

## **BILL ANALYSIS**

C.S.S.B. 435  
By: Middleton  
Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

After the Santa Fe school shooting, many next of kin of those who were killed or seriously injured requested to view the evidence to gain closure. However, due to current laws, there was concern that permitting family members to view this evidence would require that it also be disclosed to the public, including the media. C.S.S.B. 435 seeks to resolve the issue by authorizing a prosecutor to allow a family member to view certain evidence, including a medical examiner's report and video evidence, without subjecting the evidence to public disclosure.

### **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**

C.S.S.B. 435 amends the Government Code to authorize a prosecutor to permit a person to view the following evidence of a crime that resulted in a person's death and that occurred in the prosecutor's jurisdiction:

- a medical examiner's report, if the person viewing the report is a family member of the person who is the subject of the report and who was a victim of the crime; and
- video evidence of the crime, if the person viewing the video is a victim of the crime or a victim's family member.

The bill prohibits a person permitted to view a medical examiner's report or video evidence from duplicating, recording, capturing, or otherwise memorializing the information and authorizes a prosecutor to require a person to sign a confidentiality agreement before permitting the person to view the information.

C.S.S.B. 435 establishes the following regarding the permitted viewing of a medical examiner's report or video evidence:

- the permitted viewing is not a voluntary disclosure of information for purposes of state public information law;
- a governmental body, by providing the information, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future;
- the permitted viewing does not affect a person's right to obtain a medical examiner's report or video evidence of a crime from a governmental body under other law, the procedures under which the information is obtained under other law, or the use that may be made of the information obtained under other law;

- the term "family member" means a person related to a victim of a crime within the first degree of consanguinity or affinity and the term "victim" means an individual who suffered personal injury or death as a result of criminal conduct; and
- the term "medical examiner's report" means a report and the contents of such a report created by a medical examiner, as provided by the Code of Criminal Procedure, including an autopsy report and toxicology report, but specifically excluding a photograph or medical image contained in a report.

C.S.S.B. 435 applies to a crime that occurred before, on, or after the bill's effective date.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 435 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

Whereas the engrossed authorized a prosecutor to permit a person to view evidence of a "qualifying crime," which the engrossed defined as a crime that resulted in the death of at least five people and for which the defendant or person who is the alleged or suspected perpetrator of the crime is determined to be incompetent to stand trial, that occurred in the prosecutor's jurisdiction at least five years before the date the person is allowed to view the information, the substitute authorizes a prosecutor to permit a person to view evidence of a crime that resulted in a person's death and that occurred in the prosecutor's jurisdiction, irrespective of the number of deaths, the defendant's or person's competency to stand trial, and the amount of time that has elapsed since the crime occurred. Accordingly, the substitute omits the definition of "qualifying crime" that was included in the engrossed.

Whereas the engrossed prohibited a person permitted to view a medical examiner's report or video evidence under the bill from copying, duplicating, photographing, recording, capturing, or otherwise memorializing the information, the substitute prohibits such a person from duplicating, recording, capturing, or otherwise memorializing the information. The substitute also omits the following provisions present in the engrossed:

- the provision authorizing a prosecutor to prohibit the person from having a recording device, including a phone or camera, in the room when viewing the information; and
- the provision requiring the prosecutor to advise the person that the information is confidential and that discussing the contents of the information with another person is prohibited and could compromise the prosecution of the crime.

The substitute revises the definition of "medical examiner's report" as set out in the engrossed to specify that term does not include a photograph or medical image contained in the report, which was not specified in the engrossed.