S.B. No. 295

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

Sec. 420.071.  CONFIDENTIAL COMMUNICATIONS AND RECORDS; PRIVILEGE.

SECTION 3.  Section 420.071, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (c-1) to read as follows:

(a)  Any [~~A~~] communication, including an oral or written communication, between an 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 advocate 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 program is confidential and may not be disclosed except as provided by this subchapter~~].

(c)  In any civil, criminal, administrative, or legislative proceeding, subject to Section 420.072, a survivor has a privilege to refuse to disclose and to prevent another from disclosing, for any purpose, a communication or record that is confidential under this section.

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

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

(2)  waiver is necessary for a witness to be able to respond to questioning concerning the disclosed portion. [~~A person who receives information from a confidential communication or record as described by this subchapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.~~]

SECTION 4.  Section 420.072, Government Code, is amended to read as follows:

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

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

(2)  the survivor has waived the privilege established under Section 420.071(c) with respect to the communication or record;

(3)  the survivor or other appropriate person consents in writing to the disclosure as provided by Section 420.073;

(4)  an [~~or 420.0735, as applicable.~~

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

[~~(1) medical or law enforcement personnel if the~~] advocate determines that, unless the disclosure is made, there is a probability of:

(A)  imminent physical danger to any person; or

(B)  [~~for whom the communication, record, or evidence is relevant or if there is a probability of~~] immediate mental or emotional injury to the survivor;

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

(A)  to comply with:

(i)  Chapter 261, Family Code; or

(ii)  Chapter 48, Human Resources Code; or

(B)  [~~required or authorized by law;~~

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

(6)  the disclosure is made to an employee or volunteer of the sexual assault program after [~~(4) a person authorized to receive the disclosure as a result of written consent obtained under Section 420.073 or 420.0735; or~~

[~~(5)~~]  an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or the provision of services to [~~advocacy for~~] the survivor determines that the disclosure is necessary to facilitate the provision of services to the survivor; or

(7)  the communication or record is in the possession, custody, or control of the state and a court, after conducting an in camera review of the communication or record, determines the communication or record is exculpatory, provided that the disclosure is limited to the specific portion of the communication or record that was determined to be exculpatory in relation to a defendant in a criminal case.

(b)  Regardless of whether written consent has been given by a parent or legal guardian under Section 420.073(a), a person may not disclose a [~~(c) A~~] communication or[~~, a~~] record[~~, or evidence~~] that is confidential under Section 420.071 [~~this subchapter may not be 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 the person [~~an advocate or a sexual assault program~~] knows or has reason to believe that the parent or guardian of the survivor is a suspect or accomplice in the sexual assault of the survivor.

(c)  Notwithstanding Subsections (a) and (b), the Texas Rules of Evidence govern the disclosure of a communication or record that is confidential under Section 420.071 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.

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

Sec. 420.074.  DISCLOSURE OF PRIVILEGED COMMUNICATIONS OR OTHER INFORMATION IN CRIMINAL PROCEEDING [~~SUBPOENA~~]. (a) Subject to the provisions [~~Notwithstanding any other provision~~] of this chapter, not later than the 30th day before the date of the trial, a defendant in a criminal proceeding may make a motion for disclosure of a communication or record that is privileged under this chapter. The motion must include a supporting affidavit showing reasonable grounds to believe the privileged communication or record contains exculpatory evidence.

(b)  The defendant shall serve the motion on the attorney representing the state and the person who holds the privilege with regard to the communication or record at issue.

(c)  The court shall order the privileged communication or record to be produced for the court under seal and shall examine the communication or record in camera if the court finds by a preponderance of the evidence that:

(1)  there is a good-faith, specific, and reasonable basis for believing that the privileged communication or record is relevant, material, and exculpatory upon the issue of guilt for the offense charged; and

(2)  the privileged communication or record would not be duplicative of other evidence or information available or already obtained by the defendant.

(d)  The court [~~a person~~] shall disclose to the defendant and to the state only the evidence that the court finds to be exculpatory on the issue of guilt for the offense charged [~~a communication, a record, or evidence that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law~~].

SECTION 6.  The change in law made by this Act applies to any communication or record described by Section 420.071, Government Code, as amended by this Act, regardless of the date the communication is made or the record is created.

SECTION 7.  This Act takes effect September 1, 2021.

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I hereby certify that S.B. No. 295 passed the Senate on April 19, 2021, by the following vote:  Yeas 31, Nays 0; May 11, 2021, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 14, 2021, House granted request of the Senate; May 29, 2021, Senate adopted Conference Committee Report by the following vote:  Yeas 31, Nays 0.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Secretary of the Senate

I hereby certify that S.B. No. 295 passed the House, with amendments, on May 5, 2021, by the following vote:  Yeas 145, Nays 0, one present not voting; May 14, 2021, House granted request of the Senate for appointment of Conference Committee; May 28, 2021, House adopted Conference Committee Report by the following vote:  Yeas 135, Nays 9, one present not voting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Chief Clerk of the House

Approved:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_            Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_           Governor