

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 6, 2021

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB295 by Perry (Relating to the confidential and privileged communications and records of victims of certain sexual assault offenses.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Government Code to provide that any communication, including oral and written communications, between an advocate and a survivor make in the course of advising, counseling, or assisting the survivor is confidential. The bill would provide that any record created by, provided to, or maintained by an advocate is confidential if it relates to the services provided to a survivor or contains certain information related to the survivor. Under the bill's provisions, subject to certain disclosure law, a survivor would have a privilege to refuse to disclose and to prevent another from disclosing a communication or record made confidential by the bill. The bill would provide that unauthorized disclosure of any portion of a confidential communication does not constitute waiver of the privilege and that if disclosed a party may make a motion requesting that privilege be waived with respect to the disclosed portion. The bill would provide that the Texas Rules of Evidence govern the disclosure of a communication or record that is confidential under Government Code 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.

The bill would amend the Civil Practice and Remedies Code to require a court to make it known to the claimant as early as possible in the proceedings of the action that the claimant may use a confidential identity in relation to the action, allow a claimant to use a confidential identity in all petitions, filings, and other documents presented to the court, use the confidential identity in all of the courts proceedings and records related to the action, and maintain the records relating to the action in a manner that protects the confidentiality of the claimant. The bill would entitle only certain persons to know the true identity of the claimant.

The bill would amend the Government Code to provide that, subject to Chapter 420 provisions, not later than the 30th day before the date of trial a defendant in a criminal proceeding may make a motion for disclosure of a communication or record that is privileged under Chapter 420. The bill would require the court to order the privileged communication or record to be produced for the court under seal and to examine the communication or record in camera in certain circumstances. The bill would require the court to 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.

Based on the analysis of the Office of Court Administration and the Office of the Attorney General, it is assumed that duties and responsibilities associated with implementing the bill could be accomplished utilizing existing resources. In addition, no significant fiscal impact to the state court system is anticipated with the implementation of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 302 Office of the Attorney General

LBB Staff: JMc, LBO, BH, SLE, MW