

BILL ANALYSIS

Senate Research Center

S.B. 1401
By: Zaffirini; Paxton
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1401 would implement recommendations from the Governor's Sexual Assault Survivors' Task Force report. Specifically, it would require health care providers to conduct forensic medical examinations on minor victims of sexual assault, regardless of their arrival time, if consent is given by either the victim, an authorized person, or an employee of the Department of Family and Protective Services. For adult victims of sexual assault, the healthcare providers would be required to perform an examination if they arrive within 120 hours of the assault or are referred by a law enforcement agency or medical professional, and consent is given by the victim or an authorized person. A law enforcement agency also would be required to refer a victim of sexual assault for a forensic medical examination within 120 hours if the assault is reported within that time, or at any point in time if the victim is a minor. If the victim is not a minor but did not report the assault within the 120-hour period, the agency may refer the victim if they believe it could aid in an investigation or prosecution. These changes would ensure that victims receive appropriate medical care and evidence is properly collected for potential legal proceedings.

S.B. 1401 also would provide that the victim is entitled to reimbursement for the reasonable costs of other medical care provided during the forensic medical examination and for any prescribed continuing medical care provided within the 30-day period following the examination, including medication and medical testing, as set by the attorney general's rules. It would establish that sexual assault survivors who undergo a forensic medical exam have cooperated with law enforcement for purposes of accessing the Crime Victim's Compensation Fund. These changes would ensure that survivors receive needed financial support to cope with the aftermath of the assault.

What's more, S.B. 1401 would clarify that system-generated emails or text communications from Track-Kit or information viewable to the user in Track-Kit meets Texas Department of Public Safety (DPS) notification requirements in cases in which the survivor has not reported the sexual assault to law enforcement before the evidence is destroyed according to current law. This change would help not only ensure that DPS can process notifications efficiently but also that survivors have control over the preservation of their evidence and can exercise their legal rights.

S.B. 1401 amends current law relating to the rights of victims of sexual assault and to certain procedures and reimbursements occurring with respect to a sexual assault or other sex offense.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Medical Board is modified in SECTION 24 (Section 153.003, Occupations Code) of this bill.

Rulemaking authority previously granted to the attorney general is rescinded in SECTION 25 (Articles 56A.252 and 56A.256, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 38.435, Code of Criminal Procedure, as follows:

Art. 38.435. PROHIBITED USE OF EVIDENCE FROM FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT. Provides that evidence collected during a forensic medical examination conducted under Subchapter G, Chapter 56A, rather than by Subchapter F (Forensic Medical Examination of Sexual Assault Victim Reporting Assault) or G, Chapter 56A, is prohibited from being used to investigate or prosecute a misdemeanor offense, or an offense under Subchapter D (Offenses and Penalties), Chapter 481, Health and Safety Code, alleged to have been committed by the victim from whom the evidence was collected.

SECTION 2. Amends Article 56A.051(a), Code of Criminal Procedure, as follows:

(a) Provides that a victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

(1)-(5) makes no changes to these subdivisions;

(6) the right to receive information:

(A) creates this paragraph from existing text;

(B) for a victim of a sexual assault, regarding the payment under Subchapter G for a forensic medical examination; and

(C) when requested, providing a referral to, rather than when requested referral to, available social service agencies that are authorized to offer additional assistance; and

(7)-(14) makes no changes to these subdivisions.

Deletes existing text providing that a victim, guardian of a victim, or close relative of a deceased victim is entitled to certain rights within the criminal justice system, including the right to receive information regarding compensation to victims of crime as provided by Chapter 56B (Crime Victims' Compensation), including information related to the costs that are authorized to be compensated under that chapter and the payment for a forensic medical examination under Article 56A.252 (Payment of Costs of Examination) for a victim of an alleged sexual assault.

SECTION 3. Amends Article 56A.052(a), Code of Criminal Procedure, as follows:

(a) Provides that a victim, guardian of a victim, or close relative of a deceased victim, if the offense is a sexual assault, is entitled to the following rights within the criminal justice system:

(1)-(3) makes no changes these subdivisions; and

(4) for the victim, the right to:

(A) makes a nonsubstantive change to this paragraph; and

(B) a forensic medical examination as provided by Subchapter G; and

(C) any prescribed continuing medical care provided to the victim during the 30-day period following a forensic medical examination, as provided by Subchapter G.

Deletes existing text providing that, if the offense is a sexual assault, a victim, guardian of a victim, or close relative of a deceased victim is entitled to certain rights within the criminal justice system, including for the victim, the right to a forensic medical examination to the extent provided by Subchapters F and G if,

within 120 hours of the offense the offense is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care provider.

SECTION 4. Amends the heading to Subchapter G, Chapter 56A, Code of Criminal Procedure, to read as follows:

SUBCHAPTER G. FORENSIC MEDICAL EXAMINATION OF SEXUAL ASSAULT
VICTIM

SECTION 5. Amends Article 56A.303, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (b-1), as follows:

(a) Requires a health care provider, in accordance with Subchapter B (Collection, Preservation, and Tracking of Evidence of Sex Offense), Chapter 420, Government Code, and except as provided by Subsection (b), to conduct a forensic medical examination of:

(1) a victim of a sexual assault who is a minor as defined by Section 101.003 (Child or Minor; Adult), Family Code, regardless of when the victim arrives at the provider, if the victim, a person authorized to act on behalf of the victim, or an employee of the Department of Family and Protective Services (DFPS) consents to the examination, or if consent is provided as described by Section 32.003 (Consent to Treatment by Child) or 32.005 (Examination Without Consent of Abuse or Neglect of Child), Family Code; and

(2) a victim of a sexual assault who is not a minor, if:

(A) the victim arrives at the provider:

(i) creates this subparagraph from existing text; or

(ii) later than 120 hours after the assault occurred, and the victim is:

(a) referred for a forensic medical examination by a law enforcement agency under Subsection (b-1); or

(b) referred for a forensic medical examination by a physician, sexual assault examiner, or sexual assault nurse examiner who has conducted a preliminary medical evaluation and determined that a forensic medical examination should be conducted; and

(B) the victim, a person authorized to act on behalf of the victim, or an employee of DFPS consents to the examination.

Deletes existing text requiring a healthcare provider to conduct a forensic medical examination of a victim of sexual assault if the victim consents to the examination and at the time of the examination the victim has not reported the assault to a law enforcement agency.

(b-1) Requires a law enforcement agency to refer a victim of a sexual assault for a forensic medical examination, to be conducted in accordance with Subsection (a), if a sexual assault is reported to a law enforcement agency within 120 hours after the assault or, if the victim is a minor as defined by Section 101.003, Family Code, regardless of when the sexual assault is reported. Authorizes a law enforcement agency to make the same referral with respect to any victim of a sexual assault who is not a minor and who does not report the sexual assault within the 120-hour period required by this subsection if the agency believes that a forensic medical examination may further a sexual assault investigation or prosecution.

SECTION 6. Amends Articles 56A.304(a) and (b), Code of Criminal Procedure, as follows:

(a) Provides that a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with this subchapter, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination in accordance with this subchapter, as applicable, on application to the attorney general and subject to Article 56A.305(e), is entitled to be reimbursed in an amount set by attorney general rule for:

(1)-(2) makes nonsubstantive changes to these subdivisions; and

(3) the reasonable costs of other medical care provided to the victim during the forensic medical examination in accordance with Subchapters A (Emergency Services for Survivors of Sexual Assault) and B (Sexual Assault Forensic Examination Programs), Chapter 323, Health and Safety Code.

Deletes existing text providing that a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with this subchapter, or the sexual assault examiner or sexual assault nurse examiner who conducts the examination, as applicable, within 120 hours after the sexual assault occurred, on application to the attorney general, is entitled to reimbursement for certain expenses.

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

(1) makes no changes to this subdivision; and

(2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination and any additional medical care described by Subsection (a)(3).

SECTION 7. Amends Subchapter G, Chapter 56A, Code of Criminal Procedure, by adding Article 56A.3045, as follows:

Art. 56A.3045. PAYMENT OF COSTS RELATED TO TESTIMONY. Authorizes a law enforcement agency or an office of the attorney representing the state to pay any costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of a forensic medical examination described by Article 56A.303 (Forensic Medical Examination) or the manner in which the examination was performed.

SECTION 8. Amends Article 56A.305, Code of Criminal Procedure, as follows:

Art. 56A.305. New heading: PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE. (a) Creates this subsection from existing text. Requires, rather than authorizes, the attorney general to make a payment to a victim of a sexual assault or on behalf of a victim of a sexual assault, rather than an individual, for the reasonable costs incurred for medical care that is provided to the victim as described by Article 56A.304(a), rather than provided in accordance with certain statutes. Makes nonsubstantive changes.

(b) Requires the attorney general to make a payment under Subsection (a) in accordance with the medical fee guidelines prescribed by Subtitle A (Texas Workers' Compensation Act), Title 5, Labor Code. Prohibits a payment made under Subsection (a) from exceeding \$25,000.

(c) Provides that neither the attorney general nor a victim of a sexual assault is liable for costs incurred for medical care that exceed the medical fee guidelines described by Subsection (b) or is not medically necessary.

(d) Authorizes the Health and Human Services Commission (HHSC) to contract with a third-party vendor or other entity to provide health care providers access to prescription drugs for purposes of medical care described by Subsection (a).

- (e) Authorizes the attorney general to deny or reduce a payment under Subsection (a) to the extent that the amount otherwise proposed for reimbursement is recouped from a collateral source.

SECTION 9. Amends Article 56A.306, Code of Criminal Procedure, by amending Subsections (a), (b), and (c) and adding Subsection (a-1), as follows:

(a) Requires the Department of Public Safety of the State of Texas (DPS), consistent with Chapter 420 (Sexual Assault Prevention and Crisis Services), Government Code, to develop procedures for the transfer and preservation of evidence collected during a forensic medical examination for a sexual assault that was not reported to a law enforcement agency, including procedures for:

- (1) the transfer of the evidence, rather than evidence collected under this subchapter, to a crime laboratory or other suitable location designated by the public safety director of DPS;
- (2) makes no changes to this subdivision; and
- (3) the notification of the victim of the offense through the statewide electronic tracking system before a planned destruction of evidence under Article 56A.306 (Procedures for Transfer and Preservation of Evidence).

(a-1) Requires that the transfer and preservation of evidence collected during a forensic medical examination for a reported sexual assault comply with the procedures under Sections 420.035(b) (relating to requiring a law enforcement agency to take possession of evidence not later than the seventh day after notification from a health care facility) and (c) (relating to requiring a law enforcement agency to take possession of evidence not later than the 14th day after notification from a health care facility that is more than 100 miles away from law enforcement) and 420.042(a) (relating to requiring a law enforcement agency to submit evidence of a sexual assault to a public accredited crime laboratory not later than 30 days after receiving the evidence), Government Code.

(b) Requires an entity receiving evidence collected during a forensic medical examination as described by this subchapter, rather than evidence described by Subsection (a), to preserve the evidence, subject to Subsection (c), until the earlier of certain dates.

(c) Authorizes an entity receiving evidence collected during a forensic medical examination as described by this subchapter to destroy the evidence on the expiration of the entity's duty to preserve the evidence under Subsection (b)(1) (relating to the duty of an entity to preserve evidence of a sexual assault until the fifth anniversary of the date on which the evidence was collected) only if notice of the planned destruction is entered into the statewide electronic tracking system and an objection is not received by the entity from the victim before the 91st day after the date on which the entity entered the notice, rather than notifies the victim, of the planned destruction of the evidence into the tracking system.

Deletes existing text providing that an entity receiving evidence described by Subsection (a) is authorized to destroy the evidence on the expiration of the entity's duty to preserve the evidence under Subsection (b)(1) only if the entity provides written notification to the victim of the offense, in a trauma-informed manner, of the decision to destroy the evidence that includes certain information.

SECTION 10. Amends Article 56A.307, Code of Criminal Procedure, as follows:

Art. 56A.307. PROCEDURES FOR SUBMISSION OR COLLECTION OF ADDITIONAL EVIDENCE. Authorizes DPS, consistent with Chapter 420, Government Code, to develop procedures regarding the submission or collection of additional

evidence of a sexual assault other than through a forensic medical examination as described by Article 56A.303, rather than 56A.303(a).

SECTION 11. Amends Article 56A.308(b), Code of Criminal Procedure, to make a conforming change.

SECTION 12. Amends Article 56A.401, Code of Criminal Procedure, as follows:

Art. 56A.401. NOTIFICATION OF RIGHTS. Requires a law enforcement agency, at the initial contact or at the earliest possible time after the initial contact between a victim of a reported offense and agency having the responsibility for investigating the offense, to provide the victim a written notice containing:

(1)-(2) makes no changes to these subdivisions;

(3) notice that the victim has the right to receive information:

(A) regarding compensation to victims of crime as provided by Chapter 56B, including information relating to, rather than about, the costs that are authorized to be compensated under that chapter and the amount of compensation, eligibility for compensation, and procedures for application for compensation under that chapter;

(B) for a victim of a sexual assault, regarding the payment under Subchapter G for a forensic medical examination. Makes a conforming change; and

(C) providing a referral to available social service agencies that are authorized to offer additional assistance; and

(4)-(6) makes no changes to these subdivisions.

SECTION 13. Amends Article 56A.451(a), Code of Criminal Procedure, as follows:

(a) Requires the attorney representing the state, not later than the 10th day after the date that an indictment or information is returned against a defendant for an offense, to give to each victim of the offense a written notice containing:

(1)-(4) makes no changes to these subdivisions;

(5) notification of:

(A)-(B) makes no changes to these paragraphs;

(C) the right to receive information:

(i) regarding compensation to victims of crime as provided by Chapter 56B, including information relating to the costs, rather than about the costs, that are authorized to be compensated under that chapter, eligibility for compensation, and procedures for application for compensation under that chapter;

(ii) for a victim of a sexual assault, regarding the payment under Subchapter G for a forensic medical examination. Makes a conforming change; and

(iii) providing a referral to available social service agencies that are authorized to offer additional assistance; and

(D) makes no changes to this paragraph.

Makes nonsubstantive changes.

SECTION 14. Amends Article 56B.107, Code of Criminal Procedure, by adding Subsection (d), as follows:

(d) Provides that, for purposes of Subsection (a)(1) (relating to authorizing the attorney general to deny or reduce an award otherwise payable if the claimant or victim has not substantially cooperated with an appropriate law enforcement agency), a victim receiving a forensic medical examination constitutes sufficient evidence that a victim has substantially cooperated with an investigation of a sexual assault or other sex offense.

SECTION 15. Amends Article 56B.453(d), Code of Criminal Procedure, as follows:

(d) Authorizes the attorney general to use the compensation to victims of crime fund to:

(1) makes conforming changes to this subdivision; and

(2) make a payment to or on behalf of a victim of a sexual assault, rather than an individual, for the reasonable costs incurred for medical care provided under Subchapter G, Chapter 56A, as described by Article 56A.305. Makes a conforming change.

SECTION 16. Amends Section 57.002(a), Family Code, as follows:

(a) Provides that a victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the juvenile justice system:

(1)-(5) makes no changes to these subdivisions;

(6) the right to receive information:

(A) makes a nonsubstantive change to this paragraph;

(B) for a victim of a sexual assault, regarding the payment under Subchapter G, Chapter 56A, Code of Criminal Procedure, for a forensic medical examination. Makes a conforming change; and

(C) when requested, providing a referral, rather than to referral, to available social service agencies that are authorized to offer additional assistance; and

(7)-(12) makes no changes to these subdivisions;

SECTION 17. Amends Section 501.174, Government Code, as follows:

Sec. 501.174. DEPARTMENT TO ADOPT POLICY. Requires the Texas Department of Criminal Justice to adopt a policy providing for certain actions, including the office of the inspector general (office), at the time the office is notified of the sexual assault, to arrange for a medical examination of the alleged victim to be conducted in accordance with Subchapter G, rather than Subchapter F, Chapter 56A, Code of Criminal Procedure, or, if an appropriate employee of the office is not available at the time the office is notified of the sexual assault, a qualified employee at the correctional facility to conduct a medical examination of the alleged victim in accordance with that subchapter.

SECTION 18. Amends Section 241.1031(a), Health and Safety Code, to make a conforming change.

SECTION 19. Amends Section 323.004(b), Health and Safety Code, as follows:

(b) Requires a health care facility providing care to a sexual assault survivor to provide the survivor with certain services, including a forensic medical examination, subject to Subsection (b-1) (relating to prohibiting a person from performing a forensic examination on a sexual assault survivor unless the person has certain training), in accordance with Subchapter B, Chapter 420, Government Code, and Subchapter G, Chapter 56A, Code of Criminal Procedure, rather than if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure.

SECTION 20. Amends Section 323.005(a), Health and Safety Code, as follows:

(a) Requires HHSC to develop a standard information form for sexual assault survivors that is required to include certain information, including information regarding crime victims compensation and regarding the payment of costs and the reimbursements available for care to be provided as described by Subchapter G, Chapter 56A, Code of Criminal Procedure.

Deletes existing text requiring HHSC to develop a standard information form for sexual assault survivors that is required to include information regarding crime victims compensation, including a statement that public agencies are responsible for paying for the forensic portion of an examination conducted under Subchapter F or G, Chapter 56A, 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 information regarding the reimbursement of the survivor for the medical portion of the examination.

SECTION 21. Amends Section 323.0051(a), Health and Safety Code, to require that the standard information form for sexual assault survivors who arrive at a health care facility that is not a SAFE-ready facility include certain statements. Sets forth the language required to be included in the statements.

SECTION 22. Amends Section 323.0052(a), Health and Safety Code, as follows:

(a) Requires that the standard information form include the following information:

(1) the policy of DPS regarding storage of evidence of a sexual assault or other sex offense that is collected under Subchapter G, Chapter 56A, Code of Criminal Procedure, including:

(A) makes no changes to this paragraph; and

(B) the procedures of DPS regarding the notification of the survivor through the statewide electronic tracking system before a planned destruction of the evidence;

(2)-(3) makes no changes to these subdivisions; and

(4) the name and phone number of a local sexual assault crisis center, rather than local rape crisis center.

SECTION 23. Amends Sections 323.054(a), (c), and (d), Health and Safety Code, as follows:

(a) Requires that a SAFE program 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, and Subchapter G, Chapter 56A, Code of Criminal Procedure, rather than if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure. Makes a nonsubstantive change.

(c) Requires that a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program obtain the consent described by Article 56A.303,

Code of Criminal Procedure, rather than obtain a sexual assault survivor's informed, written consent, before performing a forensic medical examination or providing medical treatment to the survivor.

(d) Prohibits 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 from being required to:

(1) makes no changes to this subdivision; or

(2) pay for any costs described by Article 56A.304(a), Code of Criminal Procedure, rather than pay for the costs of the forensic portion of the forensic medical examination or for the evidence collection kit.

SECTION 24. Amends Section 153.003(b), Occupations Code, as follows:

(b) Requires that the rules adopted under Section 153.003 (Rules Regarding Maintenance of Patient Records) prohibit a physician from destroying a medical record from the forensic medical examination of a sexual assault victim conducted under Subchapter G, rather than Subchapter F or G, Chapter 56A, Code of Criminal Procedure, until the 20th anniversary of the date the record was created.

SECTION 25. Repealer: Subchapter F (Forensic Medical Examination of Sexual Assault Victim Reporting Assault), Chapter 56A, Code of Criminal Procedure.

Repealer: Article 56A.306(d) (relating to requiring the entity receiving certain evidence to document the entity's attempt to notify the victim), Code of Criminal Procedure.

SECTION 26. (a) Makes application of the changes in law made by this Act to Chapters 56A and 56B, Code of Criminal Procedure, except as provided by Subsection (b) of this section, prospective.

(b) Provides that Article 56A.306(c), Code of Criminal Procedure, as amended by this Act, applies only to evidence of a sexual assault or other sex offense collected during a forensic medical examination conducted on or after September 1, 2019.

SECTION 27. Effective date: September 1, 2023.