

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/20/2021

Date

Honorable Dan Patrick
President of the Senate

Honorable Dade Phelan
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 295 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Charles Perry

John M. King

Lois W. Kolkhorst
Lois W. Kolkhorst

Pat Guillet

Jane Nelson

Penny M. Shaw

Bryan Lough

Sheryl A. Cole

Jan Huffmann
On the part of the Senate

Kim Pine Bayard
On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 295

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the confidential and privileged communications and
3 records of victims of certain sexual assault offenses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Subchapter D, Chapter 420,
6 Government Code, is amended to read as follows:

7 SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS AND RECORDS

8 SECTION 2. The heading to Section 420.071, Government Code,
9 is amended to read as follows:

10 Sec. 420.071. CONFIDENTIAL COMMUNICATIONS AND RECORDS;
11 PRIVILEGE.

12 SECTION 3. Section 420.071, Government Code, is amended by
13 amending Subsections (a), (b), and (c) and adding Subsection (c-1)
14 to read as follows:

15 (a) Any [A] communication, including an oral or written
16 communication, between an advocate and a survivor~~[, or a person~~
17 ~~claiming to be a survivor,~~] that is made in the course of advising,
18 counseling, or assisting [~~providing sexual assault advocacy~~
19 ~~services to]~~ the survivor is confidential [~~and may not be disclosed~~
20 ~~except as provided by this subchapter].~~

21 (b) Any [A] record created by, provided to, or maintained by
22 an advocate is confidential if the record relates to the services
23 provided to a survivor or contains [~~of~~] the identity, personal
24 history, or background information of the [a] survivor or

1 information concerning the victimization of the [a] survivor [~~that~~
2 ~~is created by or provided to an advocate or maintained by a sexual~~
3 ~~assault program is confidential and may not be disclosed except as~~
4 ~~provided by this subchapter~~].

5 (c) In any civil, criminal, administrative, or legislative
6 proceeding, subject to Section 420.072, a survivor has a privilege
7 to refuse to disclose and to prevent another from disclosing, for
8 any purpose, a communication or record that is confidential under
9 this section.

10 (c-1) Except as provided by this subsection, the
11 unauthorized disclosure of a portion of a confidential
12 communication or record does not constitute a waiver of the
13 privilege provided by Subsection (c). If a portion of a
14 confidential communication or record is disclosed, a party to the
15 relevant court or administrative proceeding may make a motion
16 requesting that the privilege be waived with respect to the
17 disclosed portion. The court or administrative hearing officer, as
18 applicable, may determine that the privilege has been waived only
19 if:

20 (1) the disclosed portion is relevant to a disputed
21 matter at the proceeding; and

22 (2) waiver is necessary for a witness to be able to
23 respond to questioning concerning the disclosed portion. [A person
24 ~~who receives information from a confidential communication or~~
25 ~~record as described by this subchapter may not disclose the~~
26 ~~information except to the extent that disclosure is consistent with~~
27 ~~the authorized purposes for which the information was obtained.]~~

1 SECTION 4. Section 420.072, Government Code, is amended to
2 read as follows:

3 Sec. 420.072. DISCLOSURE OF CONFIDENTIAL COMMUNICATION OR
4 RECORD [~~EXCEPTIONS~~]. (a) A communication ~~or~~ [~~a~~] record [~~or~~
5 ~~evidence~~] that is confidential under Section 420.071 [~~this~~
6 ~~subchapter~~] may only be disclosed [~~in court or in an administrative~~
7 ~~proceeding~~] if:

8 (1) the communication or record [~~proceeding is brought~~
9 ~~by the survivor against an advocate or a sexual assault program or~~
10 ~~is a criminal proceeding or a certification revocation proceeding~~
11 ~~in which disclosure~~] is relevant to the claims or defense of an
12 [~~the~~] advocate or sexual assault program in a proceeding brought by
13 the survivor against the advocate or program; [~~or~~]

14 (2) the survivor has waived the privilege established
15 under Section 420.071(c) with respect to the communication or
16 record;

17 (3) the survivor or other appropriate person consents
18 in writing to the disclosure as provided by Section 420.073;

19 (4) an [~~or 420.0735, as applicable.~~]

20 [(b) ~~A communication, a record, or evidence that is~~
21 ~~confidential under this subchapter may be disclosed only to:~~

22 [(1) ~~medical or law enforcement personnel if the~~]
23 advocate determines that, unless the disclosure is made, there is a
24 probability of:

25 (A) imminent physical danger to any person; or

26 (B) [~~for whom the communication, record, or~~
27 ~~evidence is relevant or if there is a probability of~~] immediate

1 mental or emotional injury to the survivor;

2 (5) [(2) a governmental agency if] the disclosure is
3 necessary:

4 (A) to comply with:

5 (i) Chapter 261, Family Code; or

6 (ii) Chapter 48, Human Resources Code; or

7 (B) [required or authorized by law,

8 [(3) a qualified person to the extent necessary] for a
9 management audit, a financial audit, a program evaluation, or
10 research, except that a report of the [~~research,~~] audit, [~~or~~]
11 evaluation, or research may not directly or indirectly identify a
12 survivor;

13 (6) the disclosure is made to an employee or volunteer
14 of the sexual assault program after [(4) a person authorized to
15 receive the disclosure as a result of written consent obtained
16 under Section 420.073 or 420.0735; or

17 [(5)] an advocate or a person under the supervision of
18 a counseling supervisor who is participating in the evaluation or
19 counseling of or the provision of services to [advocacy for] the
20 survivor determines that the disclosure is necessary to facilitate
21 the provision of services to the survivor; or

22 (7) the communication or record is in the possession,
23 custody, or control of the state and a court, after conducting an in
24 camera review of the communication or record, determines the
25 communication or record is exculpatory, provided that the
26 disclosure is limited to the specific portion of the communication
27 or record that was determined to be exculpatory in relation to a

1 defendant in a criminal case.

2 (b) Regardless of whether written consent has been given by
3 a parent or legal guardian under Section 420.073(a), a person may
4 not disclose a [~~(c) A~~] communication or [~~, a~~] record [~~, or evidence~~]
5 that is confidential under Section 420.071 [~~this subchapter may not~~
6 be disclosed] to a parent or legal guardian of a survivor who is a
7 minor or to a guardian appointed under Title 3, Estates Code, of an
8 adult survivor, if applicable, if the person [~~an advocate or a~~
9 ~~sexual assault program~~] knows or has reason to believe that the
10 parent or guardian of the survivor is a suspect or accomplice in the
11 sexual assault of the survivor.

12 (c) Notwithstanding Subsections (a) and (b), the Texas
13 Rules of Evidence govern the disclosure of a communication or
14 record that is confidential under Section 420.071 in a criminal or
15 civil proceeding by an expert witness who relies on facts or data
16 from the communication or record to form the basis of the expert's
17 opinion.

18 SECTION 5. Section 420.074, Government Code, is amended to
19 read as follows:

20 Sec. 420.074. DISCLOSURE OF PRIVILEGED COMMUNICATIONS OR
21 OTHER INFORMATION IN CRIMINAL PROCEEDING [SUBPOENA]. (a) Subject
22 to the provisions [~~Notwithstanding any other provision~~] of this
23 chapter, not later than the 30th day before the date of the trial, a
24 defendant in a criminal proceeding may make a motion for disclosure
25 of a communication or record that is privileged under this chapter.
26 The motion must include a supporting affidavit showing reasonable
27 grounds to believe the privileged communication or record contains

1 exculpatory evidence.

2 (b) The defendant shall serve the motion on the attorney
3 representing the state and the person who holds the privilege with
4 regard to the communication or record at issue.

5 (c) The court shall order the privileged communication or
6 record to be produced for the court under seal and shall examine the
7 communication or record in camera if the court finds by a
8 preponderance of the evidence that:

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

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

16 (d) The court [a person] shall disclose to the defendant and
17 to the state only the evidence that the court finds to be
18 exculpatory on the issue of guilt for the offense charged [a
19 communication, a record, or evidence that is confidential under
20 this chapter for use in a criminal investigation or proceeding in
21 response to a subpoena issued in accordance with law].

22 SECTION 6. The change in law made by this Act applies to any
23 communication or record described by Section 420.071, Government
24 Code, as amended by this Act, regardless of the date the
25 communication is made or the record is created.

26 SECTION 7. This Act takes effect September 1, 2021.

Senate Bill 295
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION (IE)	CONFERENCE
<i>No equivalent provision.</i>	SECTION __.Chapter 98, Civil Practice and Remedies Code, is amended by adding Section 98.007.	Same as Senate version.
SECTION 1. The heading to Subchapter D, Chapter 420, Government Code, is amended.	SECTION 1. Same as Senate version.	SECTION 1. Same as Senate version.
<i>No equivalent provision.</i>	SECTION __.Section 420.003(4), Government Code, is amended.	Same as Senate version.
SECTION 2. The heading to Section 420.071, Government Code, is amended.	SECTION 2. Same as Senate version.	SECTION 2. Same as Senate version.
SECTION 3. Section 420.071, Government Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (c-1).	SECTION 3. Same as Senate version.	SECTION 3. Substantially the same as Senate version.
SECTION 4. Section 420.072, Government Code, is amended to read as follows: Sec. 420.072. <u>DISCLOSURE OF CONFIDENTIAL COMMUNICATION OR RECORD [EXCEPTIONS]</u> . (a) A communication or [,-a] record[,-or evidence] that is confidential under <u>Section 420.071 [this subchapter]</u> may <u>only</u> be disclosed [in court or in an administrative proceeding] if:	SECTION 4. Section 420.072, Government Code, is amended to read as follows: Sec. 420.072. <u>DISCLOSURE OF CONFIDENTIAL COMMUNICATION OR RECORD [EXCEPTIONS]</u> . (a) A communication or [,-a] record[,-or evidence] that is confidential under <u>Section 420.071 [this subchapter]</u> may <u>only</u> be disclosed [in court or in an administrative proceeding] if:	SECTION 4. Same as House version.

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CONFERENCE

(1) the communication or record [~~proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure~~] is relevant to the claims or defense of an [the] advocate or sexual assault program in a proceeding brought by the survivor against the advocate or program; [or]

(2) the survivor has waived the privilege established under Section 420.071(c) with respect to the communication or record;

(3) the survivor or other appropriate person consents in writing to the disclosure as provided by Section 420.073;

(4) an [or 420.0735, as applicable].

[~~(b) A communication, a record, or evidence that is confidential under this subchapter may be disclosed only to:~~]
[~~(1) medical or law enforcement personnel if the~~] advocate determines that, unless the disclosure is made, there is a probability of:

(A) imminent physical danger to any person; or

(B) [~~for whom the communication, record, or evidence is relevant or if there is a probability of~~] immediate mental or emotional injury to the survivor;

(5) [~~(2) a governmental agency if~~] the disclosure is necessary:

(A) to comply with:

(i) Chapter 261, Family Code; or

(ii) Chapter 48, Human Resources Code; or

(B) [~~required or authorized by law~~];

[~~(3) a qualified person to the extent necessary~~] for a management audit, a financial audit, a program evaluation, or research, except that a report of the [~~research,~~] audit, [or]

(1) the communication or record [~~proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure~~] is relevant to the claims or defense of an [the] advocate or sexual assault program in a proceeding brought by the survivor against the advocate or program; [or]

(2) the survivor has waived the privilege established under Section 420.071(c) with respect to the communication or record;

(3) the survivor or other appropriate person consents in writing to the disclosure as provided by Section 420.073;

(4) an [or 420.0735, as applicable].

[~~(b) A communication, a record, or evidence that is confidential under this subchapter may be disclosed only to:~~]
[~~(1) medical or law enforcement personnel if the~~] advocate determines that, unless the disclosure is made, there is a probability of:

(A) imminent physical danger to any person; or

(B) [~~for whom the communication, record, or evidence is relevant or if there is a probability of~~] immediate mental or emotional injury to the survivor;

(5) [~~(2) a governmental agency if~~] the disclosure is necessary:

(A) to comply with:

(i) Chapter 261, Family Code; or

(ii) Chapter 48, Human Resources Code; or

(B) [~~required or authorized by law~~];

[~~(3) a qualified person to the extent necessary~~] for a management audit, a financial audit, a program evaluation, or research, except that a report of the [~~research,~~] audit, [or]

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evaluation, or research may not directly or indirectly identify a survivor;

~~[(4) a person authorized to receive the disclosure as a result of written consent obtained under Section 420.073 or 420.0735;] or~~

(6) the disclosure is made to an employee or volunteer of the sexual assault program after [(5)] an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or the provision of services to [advocacy for] the survivor determines that the disclosure is necessary to facilitate the provision of services to the survivor.

(b) Regardless of whether written consent has been given by a parent or legal guardian under Section 420.073(a), a person may not disclose a [(e) A] communication or [a] record [or evidence] that is confidential under Section 420.071 [this subchapter may not be disclosed] to a parent or legal guardian of a survivor who is a minor or to a guardian appointed under Title 3, Estates Code, of an adult survivor,

HOUSE VERSION (IE)

evaluation, or research may not directly or indirectly identify a survivor;

[FA1,3rd(1)]

(6) the disclosure is made to an employee or volunteer of the sexual assault program after ~~[(4) a person authorized to receive the disclosure as a result of written consent obtained under Section 420.073 or 420.0735;] or~~

[(5)] an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or the provision of services to [advocacy for] the survivor determines that the disclosure is necessary to facilitate the provision of services to the survivor; or

(7) the communication or record is in the possession, custody, or control of the state and a court, after conducting an in camera review of the communication or record, determines the communication or record is exculpatory, provided that the disclosure is limited to the specific portion of the communication or record that was determined to be exculpatory in relation to a defendant in a criminal case. [FA1,3rd(2)-(3)]

(b) Same as Senate version.

CONFERENCE

(b) Same as Senate version.

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SENATE VERSION

HOUSE VERSION (IE)

CONFERENCE

if applicable, if the person [~~an advocate or a sexual assault program~~] knows or has reason to believe that the parent or guardian of the survivor is a suspect or accomplice in the sexual assault of the survivor.

(c) Notwithstanding Subsections (a) and (b), the Texas Rules of Evidence govern the disclosure of a communication or record that is confidential under Section 420.071 in a criminal or civil proceeding by an expert witness who relies on facts or data from the communication or record to form the basis of the expert's opinion.

No equivalent provision.

(c) Same as Senate version.

SECTION __. Section 420.074, Government Code, is amended to read as follows:

Sec. 420.074. DISCLOSURE OF PRIVILEGED COMMUNICATIONS OR OTHER INFORMATION IN CRIMINAL PROCEEDING [SUBPOENA]. (a) Subject to the provisions [~~Notwithstanding any other provision~~] of this chapter, not later than the 30th day before the date of the trial, a defendant in a criminal proceeding may make a motion for disclosure of a communication or record that is privileged under this chapter. The motion must include a supporting affidavit showing reasonable grounds to believe the privileged communication or record contains exculpatory evidence.

(b) The defendant shall serve the motion on the attorney representing the state and the person who holds the privilege with regard to the communication or record at issue.

(c) The court shall order the privileged communication or record to be produced for the court under seal and shall examine the communication or record in camera if the court finds by a preponderance of the evidence that:

(c) Same as Senate version.

SECTION 5. Same as House version.

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

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

(d) The court [a person] shall 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 [a communication, a record, or evidence that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law]. [FA1,3rd(4)]

SECTION 5. Section 420.074, Government Code, is repealed.

No equivalent provision. SECTION 5. Section 420.074, Government Code, is repealed. [Deleted by FA1,3rd(4)]

Same as House version.

SECTION 6. Saving provision.

SECTION 6. Same as Senate version.

SECTION 6. Same as Senate version.

SECTION 7. Effective date.

SECTION 7. Same as Senate version.

SECTION 7. Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 24, 2021

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB295 by Perry (Relating to the confidential and privileged communications and records of victims of certain sexual assault offenses.), **Conference Committee Report**

No significant fiscal implication to the State is anticipated.

Based on the analysis of the Office of Court Administration and the Office of the Attorney General, it is assumed that duties and responsibilities associated with implementing the bill as it relates to the confidential and privileged communications and records of victims of certain sexual assault offenses could be accomplished using existing resources. In addition, no significant fiscal impact to the state court system is anticipated with the implementation of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Admin, 302 Office of the Attorney General

LBB Staff: JMc, CMA, LBO, BH, SLE, MW