

BILL ANALYSIS

S.B. 295
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

State law does not provide survivors of sexual assault full confidentiality protections when seeking a crisis center's assistance, despite the fact that survivors of domestic violence have recently been granted such protections by the legislature. Because roughly 85 percent of crisis center programs in Texas serve both sexual violence and domestic violence survivors, this has caused inconsistency and confusion both for the providers and for the survivors they serve. The discrepancy in the law has resulted in unequal treatment of survivors receiving similar services based solely upon the nature of their assault. S.B. 295 seeks to address this discrepancy by expanding the confidentiality and privacy protections applicable to survivors of sexual assault.

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

S.B. 295 revises provisions of the Sexual Assault Prevention and Crisis Services Act relating to the confidentiality of certain survivor communications and records.

S.B. 295 amends the Government Code to establish the privilege of a survivor of a sexual assault or other sex offense to refuse to disclose, and to prevent another from disclosing, a confidential communication or record for any purpose in any civil, criminal, administrative, or legislative proceeding. The bill excepts the disclosure of such a communication or record in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication or record to form the basis of the expert's opinion and establishes that a disclosure by such an expert witness is governed by the Texas Rules of Evidence. The bill repeals a provision that requires the disclosure of communications, records, and evidence that are confidential under the act in response to a criminal subpoena.

S.B. 295 establishes that an unauthorized disclosure of a portion of a confidential communication or record does not constitute a waiver of a survivor's privilege except that a court or administrative hearing officer, as applicable, may determine in response to a motion by a party to a proceeding that the privilege has been waived with regard to a portion of a communication or record that has been disclosed. The bill limits the authority of the court or administrative hearing officer to make such a determination to instances in which the disclosed portion is relevant to a disputed matter at the proceeding and the waiver is necessary for a witness to be able to respond to questioning concerning the disclosed portion.

S.B. 295 makes the following changes with respect to the confidentiality of communications and records:

- specifies that any communication between an advocate and a survivor, including an oral or written communication, that is made in the course of advising, counseling, or assisting the survivor is confidential;
- specifies that any record created by, provided to, or maintained by an advocate is confidential if the record relates to the services provided to a survivor or contains certain information about the survivor or the survivor's victimization; and
- removes a provision permitting a person who receives information from a confidential communication or record to disclose the information to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

S.B. 295 makes the following changes with respect to the disclosure of applicable confidential communications and records:

- removes references to the disclosure of evidence from provisions establishing certain permissible disclosures;
- authorizes disclosure if the survivor has waived the privilege to refuse or prevent disclosure under the bill's provisions;
- removes a restriction on the persons to whom disclosure may be made if an advocate determines that there is a probability of imminent physical danger to any person or immediate mental or emotional injury to the survivor and clarifies that a disclosure under those circumstances must be necessary to remove the probability of danger or injury;
- clarifies that written consent for the release of certain confidential information that is given by a parent or guardian under the act does not authorize a person to disclose a confidential record or communication to a survivor's parent or applicable guardian who the person knows or has reason to believe is a suspect or accomplice in the sexual assault of the survivor;
- removes the authorization for any disclosure to a governmental agency that is required or authorized by law, but authorizes a disclosure that is necessary to comply with state law relating to an investigation of a report of child abuse or neglect or an investigation of abuse, neglect, or exploitation of an elderly person or person with a disability;
- authorizes disclosure to an additional employee or volunteer of a sexual assault program only after an advocate or other qualifying person participating in the provision of services to a survivor determines that the disclosure to the employee or volunteer is necessary to facilitate that provision to that survivor; and
- limits the authorized disclosure of a communication or record that is relevant to the claims or defense of an advocate or sexual assault program to such a disclosure made in a proceeding brought by the survivor.

S.B. 295 applies to any applicable confidential communication or record, regardless of the date the communication is made or the record is created.

S.B. 295 repeals Section 420.074, Government Code.

EFFECTIVE DATE

September 1, 2021.