

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 10, 2023**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**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 Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB1401, As Introduced : an impact of \$0 through the biennium ending August 31, 2025. The bill would have a negative two-year impact of (\$14,395,907) to General Revenue - Dedicated Compensation to Victims of Crime Account No. 0469.

**General Revenue-Related Funds, Five- Year Impact:**

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

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from Crime Victims Comp Acct 469</b>	<b>Change in Number of State Employees from FY 2023</b>
2024	(\$7,554,881)	4.0
2025	(\$6,841,026)	4.0
2026	(\$6,880,034)	4.0
2027	(\$6,919,042)	4.0
2028	(\$6,958,797)	4.0

**Fiscal Analysis**

Senate Bill 1401 amends 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 authorize the Office of the Attorney General (OAG), by rule, to set reimbursement amounts for reasonable costs of other medical care provided to the victim, consisting of medical care provided during the forensic medical examination and any prescribed continuing medical care provided to the victim during the 30-day period following the examination, including medication and medical testing.

The bill would amend various provisions in the Code of Criminal Procedure, Family Code, Government Code, Health and Safety Code, and Occupations Code, to ensure that victims have a right to and are provided updated

information regarding the 30-day continued care, updating the appropriate reference in statute.

Additionally, 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 also provides 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 provide that a law enforcement agency shall 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 may 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 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 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 can deny or reduce payment if the amount is recouped from a collateral source, and neither the OAG nor the victim is liable for costs that exceed medical fee guidelines or are not medically necessary. The Health and Human Services Commission may 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 must remain consistent with Chapter 420. 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 amends the Code of Criminal Procedure to provide that a victim receiving a forensic medical exam is considered sufficient evidence of cooperation in the investigation of a sexual assault. The OAG may 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 this bill only apply to sexual assault or other sex offense that is first reported or for medical care received on or after the effective date of the bill.

## **Methodology**

### **Continuing Medical Care**

The OAG anticipates that the expansion of medical coverage for victims of sexual assault and the billing process change will significantly increase the number of applications and amount spent on medical care after the initial forensic exam.

According to the OAG, the agency received 14,851 sexual assault exam reimbursement (SAER) applications from healthcare providers in fiscal year 2022. Approximately, 18% (2,693) of those applications incurred separate payments for medical services. The OAG has seen a marked increase in the number and speed of billing since the passage of HB 616, 86th Regular Session, which permits health care providers and medical facilities to submit SAER applications instead of law enforcement submitting those applications. Based on historical data, the OAG estimates an approximate increase of 50% in applications. Offsetting this increase by the fiscal year 2022 percentage of applications containing medical expenses, the OAG estimates a 32% (4,752) increase in the number of medical bills submitted with crime victim applications.

The OAG indicates that there is no current benchmark for 30 days of continuing medical care costs. However, the most recent five-fiscal year average of medical care costs for sexual assault related applications is \$1,086. As a result, annual medical costs are projected to increase by \$5,160,672.

The anticipated increase in medicals bills would result in additional costs for the agency's cost containment vendor or CCV. The current contract for auditing each medical bill is \$9.40 per bill. The OAG estimates that each new application will have an average of three medical bills per application. The anticipated increase in annual CCV costs is \$134,006.

**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. 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.

According to the OAG, two Accountants I and two Administrative Assistants III would be needed to handle the increased work load created by the bill. Additionally, the OAG anticipates one-time costs of \$500,000 for vendor hours to update the claims management system (CVMS) workflow used for applications. The total estimated costs are itemized below.

	<b>FY 2024</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>	<b>FY2028</b>
<b>Continuing Medical Care</b>	\$5,160,672	\$5,160,672	\$5,160,672	\$5,160,672	\$5,160,672
<b>Cost Containment Vendor Costs</b>	\$134,006	\$134,006	\$134,006	\$134,006	\$134,006
<b>Removing the 120-hour Requirement</b>	\$555,021	\$349,596	\$360,054	\$370,512	\$381,717
<b>Evidence of Victim Cooperation</b>	\$885,050	\$913,600	\$942,150	\$970,700	\$999,250
<b>System Costs</b>	\$500,000				
<b>FTE Costs</b>	\$ 320,132	\$ 283,152	\$ 283,152	\$ 283,152	\$ 283,152
<b>Total Increase/Year</b>	\$7,554,881	\$6,841,026	\$6,880,034	\$6,919,042	\$6,958,797

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.

## **Technology**

The technology impact includes one-time costs of \$518,500 in fiscal year 2024 and a recurring annual cost of \$14,652 in each fiscal year 2024-2028 thereafter. One-time costs include system costs, standard laptop, software, printer, and telecom/voicemail box. Annual recurring charges cover data center services and voice line.

## **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

**LBB Staff:** JMc, DDel, LCO, HGR, NV