from being disclosed to a parent or legal guardian of a survivor who is a minor or to a guardian appointed under Title 3, Estates Code, of an adult survivor, if applicable, if an advocate or a sexual assault program knows or has reason to believe that the parent or guardian, rather than the parent or legal guardian, of the survivor is a suspect or accomplice in the sexual assault of the survivor.

SECTION 4. Amends Section 420.073, Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires consent for the release of confidential information other than evidence contained in an evidence collection kit to be in writing and signed by the survivor, a parent or legal guardian if the survivor is a minor, an attorney ad litem appointed for the survivor, or a personal representative if the survivor is deceased, rather than the survivor, a parent or legal guardian if the survivor is a minor, a legal guardian if the survivor has been adjudicated incompetent to manage the survivor's personal affairs, an attorney ad litem appointed for the survivor, or a personal representative if the survivor is deceased.

(d) Provides that, for purposes of Subsection (a), a written consent signed by an adult survivor with a guardian appointed under Title 3, Estates Code, is effective regardless of whether the adult survivor's guardian, guardian ad litem, or other legal agent signs the release. Provides that, if the adult survivor agrees to the release but is unable to provide a signature and the guardian, guardian ad litem, or other legal agent is unavailable or declines to sign the release, then a notary is authorized to sign the release in the manner provided by Section 406.0165 (Signing Document For Individual With Disability).

SECTION 5. Amends Section 420.0735(b), Government Code, as follows:

(b) Provides that, for purposes of Subsection (a)(1), a written consent signed by an adult survivor with a guardian appointed under Title 3, Estates Code, is effective regardless of whether the adult survivor's guardian, guardian ad litem, or other legal agent signs the release, rather than providing that a written consent signed by an incapacitated person, as that term is defined by Chapter 1002 (Definitions), Estates Code, is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other legal agent signs the release. Provides that, if the adult survivor with an appointed guardian agrees to the release but is unable to provide a signature and the guardian, rather than if the incapacitated person is unable to provide a signature and the guardian, guardian ad litem,

or other legal agent is unavailable or declines to sign the release, then the investigating law enforcement officer is authorized to sign the release.

SECTION 6. Amends Section 1151.351(b), Estates Code, as follows:

(b) Provides that, unless limited by a court or otherwise restricted by law, a ward is authorized to the following:

(1)–(22) makes no changes to these subdivisions;

(23)–(24) makes nonsubstantive changes to these subdivisions; and

(25) to make decisions related to sexual assault crisis services, including consenting to a forensic medical examination and treatment, authorizing the collection of forensic evidence, consenting to the release of evidence contained in an evidence collection kit and disclosure of related confidential information, and receiving counseling and other support services.

SECTION 7. Effective date: September 1, 2019.