

1-1 By: Perry S.B. No. 295
1-2 (In the Senate - Filed January 7, 2021; March 3, 2021, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 9, 2021, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 9, 2021,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			

1-14 COMMITTEE SUBSTITUTE FOR S.B. No. 295 By: Johnson

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the confidential and privileged communications and
1-18 records of victims of certain sexual assault offenses.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. The heading to Subchapter D, Chapter 420,
1-21 Government Code, is amended to read as follows:

1-22 SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS AND RECORDS

1-23 SECTION 2. The heading to Section 420.071, Government Code,
1-24 is amended to read as follows:

1-25 Sec. 420.071. CONFIDENTIAL COMMUNICATIONS AND RECORDS;
1-26 PRIVILEGE.

1-27 SECTION 3. Section 420.071, Government Code, is amended by
1-28 amending Subsections (a), (b), and (c) and adding Subsection (c-1)
1-29 to read as follows:

1-30 (a) Any [A] communication, including an oral or written
1-31 communication, between an advocate and a survivor~~[, or a person~~
1-32 ~~claiming to be a survivor,~~ that is made in the course of advising,
1-33 counseling, or assisting ~~[providing sexual assault advocacy~~
1-34 ~~services to]~~ the survivor is confidential ~~[and may not be disclosed~~
1-35 ~~except as provided by this subchapter].~~

1-36 (b) Any [A] record created by, provided to, or maintained by
1-37 an advocate is confidential if the record relates to the services
1-38 provided to a survivor or contains ~~[of]~~ the identity, personal
1-39 history, or background information of the [a] survivor or
1-40 information concerning the victimization of the [a] survivor ~~[that~~
1-41 ~~is created by or provided to an advocate or maintained by a sexual~~
1-42 ~~assault program is confidential and may not be disclosed except as~~
1-43 ~~provided by this subchapter].~~

1-44 (c) In any civil, criminal, administrative, or legislative
1-45 proceeding, subject to Section 420.072, a survivor has a privilege
1-46 to refuse to disclose and to prevent another from disclosing, for
1-47 any purpose, a communication or record that is confidential under
1-48 this section. ~~[A person who receives information from a~~
1-49 ~~confidential communication or record as described by this~~
1-50 ~~subchapter may not disclose the information except to the extent~~
1-51 ~~that disclosure is consistent with the authorized purposes for~~
1-52 ~~which the information was obtained.]~~

1-53 (c-1) Except as provided by this subsection, the
1-54 unauthorized disclosure of a portion of a confidential
1-55 communication or record does not constitute a waiver of the
1-56 privilege provided by Subsection (c). If a portion of a
1-57 confidential communication or record is disclosed, a party to the
1-58 relevant court or administrative proceeding may make a motion
1-59 requesting that the privilege be waived with respect to the
1-60 disclosed portion. The court or administrative hearing officer, as

2-1 applicable, may determine that the privilege has been waived only
2-2 if:

2-3 (1) the disclosed portion is relevant to a disputed
2-4 matter at the proceeding; and

2-5 (2) waiver is necessary for a witness to be able to
2-6 respond to questioning concerning the disclosed portion.

2-7 SECTION 4. Section 420.072, Government Code, is amended to
2-8 read as follows:

2-9 Sec. 420.072. DISCLOSURE OF CONFIDENTIAL COMMUNICATION OR
2-10 RECORD [EXCEPTIONS]. (a) A communication or ~~[, a]~~ record ~~[, or~~
2-11 ~~evidence]~~ that is confidential under Section 420.071 ~~[this~~
2-12 ~~subchapter]~~ may only be disclosed ~~[in court or in an administrative~~
2-13 ~~proceeding]~~ if:

2-14 (1) the communication or record ~~[proceeding is brought~~
2-15 ~~by the survivor against an advocate or a sexual assault program or~~
2-16 ~~is a criminal proceeding or a certification revocation proceeding~~
2-17 ~~in which disclosure]~~ is relevant to the claims or defense of an
2-18 ~~[the] advocate or sexual assault program in a proceeding brought by~~
2-19 ~~the survivor against the advocate or program; ~~[or]~~~~

2-20 (2) the survivor has waived the privilege established
2-21 under Section 420.071(c) with respect to the communication or
2-22 record;

2-23 (3) the survivor or other appropriate person consents
2-24 in writing to the disclosure as provided by Section 420.073;

2-25 (4) an ~~[or 420.0735, as applicable.~~

2-26 ~~[(b) A communication, a record, or evidence that is~~
2-27 ~~confidential under this subchapter may be disclosed only to:~~

2-28 ~~[(1) medical or law enforcement personnel if the]~~
2-29 ~~advocate determines that, unless the disclosure is made, there is a~~
2-30 ~~probability of:~~

2-31 (A) imminent physical danger to any person; or

2-32 (B) ~~[for whom the communication, record, or~~
2-33 ~~evidence is relevant or if there is a probability of]~~ immediate
2-34 mental or emotional injury to the survivor;

2-35 (5) ~~[(2) a governmental agency if]~~ the disclosure is
2-36 necessary:

2-37 (A) to comply with:

2-38 (i) Chapter 261, Family Code; or

2-39 (ii) Chapter 48, Human Resources Code; or

2-40 (B) ~~[required or authorized by law;~~

2-41 ~~[(3) a qualified person to the extent necessary]~~ for a
2-42 management audit, a financial audit, a program evaluation, or
2-43 research, except that a report of the ~~[research,]~~ audit, ~~[or]~~
2-44 evaluation, or research may not directly or indirectly identify a
2-45 survivor;

2-46 ~~[(4) a person authorized to receive the disclosure as~~
2-47 ~~a result of written consent obtained under Section 420.073 or~~
2-48 ~~420.0735,]~~ or

2-49 (6) the disclosure is made to an employee or volunteer
2-50 of the sexual assault program after ~~[(5)]~~ an advocate or a person
2-51 under the supervision of a counseling supervisor who is
2-52 participating in the evaluation or counseling of or the provision
2-53 of services to ~~[advocacy for]~~ the survivor determines that the
2-54 disclosure is necessary to facilitate the provision of services to
2-55 the survivor.

2-56 (b) Regardless of whether written consent has been given by
2-57 a parent or legal guardian under Section 420.073(a), a person may
2-58 not disclose a ~~[(c) A]~~ communication or ~~[, a]~~ record ~~[, or evidence]~~
2-59 that is confidential under Section 420.071 ~~[this subchapter may not~~
2-60 ~~be disclosed]~~ to a parent or legal guardian of a survivor who is a
2-61 minor or to a guardian appointed under Title 3, Estates Code, of an
2-62 adult survivor, if applicable, if the person ~~[an advocate or a~~
2-63 ~~sexual assault program]~~ knows or has reason to believe that the
2-64 parent or guardian of the survivor is a suspect or accomplice in the
2-65 sexual assault of the survivor.

2-66 (c) Notwithstanding Subsections (a) and (b), the Texas
2-67 Rules of Evidence govern the disclosure of a communication or
2-68 record that is confidential under Section 420.071 in a criminal or
2-69 civil proceeding by an expert witness who relies on facts or data

3-1 from the communication or record to form the basis of the expert's
3-2 opinion.

3-3 SECTION 5. Section 420.074, Government Code, is repealed.

3-4 SECTION 6. The change in law made by this Act applies to any
3-5 communication or record described by Section 420.071, Government
3-6 Code, as amended by this Act, regardless of the date the
3-7 communication is made or the record is created.

3-8 SECTION 7. This Act takes effect September 1, 2021.

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