

BILL ANALYSIS

Senate Research Center
89R4215 AJZ-F

S.B. 836
By: Paxton
Criminal Justice
3/21/2025
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 836 respects and protects the dignity and agency of sexual assault survivors by giving them additional privacy protections when going through the criminal justice process.

One of the primary barriers to a survivor seeking justice is fear over the loss of privacy. Sexual assault survivors have identified areas in which current Texas court practices can further traumatize survivors by sharing the darkest, most personal details of the crime committed against them with potentially the entire world.

S.B. 836 addresses these concerning court practices to ensure that sensitive, personal details of sexual crimes are kept private and survivors are not re-traumatized or shamed in the process of seeking justice.

Specifically, S.B. 836:

- Prohibits livestreaming of trials relating to sexual crimes and for certain protective orders unless consent is given by both parties;
- Provides the right to request usage of a pseudonym in the prosecution phase;
- Protects survivors' phone records from open records requests after trial;
- Safeguards evidence of forensic medical examination and invasive visual recordings of adults; and
- Establishes a process for discovery of confidential and privileged evidence.

The decision of how and with whom to share one's story should be the sole decision of the survivor.

As proposed, S.B. 836 amends current law relating to victims of sex offenses, sex-based human trafficking offenses, or acts of a sexual nature and to the confidentiality of or restrictions on the availability of certain property, material, or information regarding those victims, offenses, or acts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

Art. 38.435. New heading: PROHIBITED USE OF EVIDENCE FROM FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT OR OTHER SEX OFFENSE; PLACEMENT UNDER SEAL. (a) Creates this subsection from existing text and makes no further changes.

(b) Prohibits the court, during the course of a criminal hearing or proceeding, from making available or allowing to be made available for copying or dissemination to the public any property or material related to or derived from evidence described by Subsection (a) (relating to prohibiting the use of evidence collected during a forensic medical examination from being used to investigate or prosecute a misdemeanor offense alleged to have been committed by the victim), including a visual image or a recording made as a part of the examination.

(c) Requires the court to place property or material described by Subsection (a) under seal of the court on the conclusion of the hearing or proceeding.

(d) Requires the attorney representing the state to be provided access to property or material described by Subsection (a). Requires the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial, in the manner provided by Article 39.152, to be provided access to the property or material described by Subsection (a).

(e) Authorizes a court that places under seal property or material described by Subsection (a) to issue an order lifting the seal on a finding that the order is in the best interest of the public.

SECTION 2. Amends the heading to Article 38.451, Code of Criminal Procedure, to read as follows:

Art. 38.451. EVIDENCE DEPICTING INVASIVE VISUAL RECORDING

SECTION 3. Amends Article 38.451(a), Code of Criminal Procedure, as follows:

(a) Prohibits the court, during the course of a criminal hearing or proceeding concerning an offense under Section 21.15 (Invasive Visual Recording), Penal Code, from making available or allowing to be made available for copying or dissemination to the public property or material that constitutes or contains a visual image, as described by Section 21.15(b) (relating to creating an offense if a person invades the privacy of another person without their consent under certain conditions), Penal Code, and that was seized by law enforcement on a reasonable suspicion that an offense under that subsection has been committed.

Deletes existing text prohibiting the court, during the course of a criminal hearing or proceeding concerning an offense under Section 21.15, Penal Code, that was committed against a child younger than 14 years of age, from making available or allowing to be made available the copying or dissemination to the public property or material that constitutes or contains a visual image, as described by Section 21.15(6), Penal Code, of a child younger than 14 years of age. Makes a nonsubstantive change.

SECTION 4. Amends Article 39.14(a), Code of Criminal Procedure, as follows:

(a) Requires the state, subject to the restrictions provided by Section 264.408 (Use of Information and Records; Confidentiality and Ownership), Family Code, Subchapter D (Confidential Communications and Records; Privilege), Chapter 420 (Sexual Assault Prevention and Crisis Services), Government Code, and Articles 39.15 (Discovery of Evidence Depicting or Describing Abuse of or Sexual Conduct by Child or Minor), 39.151, 39.152, and 39.153, Code of Criminal Procedure, as soon as practicable after receiving a timely request from the defendant, to produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the defendant, of certain documents. Makes a nonsubstantive change.

SECTION 5. Amends the heading to Article 39.151, Code of Criminal Procedure, to read as follows:

Art. 39.151. DISCOVERY OF EVIDENCE DEPICTING INVASIVE VISUAL RECORDING.

SECTION 6. Amends Article 39.151(b), Code of Criminal Procedure, to make a conforming change.

SECTION 7. Amends Chapter 39, Code of Criminal Procedure, by adding Articles 39.152 and 39.153, as follows:

Art. 39.152. DISCOVERY OF PROPERTY OR MATERIAL FROM FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT OR OTHER SEX OFFENSE. (a) Requires a court, in the manner provided by this article, to allow discovery of property or material that constitutes or contains a visual image or a recording that was made as part of a forensic medical examination.

(b) Requires that property or material described by Subsection (a) remain in the care, custody, or control of the court or the state, as provided by Article 38.435.

(c) Requires a court to deny any request by a defendant to copy, photograph, duplicate, or otherwise reproduce any property or material described by Subsection (a), provided that the state makes the property or material reasonably available to the defendant.

(d) Provides that, for purposes of Subsection (c), property or material is considered to be reasonably available to the defendant if, at a facility under the control of the state, the state provides ample opportunity for the inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial.

Art. 39.153. DISCOVERY OF COMMUNICATION OR RECORD THAT IS CONFIDENTIAL OR PRIVILEGED BY LAW. (a) Provides that this article only applies to a communication or record collected during the investigation of an offense under certain provisions of the Penal Code.

(b) Requires a court, in the manner provided by this article, to allow discovery of a communication or record described by Subsection (a) that is otherwise confidential or privileged by law.

(c) Authorizes a defendant in a criminal action for an offense described by Subsection (a), not later than the 30th day before the date the trial is scheduled to begin, to make a motion for disclosure of a communication or record that is confidential or privileged by law. Requires that the motion include a supporting affidavit showing reasonable grounds to believe the confidential or privileged communication or record contains exculpatory evidence.

(d) Requires the defendant to serve the motion on the attorney representing the state, the victim or the victim's representative, and the person who is the subject of the grant of confidentiality or who holds the privilege with regard to the communication or record at issue.

(e) Requires the court to provide the victim the opportunity to retain counsel to respond to the defendant's motion.

(f) Requires the court, after a hearing on the defendant's motion, to order the confidential or privileged communication or record to be produced for the court under seal and to examine the communication or record in camera if the court finds by a preponderance of the evidence that:

(1) there is a good-faith, specific, and reasonable basis for believing that the confidential or privileged communication or record is relevant, material, and exculpatory on the issue of guilt for the offense charged; and

(2) the confidential or privileged communication or record would not be duplicative of other evidence or information available or already obtained by the defendant.

(g) Requires the court to disclose to the defendant and to the state only the evidence that the court finds to be exculpatory on the issue of guilt for the offense charged.

SECTION 8. Amends Article 58.102, Code of Criminal Procedure, as follows:

Art. 58.102. DESIGNATION OF PSEUDONYM; PSEUDONYM FORM. (a) Requires a victim who elects to use a pseudonym as provided by Subchapter C (Confidentiality of Identifying Information of Sex Offense Victims), Chapter 58 (Confidentiality of Identifying Information and Medical Records of Certain Crime Victims) to complete a pseudonym form developed under Subsection (b) and return the form to the law enforcement agency investigating the offense or to the office of the attorney representing the state prosecuting the offense.

(b) Requires the Sexual Assault Prevention and Crisis Services Program of the Office of the Attorney General to develop and distribute to all law enforcement agencies of the state and to each office of the attorney representing the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim.

SECTION 9. Amends Article 58.103, Code of Criminal Procedure, as follows:

Art. 58.103. VICTIM INFORMATION CONFIDENTIAL. (a) Prohibits a victim who completes a pseudonym form and returns the form to the law enforcement agency investigating the offense or to the office of the attorney representing the state prosecuting the offense from being required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense.

(b) Requires a law enforcement agency or an office of the attorney representing the state receiving a pseudonym form under Subsection (a) to send a copy of the form to each other agency or office investigating or prosecuting the offense.

(c) Creates this subsection from existing text. Creates an exception under Subsection (b). Makes a nonsubstantive change.

(d) Redesignates existing Subsection (c) as Subsection (d). Deletes existing text requiring the law enforcement agency receiving a pseudonym form, if a victim completes the form and returns the form to a law enforcement agency, to notify the attorney representing the state of the pseudonym and that the victim has elected to be designated by the pseudonym. Makes nonsubstantive changes.

(e) Requires an office of the attorney representing the state receiving the form or a copy of the form to:

(1) remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the office's possession;

(2) maintain the form in a manner that protects the confidentiality of the information contained on the form; and

(3) redesignates existing Subsection (d) as Subdivision (3) and makes a nonsubstantive change.

SECTION 10. Amends Chapter 21, Government Code, by adding Section 21.014, as follows:

Sec. 21.014. ELECTRONIC TRANSMISSION OF COURT PROCEEDINGS IN CERTAIN CASES PROHIBITED. (a) Provides that this section applies to the following:

(1) criminal or civil court proceedings relating to an offense under certain provisions of the Penal Code; and

(2) court proceedings relating to certain protective orders.

(b) Prohibits a court from allowing the electronic transmission or broadcasting of court proceedings described by Subsection (a) in which evidence or testimony is offered that depicts or describes acts of a sexual nature unless the court provides notice to and receives express consent for the transmission or broadcasting from the victim or the parent, conservator, or guardian of the victim, as applicable, the attorney representing the state, and the defendant.

SECTION 11. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.1082, as follows:

Sec. 552.1082. EXCEPTION: CERTAIN ELECTRONIC INFORMATION HELD BY PROSECUTOR, LAW ENFORCEMENT AGENCY, OR CORRECTIONS AGENCY.

(a) Provides that information held by a prosecutor, law enforcement agency, or corrections agency is excepted from the requirements of Section 552.021 (Availability of Public Information) if the information:

(1) was obtained, or is a copy of information obtained, from certain electronic devices;

(2) was obtained by any prosecutor, law enforcement agency, or corrections agency:

(A) during the course of the detection, investigation, or prosecution of an offense under certain provisions of the Penal Code; and

(B) in a manner related to the detection, investigation, or prosecution of a crime described by Paragraph (A); and

(3) was not written or produced by a prosecutor, law enforcement agency, or corrections agency.

(b) Authorizes a governmental body, subject to Subsection (c), to redact information described by Subsection (a) from any information the governmental body discloses under Section 552.021 without the necessity of requesting a decision from the attorney general under Subchapter G (Attorney General Decisions).

(c) Requires a governmental body that redacts or withholds information under Subsection (b) to provide a written notice to a requestor containing certain information.

SECTION 12. (a) Makes application of Articles 38.435, 38.451, and 39.151, Code of Criminal Procedure, as amended by this Act, and Articles 39.152 and 39.153, Code of Criminal Procedure, and Section 21.014, Government Code, as added by this Act, prospective.

(b) Makes application of Section 552.1082, Government Code, as added by this Act, prospective.

SECTION 13. Effective date: September 1, 2025.