

BILL ANALYSIS

S.B. 1401
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Homeland Security & Public Safety
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Sexual Assault Survivors' Task Force (SASTF) in the Office of the Governor was established by the 86th Texas Legislature to develop a survivor-centered and trauma-informed response to sexual violence experienced by adults and children in Texas. The 87th Texas Legislature passed all 11 of SASTF's policy recommendations. This session, SASTF is proposing further policy changes to help meaningfully transform the state's response to sexual violence. S.B. 1401 seeks to strengthen the rights of sexual assault survivors as they relate to forensic medical examinations. Specifically, this bill seeks to increase the accessibility of forensic medical examinations by granting survivors and their medical providers greater discretion over the performance of exams, improve survivors' compensation eligibility and reimbursement procedures, and allow for survivor-centered sexual assault kit notification procedures.

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

S.B. 1401 repeals Code of Criminal Procedure provisions that provide for a bifurcated approach to handling forensic medical examinations for sexual assault victims who report their assault to law enforcement and for sexual assault victims who do not and amends the Code of Criminal Procedure to set out and revise provisions 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 to provide for an updated, consolidated statutory approach for all sexual assault victims.

S.B. 1401 requires a law enforcement agency to refer a victim of a sexual assault for a forensic medical examination if the assault is reported to a law enforcement agency within 120 hours after the assault or, if the victim is a minor, regardless of when the assault is reported. A law enforcement agency may 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 if the agency believes that a forensic medical examination may further a sexual assault investigation or prosecution. The bill requires a health care provider to conduct a forensic medical examination of a sexual assault victim who is a minor, regardless of when the victim arrives at the provider, if the victim, a person authorized to act on the victim's behalf, or an employee of the Department of Family and Protective Services (DFPS) consents to the examination or if consent is provided by the victim or by the provider under applicable Family Code provisions.

With respect to forensic medical examinations for victims who are not minors, the bill retains the requirement for a provider to conduct such an examination of a victim who arrives at the provider within 120 hours after the assault occurs but requires also that an examination be conducted on an adult victim who arrives after that 120-hour period if the victim is referred for the examination by a law enforcement agency as provided by the bill or referred for the examination by a physician, sexual assault examiner, or sexual assault nurse examiner who has conducted a preliminary medical evaluation and determined that the examination should be conducted.

S.B. 1401 broadens the scope of the provision entitling a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with applicable law, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, to reimbursement in an amount set by attorney general rule for the reasonable costs of the forensic portion of the examination and the evidence collection kit to entitle the provider or examiner, as applicable, to receive reimbursement also for the reasonable costs of other medical care provided to the victim during the forensic medical examination in accordance with applicable Health and Safety Code provisions regarding emergency services for sexual assault survivors. The bill requires the attorney general to make a payment to a victim of a sexual assault or on the victim's behalf for the reasonable costs incurred for that medical care provided to the victim, which is in replacement of the current authorization for the attorney general to make a payment to or on behalf of an individual for the reasonable costs incurred for medical care provided in accordance with those Health and Safety Code provisions. In addition, the bill does the following:

- requires the attorney general to make such a payment in accordance with the medical fee guidelines prescribed by the Texas Workers' Compensation Act;
- caps the amount of a payment made at \$25,000;
- authorizes the attorney general to deny or reduce a payment to the extent that the amount otherwise proposed for reimbursement is recouped from a collateral source; and
- establishes that neither the attorney general nor the victim is liable for costs incurred for medical care that is not medically necessary or that exceeds those medical fee guidelines.

The bill authorizes the Health and Human Services Commission to contract with a third-party vendor or other entity to provide health care providers access to prescription drugs for purposes of the medical care provided to sexual assault victims.

S.B. 1401 retains the provision currently applicable only with respect to sexual assault victims who report their assault for a law enforcement agency or state's attorney to pay all costs related to the testimony of a licensed health care professional in a criminal proceeding regarding the results of a forensic medical examination or the manner in which the examination was performed but makes the authorization applicable with respect to the results of a forensic medical examination conducted in accordance with state law as set out by the bill, irrespective of whether the victim reported the assault.

S.B. 1401 removes the requirement for an entity receiving evidence collected during a forensic medical examination for a sexual assault that was not reported to a law enforcement agency to provide a written notice to the victim of the office notifying the victim of the entity's intention to destroy the evidence before the entity may do so and provides for notification to instead be provided through the statewide sexual assault evidence electronic tracking system.

S.B. 1401 requires the transfer and preservation of evidence collected during a forensic medical examination for a reported sexual assault to comply with the procedures established under the Government Code for law enforcement agencies regarding the analysis and release of evidence of sexual assault or another sex offense.

S.B. 1401 establishes that, for purposes of the authorization for the attorney general to deny or reduce an award otherwise payable under state's crime victims' compensation program if a victim has not substantially cooperated with an appropriate law enforcement agency, a victim

receiving a forensic medical examination constitutes sufficient evidence that the victim has substantially cooperated with an investigation of a sexual assault or other sex offense.

S.B. 1401 amends the Family Code, Government Code, Health and Safety Code, and Occupations Code to make conforming changes.

S.B. 1401 applies only to a sexual assault or other sex offense that is first reported or for which medical care is first sought on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

S.B. 1401 repeals the following provisions of the Code of Criminal Procedure:

- Subchapter F, Chapter 56A; and
- Article 56A.306(d).

EFFECTIVE DATE

September 1, 2023.