

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 8, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB1401 by Zaffirini (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.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1401, As Passed 2nd House : an impact of \$0 through the biennium ending August 31, 2025.

The bill would have a negative two-year impact of (\$2,703,267) to General Revenue - Dedicated Compensation to Victims of Crime Account No. 0469.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	Probable Net Positive/(Negative) Impact to <i>General Revenue Related Funds</i>
2024	\$0
2025	\$0
2026	\$0
2027	\$0
2028	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from <i>Crime Victims Comp Acct</i> 469
2024	(\$1,440,071)
2025	(\$1,263,196)
2026	(\$1,302,204)
2027	(\$1,341,212)
2028	(\$1,380,967)

Fiscal Analysis

The bill would amend various provisions in the Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, and Occupations Code 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.

The bill would remove that the offense does not have to be reported to a law enforcement agency and the forensic medical exam does not have to be conducted at a health care provider.

The bill would remove the distinction of reporting assault and not reporting assault by repealing current

Subchapter F, Chapter 56A, and amending current Subchapter G to remove "not reporting assault" from the Subchapter heading.

The bill would remove the 120-hour requirement for forensic medical examinations of a victim of sexual assault who is a minor. The bill would also provide that a victim of a sexual assault who is not a minor can receive a forensic medical examination outside of the 120-hour requirement if the victim is referred by law enforcement or a physician, sexual assault examiner, or sexual assault nurse examiner and the victim consents.

The bill would require a law enforcement agency to refer a victim of sexual assault for a forensic medical examination if a sexual 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. The law enforcement agency could refer a victim outside of the 120-hour requirement if it may further a sexual assault investigation or prosecution.

The bill would add that any costs related to the testimony of a health care professional regarding the forensic medical exam results in the criminal case may be paid by the law enforcement agency or the Office of the Attorney General (OAG) representing the state.

The bill would require the OAG to pay reasonable costs incurred for testing and medical care for a victim of sexual assault according to specific articles and medical fee guidelines, not exceeding \$25,000. OAG could deny or reduce payment if the amount is recouped from a collateral source, and neither the OAG nor the victim would be liable for costs that exceed medical fee guidelines or are not medically necessary. The Health and Human Services Commission could contract with a third-party vendor to provide health care providers access to prescription drugs for medical care related to sexual assault.

The bill would require the Texas Department of Criminal Justice to develop procedures for the transfer and preservation of evidence collected during a forensic medical examination for sexual assault cases, and entities receiving such evidence must preserve it until the fifth anniversary of its collection or until written consent is obtained. Additionally, entities must provide notice of planned destruction of evidence through the statewide electronic tracking system and receive no objection from the victim before destroying it.

The bill would update the references for the procedures regarding the submission or collection of additional evidence from something other than a forensic medical exam described by Art. 56A.303. Additionally, records or communications are confidential for purposes under Section 552.001 of the Government Code, that contain identifying information under Art. 56A.303 and is created, provided to, or in the control or possession of the department.

The bill would provide that a victim receiving a forensic medical exam is considered sufficient evidence of cooperation in the investigation of a sexual assault. The OAG could use the Compensation to Victims of Crime Fund to make payments for reasonable testing costs to, or on behalf of a victim of sexual assault.

Any changes in law made by the bill would only apply to sexual assault or other sex offenses that are first reported or, for medical care, received on or after the effective date of the bill, with the exception of changes made to procedures for the transfer and preservation of evidence concerning a forensic medical examination of a sexual assault victim who is not reporting assault. Those changes would apply to evidence of a sexual assault or other sex offense collected during a forensic medical examination conducted on or after September 1, 2019.

Methodology

Removing the 120-hour Requirement

Removing the 120-hour requirement for minors and certain adult victims will increase the number of sexual assault exams that will be conducted. It is anticipated that increases in the number of exams conducted will result in higher payouts for sexual assault exam reimbursements (SAER). The OAG projects SAER applications to increase by 5% in fiscal year 2024. Increases in subsequent years are anticipated at 3%, which is consistent with Texas' average population growth.

The OAG received a total of 14,851 SAER applications with an average payment of \$747 in fiscal year 2022. With 1,211 new applications expected in the 2024-25 biennium, the two-year anticipated cost is \$904,617.

Evidence of Victim Cooperation

In the most recent five fiscal years, the CVC program denied an average of 155 sexual assault related applications for noncooperation with law enforcement as required by Texas Code of Criminal Procedure Art. 56B.107(a)(1), per fiscal year. The CVC program does not currently track if these claims received a forensic exam. This estimate assumes that all sexual assault applications denied for not cooperating in the investigation would be approved. This estimate also assumes increases in CVC applications in subsequent years at 3% due to state population growth.

The five fiscal year average payment total for CVC applications is \$5,710. With 315 additional CVC applications expected in the 2024-25 biennium, the two-year anticipated cost is \$1,798,650.

The total estimated costs are itemized below.

	FY 2024	FY2025	FY2026	FY2027	FY2028
Removing the 120-hour Requirement	\$555,021	\$349,596	\$360,054	\$370,512	\$381,717
Evidence of Victim Cooperation	\$885,050	\$913,600	\$942,150	\$970,700	\$999,250
Total Increase/Year	\$1,440,071	\$1,263,196	\$1,302,204	\$1,341,212	\$1,380,967

According to the Department of Public Safety, Health and Human Services Commission, Department of Criminal Justice, Alcoholic Beverage Commission, and Parks and Wildlife Department, no significant fiscal implications are anticipated from the provisions of the bill.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 302 Office of the Attorney General, 405 Department of Public Safety, 458 Alcoholic Beverage Commission, 529 Health and Human Services Commission, 696 Department of Criminal Justice, 802 Parks and Wildlife Department

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