

BILL ANALYSIS

C.S.H.B. 4531
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 4531 amends the Health and Safety Code to require a health care facility to presume that an adult sexual assault survivor requesting a forensic medical examination and treatment is competent.

C.S.H.B. 4531 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 the Estates Code without the consent of the survivor's guardian, guardian ad litem, or other legal agent if:

- the health care facility determines the survivor understands the nature of the forensic medical examination and treatment; and
- the survivor agrees to receive the forensic medical examination and treatment.

C.S.H.B. 4531 establishes that, 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 examination and treatment, the health care facility may:

- obtain consent from a relative or caretaker of the survivor on the survivor's behalf;
- obtain consent from the survivor's guardian, guardian ad litem, or other legal agent; or
- petition a court with probate jurisdiction in the county in which the facility is located for an emergency order authorizing the examination and treatment, in the manner provided by law.

C.S.H.B. 4531 prohibits a health care facility from contacting a survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent if personnel of the health care facility know or have reason to believe that such a person is a suspect or accomplice in the sexual assault of the survivor. The bill prohibits a health care facility from providing a forensic medical examination to an adult sexual assault survivor for whom a guardian is appointed if the survivor refuses an examination, regardless of whether the survivor's guardian requests or consents to the examination.

C.S.H.B. 4531 amends the Government Code to expand the prohibition against the disclosure of a communication, record, or evidence that is confidential under the Sexual Assault Prevention and Crisis Services Act to a parent or legal guardian of a sexual assault survivor who is a minor if an advocate or a sexual assault program knows or has reason to believe the parent or legal guardian is a suspect in the sexual assault of the survivor by:

- including a guardian appointed under the Estates Code of an adult survivor among the persons to whom the information may not be disclosed; and
- prohibiting disclosure to a parent or legal guardian of a survivor and a guardian appointed under the Estates Code of an adult survivor if an advocate or a sexual assault program knows or has reason to believe that the parent or guardian is an accomplice in the sexual assault of the survivor.

C.S.H.B. 4531, with respect to consent for the release of certain confidential information and evidence regarding a survivor:

- removes the condition that consent for the release of confidential information other than evidence contained in an evidence collection kit must be in writing and signed by a legal guardian for a survivor who has been adjudicated incompetent to manage the survivor's affairs;
- establishes that, for purposes of the release of such information other than evidence, written consent signed by an adult survivor with a guardian appointed under the Estates Code is effective regardless of whether the adult survivor's guardian, guardian ad litem, or other legal agent signs the release; and
- authorizes an investigating law enforcement officer to sign consent for the release of confidential information and to sign consent for the release of evidence contained in an evidence collection kit if the adult survivor with a guardian appointed under the Estates Code agrees to the release but is unable to provide a signature and the guardian, guardian ad litem, or other legal agent or other applicable representative is unavailable or declines to sign the applicable consent.

C.S.H.B. 4531 amends the Estates Code to include in the bill of rights for wards the right to make decisions related to sexual assault crisis services.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4531 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions:

- requiring a health care facility to presume that an adult survivor requesting a forensic medical examination and treatment is competent;

- relating to provision of emergency services by a health care facility to adult sexual assault survivors with a guardian appointed under the Estates Code without the consent of the survivor's guardian, guardian ad litem, or other legal agent;
- authorizing a health care facility to obtain consent or petition an applicable court for an emergency order authorizing the provision of emergency services if the health care facility determines that an adult survivor requesting the examination and treatment potentially is incapable of consenting to the services;
- prohibiting a health care facility from contacting a person that the personnel of the health care facility knows or has reason to believe is a suspect or accomplice in the sexual assault of the survivor; and
- including in the bill of rights for wards the right to make decisions related to sexual assault crisis services.

The substitute does not include an authorization for a sexual assault examiner and sexual assault nurse to provide, on request, medical care to and collect forensic evidence for certain survivors of sexual assault who are wards or who are incapacitated 14 years of age or older, regardless of whether an applicable guardian consents, but includes a provision prohibiting the provision of a forensic medical examination to an adult survivor with a guardian appointed under the Estates Code if the survivor refuses the services, regardless of whether the survivor's guardian requests or consents to the examination.

The substitute changes the bill provision that expands the prohibition in the Sexual Assault Prevention and Crisis Services Act against disclosure of applicable confidential information to a parent or legal guardian of a survivor, regardless of the age of the survivor, if it is known or reasonably believed that the parent or guardian is an accomplice in the sexual assault of the provider, by clarifying that the adult survivor's guardian is a guardian appointed under the Estates Code. The substitute replaces references in the bill provisions regarding the release of applicable confidential information and evidence with respect to a survivor who is an incapacitated person with references to an adult survivor with a guardian so appointed.