By:  Howard, et al. (Senate Sponsor - Nelson) H.B. No. 2706

(In the Senate - Received from the House May 3, 2021; May 20, 2021, read first time and referred to Committee on Jurisprudence; May 22, 2021, reported favorably by the following vote: Yeas 3, Nays 0; May 22, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Huffman           X

Hinojosa             X

Creighton            X

Hughes                         X

Johnson                        X

A BILL TO BE ENTITLED

AN ACT

relating to the emergency services and care provided to victims of sexual assault and other sex offenses and to the processes associated with preserving and analyzing the evidence of those offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.435 to read as follows:

Art. 38.435.  PROHIBITED USE OF EVIDENCE FROM FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT. Evidence collected during a forensic medical examination conducted under Subchapter F or G, Chapter 56A, may not be used to investigate or prosecute a misdemeanor offense, or an offense under Subchapter D, Chapter 481, Health and Safety Code, alleged to have been committed by the victim from whom the evidence was collected.

SECTION 2.  Article 56A.252, Code of Criminal Procedure, is amended to conform to Sections 3 and 8, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and is further amended to read as follows:

Art. 56A.252.  PAYMENT OF COSTS OF EXAMINATION. (a) [~~A law enforcement agency that requests a forensic medical examination under Article 56A.251 shall pay all costs of the examination.~~] On application to the attorney general, a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with this subchapter, or the [~~law enforcement agency is entitled to be reimbursed for the reasonable costs of the examination if the examination was performed by a physician or by a~~] sexual assault examiner or sexual assault nurse examiner who conducts the examination, as applicable, is entitled to be reimbursed in an amount set by attorney general rule for:

(1)  the reasonable costs of the forensic portion of that examination; and

(2)  the evidence collection kit [~~defined by Section 420.003, Government Code~~].

(b)  The application under Subsection (a) must be in the form and manner prescribed by the attorney general and must include:

(1)  the documentation of the law enforcement agency's request for the forensic medical examination, as required under Article 56A.251(d); and

(2)  a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(c)  A health care provider or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (a) shall accept reimbursement from the attorney general as payment for the costs unless:

(1)  the health care provider or sexual assault examiner or sexual assault nurse examiner, as applicable:

(A)  requests, in writing, additional reimbursement from the attorney general; and

(B)  provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and

(2)  the attorney general determines that there is a reasonable justification for additional reimbursement.

(d)  A health care provider is not entitled to reimbursement under this article unless the forensic medical examination is conducted on the premises of the provider by a sexual assault examiner or sexual assault nurse examiner.

(e)  On request, the attorney general may provide training to a health care provider regarding the process for applying for reimbursement under this article.

SECTION 3.  Article 56A.254, Code of Criminal Procedure, is amended to read as follows:

Art. 56A.254.  PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE. The attorney general may make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided in accordance with Sections [~~Section~~] 323.004, 323.053, and 323.054, Health and Safety Code.

SECTION 4.  Article 56A.302, Code of Criminal Procedure, is amended to read as follows:

Art. 56A.302.  APPLICABILITY. This subchapter applies to the following health care providers [~~facilities~~] that provide diagnosis or treatment services to victims of sexual assault:

(1)  a general or special hospital licensed under Chapter 241, Health and Safety Code;

(2)  a general or special hospital owned by this state;

(3)  an outpatient clinic; [~~and~~]

(4)  a private physician's office; and

(5)  a SAFE program as defined by Section 323.051, Health and Safety Code.

SECTION 5.  Article 56A.303, Code of Criminal Procedure, is amended to conform to Section 4, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and is further amended to read as follows:

Art. 56A.303.  FORENSIC MEDICAL EXAMINATION. (a) In accordance with Subchapter B, Chapter 420, Government Code, and except as provided by Subsection (b), a health care provider [~~facility~~] shall conduct a forensic medical examination of a victim of a [~~an alleged~~] sexual assault if:

(1)  the victim arrives at the provider [~~facility~~] within 120 [~~96~~] hours after the assault occurred;

(2)  the victim consents to the examination; and

(3)  at the time of the examination the victim has not reported the assault to a law enforcement agency.

(b)  If a health care provider [~~facility~~] does not provide diagnosis or treatment services to victims of sexual assault, the provider [~~facility~~] shall refer a victim of a [~~an alleged~~] sexual assault who seeks a forensic medical examination under Subsection (a) to a health care provider [~~facility~~] that provides services to those victims.

(c)  A victim of a [~~an alleged~~] sexual assault may not be required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination under this article.

SECTION 6.  Article 56A.304, Code of Criminal Procedure, is amended to conform to Sections 4 and 8, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and is further amended to read as follows:

Art. 56A.304.  PAYMENT OF FEES RELATED TO EXAMINATION. (a) On application to the [~~The department shall pay the appropriate fees, as set by~~] attorney general [~~rule~~], a health care provider that provides [~~for the forensic portion of~~] a forensic medical examination to a sexual assault survivor in accordance with this subchapter, or the [~~conducted under Article 56A.303(a) and for the evidence collection kit if a physician,~~] sexual assault examiner [~~,~~] or sexual assault nurse examiner who conducts that [~~the forensic portion of the~~] examination, as applicable, within 120 [~~96~~] hours after the [~~alleged~~] sexual assault occurred is entitled to be reimbursed in an amount set by attorney general rule for:

(1)  the reasonable costs of the forensic portion of that examination; and

(2)  the evidence collection kit.

(b)  The application under Subsection (a) must be in the form and manner prescribed by the attorney general and must include:

(1)  certification that the examination was conducted in accordance with the requirements of Article 56A.303(a); and

(2)  a complete and itemized bill of the reasonable costs of the forensic portion of the examination [~~attorney general shall reimburse the department for fees paid under Subsection (a)~~].

(c)  A health care provider or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (a) shall accept reimbursement from the attorney general as payment for the costs unless:

(1)  the health care provider or sexual assault examiner or sexual assault nurse examiner, as applicable:

(A)  requests, in writing, additional reimbursement from the attorney general; and

(B)  provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and

(2)  the attorney general determines that there is a reasonable justification for additional reimbursement.

(d)  A health care provider is not entitled to reimbursement under this article unless the forensic medical examination was conducted on the premises of the provider by a sexual assault examiner or sexual assault nurse examiner.

(e)  On request, the attorney general may provide training to a health care provider regarding the process for applying for reimbursement under this article.

(f)  A victim of a [~~an alleged~~] sexual assault may not be required to pay for:

(1)  the forensic portion of the forensic medical examination; or

(2)  the evidence collection kit.

SECTION 7.  Article 56A.305, Code of Criminal Procedure, is amended to read as follows:

Art. 56A.305.  PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE. The attorney general may make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided in accordance with Sections [~~Section~~] 323.004, 323.053, and 323.054, Health and Safety Code.

SECTION 8.  Section 420.003(1-a), Government Code, is amended to read as follows:

(1-a)  "Active criminal case" means a case:

(A)  in which:

(i)  a sexual assault or other sex offense has been reported to a law enforcement agency; [~~and~~]

(ii)  physical evidence of the offense has been submitted to the agency or an accredited crime laboratory under this chapter for analysis; and

(iii)  the agency documents that an offense has been committed and reported; and

(B)  for which:

(i)  the statute of limitations has not run with respect to the prosecution of the offense; or

(ii)  a DNA profile was obtained that is eligible under Section 420.043 for comparison with DNA profiles in the state database or CODIS DNA database.

SECTION 9.  The heading to Chapter 323, Health and Safety Code, is amended to read as follows:

CHAPTER 323. EMERGENCY SERVICES AND FORENSIC EXAMINATION PROGRAMS FOR SURVIVORS OF SEXUAL ASSAULT

SECTION 10.  Chapter 323, Health and Safety Code, is amended by designating Sections 323.001 through 323.008 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. EMERGENCY SERVICES FOR SURVIVORS

OF SEXUAL ASSAULT

SECTION 11.  Section 323.001, Health and Safety Code, is amended to read as follows:

Sec. 323.001.  DEFINITIONS. In this subchapter [~~chapter~~]:

(1)  "Commission" means the Health and Human Services Commission.

(2)  "Department" means the Department of State Health Services.

(3)  "Health care facility" means a general or special hospital licensed under Chapter 241, a general or special hospital owned by this state, or a freestanding emergency medical care facility licensed under Chapter 254.

(3-a)  "SAFE-ready facility" means a health care facility designated as a sexual assault forensic exam-ready facility under Section 323.0015. The term includes a SAFE program designated as a SAFE-ready facility under Section 323.052.

(3-b)  "SAFE program" has the meaning assigned by Section 323.051.

(4)  "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.

(4-a)  "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician with specialized training on conducting a forensic medical examination.

(5)  "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

SECTION 12.  Sections 323.004(a), (a-1), and (b), Health and Safety Code, are amended to read as follows:

(a)  Except as otherwise provided by Subsection (a-2), after a sexual assault survivor arrives at a health care facility following a [~~an alleged~~] sexual assault, the facility shall provide care to the survivor in accordance with Subsection (b).

(a-1)  A facility that is not a SAFE-ready facility shall inform the sexual assault survivor that:

(1)  the facility is not a SAFE-ready facility and provide to the survivor the name and location of nearby [~~the closest~~] SAFE-ready facilities [~~facility~~] and the information form required by Section 323.0051; and

(2)  the survivor is entitled, at the survivor's option:

(A)  to receive the care described by Subsection (b) at that facility, subject to Subsection (b-1); or

(B)  to be stabilized and to be referred or transferred to and receive the care described by Subsection (b) at a SAFE-ready facility.

(b)  A health care facility providing care to a sexual assault survivor shall provide the survivor with:

(1)  subject to Subsection (b-1), a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure, or is conducted under Subchapter G, Chapter 56A, Code of Criminal Procedure;

(2)  a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(3)  access to a sexual assault program advocate, if available, as provided by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(4)  the information form required by Section 323.005;

(5)  a private treatment room, if available;

(6)  if indicated by the history of contact, access to appropriate prophylaxis for exposure to sexually transmitted infections; [~~and~~]

(7)  the name and telephone number of the nearest sexual assault crisis center; and

(8)  if the health care facility has shower facilities, access to a shower at no cost to the survivor after the examination described by Subdivision (1).

SECTION 13.  Section 323.005(a), Health and Safety Code, as amended by Chapters 408 (H.B. 8), 469 (H.B. 4173), and 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, is reenacted and further amended to conform to Chapter 469 (H.B. 4173), Acts of the 86th Legislature, Regular Session, 2019, to read as follows:

(a)  The commission [~~department~~] shall develop a standard information form for sexual assault survivors that must include:

(1)  a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2)  information regarding treatment of sexually transmitted infections and pregnancy, including:

(A)  generally accepted medical procedures;

(B)  appropriate medications; and

(C)  any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3)  information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4)  information regarding crime victims compensation, including:

(A)  a statement that public agencies are responsible for paying for the forensic portion of an examination conducted under Subchapter F or G, Chapter 56A [~~Article 56.06 or 56.065~~], Code of Criminal Procedure, and for the evidence collection kit used in connection with the examination and that the health care facility or provider, as applicable, is responsible for seeking reimbursement for those costs; and

(B)  information regarding the reimbursement of the survivor for the medical portion of the examination;

(5)  an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6)  the name and telephone number of sexual assault crisis centers statewide; [~~and~~]

(7)  information regarding postexposure prophylaxis for HIV infection;

(8)  information regarding the period for which biological evidence collected from the forensic medical examination will be retained and preserved under Article 38.43, Code of Criminal Procedure; and

(9)  a statement that the survivor has the right to access a shower for free after the forensic medical examination, if shower facilities are available at the health care facility.

SECTION 14.  Section 323.0051(a), Health and Safety Code, is amended to read as follows:

(a)  The commission [~~department~~] shall develop a standard information form for sexual assault survivors who arrive at a health care facility that is not a SAFE-ready facility. The information form must include:

(1)  information regarding the benefits of a forensic medical examination conducted by a sexual assault forensic examiner;

(2)  the Internet website address to the commission's [~~department's~~] list of SAFE-ready facilities that includes the facilities' physical addresses as required by Section 323.008;

(3)  the following statements:

(A)  "As a survivor of sexual assault, you have the right to receive a forensic medical examination at this hospital emergency room if you are requesting the examination not later than 120 hours after the assault.";

(B)  "A report to law enforcement is not required, but if you make a report, law enforcement must first authorize the examination."; and

(C)  "Call 1-800-656-HOPE to be connected to a rape crisis center for free and confidential assistance."; and

(4)  information on the procedure for submitting a complaint against the health care facility.

SECTION 15.  Section 323.0052(a), Health and Safety Code, is amended to conform to Chapter 469 (H.B. 4173), Acts of the 86th Legislature, Regular Session, 2019, and further amended to read as follows:

(a)  The commission [~~department~~] shall develop a standard information form that, as described by Subsection (b), is to be provided to sexual assault survivors who have not given signed, written consent to a health care facility to release the evidence as provided by Section 420.0735, Government Code. The form must include the following information:

(1)  the Department of Public Safety's policy regarding storage of evidence of a sexual assault or other sex offense that is collected under Subchapter G, Chapter 56A [~~Article 56.065~~], Code of Criminal Procedure, including:

(A)  a statement that the evidence will be stored until the fifth anniversary of the date on which the evidence was collected before the evidence becomes eligible for destruction; and

(B)  the department's procedures regarding the notification of the survivor before a planned destruction of the evidence;

(2)  a statement that the survivor may request the release of the evidence to a law enforcement agency and report a sexual assault or other sex offense to the agency at any time;

(3)  the name, phone number, and e-mail address of the law enforcement agency with jurisdiction over the offense; and

(4)  the name and phone number of a local rape crisis center.

SECTION 16.  Section 323.008, Health and Safety Code, is amended to read as follows:

Sec. 323.008.  DATA PUBLICATION. The commission [~~department~~] shall post on the commission's [~~department's~~] Internet website a list of all hospitals and other health facilities that are designated as SAFE-ready facilities under this chapter and the facilities' physical addresses. The commission [~~department~~] shall update the list quarterly [~~annually~~]. To the extent possible, the commission [~~department~~] shall collect the data required by this section as part of a survey required by the commission [~~department~~] under other law.

SECTION 17.  Chapter 323, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. SEXUAL ASSAULT FORENSIC EXAMINATION PROGRAMS

Sec. 323.051.  DEFINITIONS. In this subchapter:

(1)  "SAFE program" means a program that meets the requirements prescribed by Section 323.052. The term does not include a program operated by a health care facility, as defined by Section 323.001.

(2)  "Sexual assault examiner," "sexual assault nurse examiner," and "sexual assault program" have the meanings assigned by Section 420.003, Government Code.

(3)  "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician licensed under Subtitle B, Title 3, Occupations Code, with specialized training on conducting a forensic medical examination.

Sec. 323.052.  OPERATION OF SAFE PROGRAM; DESIGNATION OF SAFE PROGRAM AS SAFE-READY FACILITY. (a) A person may operate a SAFE program only if:

(1)  the program meets the minimum standards established under Section 323.053; and

(2)  the program provides forensic medical examinations to sexual assault survivors in accordance with Section 323.054.

(b)  The Health and Human Services Commission shall designate a SAFE program described by Subsection (a) as a SAFE-ready facility under Section 323.0015 if the program notifies the commission that the program employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation during a sexual assault forensic medical examination to a nurse or physician licensed to practice in this state.

Sec. 323.053.  MINIMUM STANDARDS FOR SAFE PROGRAMS. A SAFE program must:

(1)  operate under the active oversight of a medical director who is a physician licensed by and in good standing with the Texas Medical Board;

(2)  provide medical treatment under a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by Texas Medical Board rules;

(3)  employ or contract with a sexual assault examiner or a sexual assault nurse examiner;

(4)  provide access to a sexual assault program advocate, as required by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(5)  ensure a sexual assault survivor has access to a private treatment room;

(6)  if indicated by a survivor's history or on a survivor's request, provide:

(A)  HIV testing and prophylactic medication to the survivor or a referral for the testing and medication; and

(B)  counseling and prophylactic medications for exposure to sexually transmitted infections and pregnancy;

(7)  provide to survivors the name and telephone number of a nearby sexual assault program that provides to survivors the minimum services described by Subchapter A, Chapter 420, Government Code;

(8)  provide to survivors the information form required by Section 323.005, 323.0051, or 323.0052, as applicable, and orally communicate the information regarding crime victims compensation under Section 323.005(a)(4);

(9)  collaborate with any sexual assault program, as defined by Section 420.003, Government Code, that provides services to survivors in the county;

(10)  engage in efforts to improve the quality of the program;

(11)  maintain capacity for appropriate triage or have agreements with other health facilities to assure that a survivor receives the appropriate level of care indicated for the survivor's medical and mental health needs;

(12)  prioritize the safety and well-being of survivors;

(13)  provide a trauma-informed approach in the forensic medical care provided to survivors; and

(14)  collaborate with:

(A)  law enforcement agencies and attorneys representing the state with jurisdiction in the county;

(B)  any available local sexual assault response team; and

(C)  other interested persons in the community.

Sec. 323.054.  FORENSIC MEDICAL EXAMINATION BY SAFE PROGRAM; INFORMED CONSENT. (a) A SAFE program shall provide to a sexual assault survivor under the care of the program a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure, or if the examination is performed in accordance with Subchapter G, Chapter 56A, Code of Criminal Procedure.

(b)  Only a sexual assault examiner or a sexual assault nurse examiner may perform a forensic medical examination under a SAFE program.

(c)  A sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program must obtain a sexual assault survivor's informed, written consent before performing a forensic medical examination or providing medical treatment to the survivor.

(d)  A sexual assault survivor who receives a forensic medical examination from a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program may not be required to:

(1)  participate in the investigation or prosecution of an offense as a prerequisite to receiving the forensic medical examination or medical treatment; or

(2)  pay for the costs of the forensic portion of the forensic medical examination or for the evidence collection kit.

SECTION 18.  Article 38.435, Code of Criminal Procedure, and Section 323.004(b)(8), Health and Safety Code, as added by this Act, apply to a forensic medical examination that occurs on or after the effective date of this Act. A forensic medical examination that occurs before that date is governed by the law in effect on the date the examination occurred, and the former law is continued in effect for that purpose.

SECTION 19.  To the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 20.  This Act takes effect September 1, 2021.

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