

BILL ANALYSIS

Senate Research Center

H.B. 2706
By: Howard et al. (Nelson)
Jurisprudence
5/20/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A 2015 study conducted by the Institute on Domestic Violence and Sexual Assault found that roughly one-third of all adult Texans have experienced sexual assault at some point in their lives. Victims of sexual assault are more likely to abuse alcohol or drugs or to contemplate suicide. In addition to the physical, emotional, and psychological harm done to victims, recent data suggests that there could be major economic impacts as well.

In light of these facts, the Texas Legislature recently established the Sexual Assault Survivors' Task Force to examine solutions to address the most difficult challenges and meaningful opportunities facing the state as it continues to work to improve services and supports for Texans affected by sexual violence. The task force's steering committee released its first report in November 2020, which included 11 consensus policy recommendations for the legislature to consider.

H.B. 2706 seeks to enact certain of those recommendations in an effort to increase access to SAFE-ready facilities for survivors, clarify the reimbursement process for forensic medical exams, and codify the state's commitment to survivors by removing the word "alleged" when referencing a sexual assault or other sex offense within state statute.

H.B. 2706 amends current law relating to the emergency services and care provided to victims of sexual assault and other sex offenses and to the processes associated with preserving and analyzing the evidence of those offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 2 (Article 56A.252, Code of Criminal Procedure) of this bill.

Rulemaking authority granted to the attorney general is modified in SECTION 6 (Article 56A.304, Code of Criminal Procedure).

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.435, as follows:

Art. 38.435. PROHIBITED USE OF EVIDENCE FROM FORENSIC MEDICAL EXAMINATION PERFORMED ON VICTIM OF SEXUAL ASSAULT. Prohibits evidence collected during a forensic medical examination conducted under Subchapter F (Forensic Medical Examination of Sexual Assault Victim Reporting Assault) or G (Forensic Medical Examination of Sexual Assault Victim Not Reporting Assault), Chapter 56A (Rights of Crime Victims), from being used to investigate or prosecute a misdemeanor offense, or an offense under Subchapter D (Offenses and Penalties), Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, alleged to have been committed by the victim from whom the evidence was collected.

SECTION 2. Amends Article 56A.252, Code of Criminal Procedure, to conform to Sections 3 and 8 Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and further amends it, as follows:

Art. 56A.252. PAYMENT OF COSTS OF EXAMINATION. (a) Creates this subsection from existing text. Provides that a health care provider, on application to the attorney general, that provides a forensic medical examination to a sexual assault survivor in accordance with Subchapter F, or the sexual assault examiner or sexual assault nurse examiner who conducts the examination, as applicable, is entitled to be reimbursed in an amount set by attorney general rule for:

- (1) the reasonable costs of the forensic portion of that examination; and
- (2) the evidence collection kit.

Deletes existing text requiring a law enforcement agency that requests a forensic medical examination under Article 56A.251 (Request for Forensic Medical Examination) to pay all costs of the examination. Deletes existing text providing that a law enforcement agency, on application to the attorney general, is entitled to be reimbursed for the reasonable costs of the examination if the examination was performed by a physician or by a sexual assault examiner or sexual assault nurse examiner, as defined by Section 420.003 (Definitions).

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

- (1) the documentation of the law enforcement agency's request for the forensic medical examination, as required under Article 56A.251(d); and
- (2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(c) Requires a health care provider or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (a) to accept reimbursement from the attorney general as payment for the costs unless:

- (1) the health care provider or sexual assault examiner or sexual assault nurse examiner, as applicable:
 - (A) requests, in writing, additional reimbursement from the attorney general; and
 - (B) provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and
- (2) the attorney general determines that there is a reasonable justification for additional reimbursement.

(d) Provides that a health care provider is not entitled to reimbursement under this article unless the forensic medical examination is conducted on the premises of the provider by a sexual assault examiner or sexual assault nurse examiner.

(e) Authorizes the attorney general, on request, to provide training to a health care provider regarding the process for applying for reimbursement under this article.

SECTION 3. Amends Article 56A.254, Code of Criminal Procedure, as follows:

Art. 56A.254. PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE. Authorizes 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 certain sections, including Sections 323.053 and 323.054, Health and Safety Code. Makes a nonsubstantive change.

SECTION 4. Amends Article 56A.302, Code of Criminal Procedure, as follows:

Art. 56A.302. APPLICABILITY. Provides that Subchapter G applies to certain health care providers, rather than healthcare facilities, that provide diagnosis or treatment services to victims of sexual assault, including a SAFE program as defined by Section 323.051, Health and Safety Code.

SECTION 5. Amends Article 56A.303, Code of Criminal Procedure, to conform to Section 4, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and further amends it, as follows:

Art. 56A.303. FORENSIC MEDICAL EXAMINATION. (a) Requires a health care provider, in accordance with Subchapter B (Collection, Preservation, and Tracking of Evidence of Sex Offense), Chapter 420 (Sexual Assault Prevention and Crisis Services), Government Code, and except as provided by Subsection (b), to conduct a forensic medical examination of a victim of a sexual assault, rather than alleged sexual assault, if the victim meets certain conditions, including that the victim arrives at the provider within 120 hours, rather than 96 hours, after the assault occurred.

(b) Requires the health care provider, if a health care provider does not provide diagnosis or treatment services to victims of sexual assault, to refer a victim of a sexual assault who seeks forensic medical examination under Subsection (a) to a health care provider that provides services to those victims.

(c) Makes a conforming change to this subsection.

SECTION 6. Amends Article 56A.304, Code of Criminal Procedure, to conform to Sections 4 and 8, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and further amends it, as follows:

Art. 56A.304. PAYMENT OF FEES RELATED TO EXAMINATION. (a) Provides that, on application to the attorney general, a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with Subchapter G, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, as applicable, within 120 hours after the sexual assault occurred is entitled to be reimbursed in an amount set by attorney general rule for:

- (1) the reasonable costs of the forensic portion of that examination; and
- (2) the evidence collection kit.

Deletes existing text requiring the Department of Public Safety of the State of Texas (DPS) to pay the appropriate fees, as set by attorney general rule, for the forensic portion of a forensic medical examination conducted under Article 56A.303(a) and for the evidence collection kit if a physician, a sexual assault examiner, or sexual assault nurse examiner conducts the forensic portion of the examination within 96 hours after the alleged sexual assault occurred. Deletes existing text requiring the attorney general to reimburse DPS for fees paid under Subsection (a).

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

- (1) certification that the examination was conducted in accordance with the requirements of Article 56A.303(a); and
- (2) a complete and itemized bill of the reasonable costs of the forensic portion of the examination.

(c) Requires a health care provider or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (a) to accept reimbursement from the attorney general as payment for the costs unless:

- (1) the health care provider or sexual assault examiner or sexual assault nurse examiner, as applicable, requests, in writing, additional

reimbursement from the attorney general and provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and

(2) the attorney general determines that there is a reasonable justification for additional reimbursement.

(d) Provides that a health care provider is not entitled to reimbursement under this article unless the forensic medical examination was conducted on the premises of the provider by a sexual assault examiner or sexual assault nurse examiner.

(e) Authorizes the attorney general, on request, to provide training to a health care provider regarding the process for applying for reimbursement under this article.

(f) Creates this subsection from existing text and makes a conforming change.

SECTION 7. Amends Article 56A.305, Code of Criminal Procedure, as follows:

Art. 56A.305. PAYMENT OF COSTS FOR CERTAIN MEDICAL CARE. Authorizes 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 certain sections, including Sections 323.053 and 323.054, Health and Safety Code. Makes a nonsubstantive change.

SECTION 8. Amends Section 420.003(1-a), Government Code, to redefine "active criminal case" for purposes of Chapter 420.

SECTION 9. Amends the heading to Chapter 323, Health and Safety Code, to read as follows:

CHAPTER 323. EMERGENCY SERVICES AND FORENSIC EXAMINATION
PROGRAMS FOR SURVIVORS OF SEXUAL ASSAULT

SECTION 10. Amends Chapter 323, Health and Safety Code, by designating Sections 323.001 through 323.008 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. EMERGENCY SERVICES FOR SURVIVORS
OF SEXUAL ASSAULT

SECTION 11. Amends Section 323.001, Health and Safety Code, as follows:

Sec. 323.001. DEFINITIONS. Defines "commission" and "SAFE program" and redefines "SAFE-ready facility" for the purposes of Subchapter A, rather than for the purposes of Chapter 323.

SECTION 12. Amends Sections 323.004(a), (a-1), and (b), Health and Safety Code, as follows:

(a) Makes a conforming change to this subsection.

(a-1) Requires a facility that is not a SAFE-ready facility to inform the sexual assault survivor that:

(1) the facility is not a SAFE-ready facility and provide to the survivor the name and location of nearby SAFE-ready facilities, rather than the closest SAFE-ready facility, and the information form required by Section 323.0051 (Information Form for Sexual Assault Survivors at Certain Facilities); and

(2) the survivor is entitled, at the survivor's option, to certain services, including to be stabilized and to be referred or transferred to and receive the care described by Subsection (b) at a SAFE-ready facility.

(b) Requires a health care facility providing care to a sexual assault survivor to provide the survivor with:

(1) subject to Subsection (b-1), a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure, or is conducted under Subchapter G, Chapter 56A, Code of Criminal Procedure.

(2) - (5) makes no changes to these subsections.

(6) and (7) makes nonsubstantive changes to these subdivisions; and

(8) if the health care facility has shower facilities, access to a shower at no cost to the survivor after the examination described by Subdivision (1).

SECTION 13. Reenacts Section 323.005(a), Health and Safety Code, as amended by Chapters 408 (H.B. 8), 469 (H.B. 4173), and 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and further amends it to conform to Chapter 469 (H.B. 4173), Acts of the 86th Legislature, Regular Session, 2019, as follows:

(a) Requires the Health and Human Services Commission (HHSC), rather than the Department of State Health Services (DSHS), to develop a standard information form for sexual assault survivors that is required to include:

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

(4) certain 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, rather than conducted under Article 56.06 (Forensic Medical Examination for Sexual Assault Victim Who Has Reported Assault; Costs) or 56.065 (Medical Examination for Sexual Assault Victim Who Has Not Reported Assault; Costs), 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;

(5) makes no changes to this subdivision;

(6) and (7) makes nonsubstantive changes to these subdivisions;

(8) information regarding the period for which biological evidence collected from the forensic medical examination will be retained and preserved under Article 38.43 (Evidence Containing Biological Material), Code of Criminal Procedure; and

(9) a statement that the survivor has the right to access a shower for free after the forensic medical examination, if shower facilities are available at the health care facility.

SECTION 14. Amends Section 323.0051(a), Health and Safety Code, to make conforming changes.

SECTION 15. Amends Section 323.0052(a), Health and Safety Code, to conform to Chapter 469 (H.B. 4173), Acts of the 86th Legislature, Regular Session, 2019, and further amends it to make conforming changes.

SECTION 16. Amends Section 323.008, Health and Safety Code, as follows:

Sec. 323.008. DATA PUBLICATION. Requires HHSC, rather than DSHS, to post on the HHSC Internet website a list of all hospitals and other health facilities that are designated as SAFE-ready facilities under Chapter 323 and the facilities' physical addresses. Requires the list to be updated quarterly, rather than annually. Makes conforming changes.

SECTION 17. Amends Chapter 323, Health and Safety Code, by adding Subchapter B, as follows:

SUBCHAPTER B. SEXUAL ASSAULT FORENSIC EXAMINATION PROGRAMS

Sec. 323.051. DEFINITIONS. Defines "SAFE program," "sexual assault examiner," "sexual assault nurse examiner," "sexual assault program," and "sexual assault forensic examiner."

Sec. 323.052. OPERATION OF SAFE PROGRAM; DESIGNATION OF SAFE PROGRAM AS SAFE-READY FACILITY. (a) Authorizes a person to operate a SAFE program only if the program meets the minimum standards established under Section 323.053, and if the program provides forensic medical examinations to sexual assault survivors in accordance with Section 323.054.

(b) Requires HHSC to designate a SAFE program described by Subsection (a) as a SAFE-ready facility under Section 323.0015 (Safe-Ready Facilities) if the program notifies HHSC that the program employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation during a sexual assault forensic medical examination to a nurse or a physician licensed to practice in this state.

Sec. 323.053. MINIMUM STANDARDS FOR SAFE PROGRAMS. Requires that a SAFE program:

- (1) operate under the active oversight of a medical director who is a physician licensed by and in good standing with the Texas Medical Board (TMB);
- (2) provide medical treatment under a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by TMB rules;
- (3) employ or contract with a sexual assault examiner or a sexual assault nurse examiner;
- (4) provide access to a sexual assault program advocate, as required by Subchapter H (Presence of Advocate or Representative During Forensic Medical Examination), Chapter 56A, Code of Criminal Procedure;
- (5) ensure a sexual assault survivor has access to a private treatment room;
- (6) if indicated by a survivor's history or on a survivor's request, provide:
 - (A) HIV testing and prophylactic medication to the survivor or a referral for the testing and medication; and
 - (B) counseling and prophylactic medications for exposure to sexually transmitted infections and pregnancy;
- (7) provide to survivors the name and telephone number of a nearby sexual assault program that provides to survivors the minimum services described by Subchapter A (General Provisions), Chapter 420, Government Code;
- (8) provide to survivors the information form required by Section 323.005 (Information Form), 323.0051 (Information Form for Sexual Assault Survivors at Certain Facilities), or 323.0052 (Information Form for Sexual Assault Survivors Who Have Not Reported Assault), as applicable, and orally communicate the information regarding crime victims compensation under Section 323.005(a)(4) (relating to information regarding crime victims compensation);
- (9) collaborate with any sexual assault program, as defined by Section 420.003 (Definitions), Government Code, that provides services to survivors in the county;
- (10) engage in efforts to improve the quality of the program;
- (11) maintain capacity for appropriate triage or have agreements with other health facilities to assure that a survivor receives the appropriate level of care indicated for the survivor's medical and mental health needs;

- (12) prioritize the safety and well-being of survivors;
- (13) provide a trauma-informed approach in the forensic medical care provided to survivors; and
- (14) collaborate with law enforcement agencies and attorneys representing the state with jurisdiction in the county, any available local sexual assault response team, and other interested persons in the community.

Sec. 323.054. FORENSIC MEDICAL EXAMINATION BY SAFE PROGRAM; INFORMED CONSENT. (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, if the examination has been requested by a law enforcement agency under Subchapter F, Chapter 56A, Code of Criminal Procedure, or if the examination is performed in accordance with Subchapter G, Chapter 56A, Code of Criminal Procedure.

(b) Authorizes only a sexual assault examiner or a sexual assault nurse examiner to perform a forensic medical examination under a SAFE program.

(c) Requires a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program to 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) participate in the investigation or prosecution of an offense as a prerequisite to receiving the forensic medical examination or medical treatment; or

(2) pay for the costs of the forensic portion of the forensic medical examination or for the evidence collection kit.

SECTION 18. Makes application of Article 38.435, Code of Criminal Procedure, and Section 323.004(b)(8), Health and Safety Code, as added by this Act, prospective.

SECTION 19. Provides that this Act, to the extent of any conflict, prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 20. Effective date: September 1, 2021.