

BILL ANALYSIS

C.S.H.B. 2706
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Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2706 establishes provisions relating to the reporting of sexual assault and other sex offenses, to the emergency services and care provided to victims of those offenses, and to the processes associated with preserving and analyzing the evidence of those offenses.

Sexual Assault Forensic Examination Programs

C.S.H.B. 2706 amends the Health and Safety Code to regulate the operation of Sexual Assault Forensic Examination (SAFE) programs. The bill sets out minimum standards for the operation of a SAFE program, which include the following requirements, among others:

- 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);
- provide medical treatment under a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by TMB rules;
- employ or contract with a sexual assault examiner or a sexual assault nurse examiner;

- provide access to a sexual assault program advocate;
- 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; and
- collaborate with appropriate law enforcement agencies and state attorneys, any available local sexual assault response team, and other interested persons in the community.

C.S.H.B. 2706 requires a SAFE program to provide to a sexual assault survivor under the program's care a forensic medical examination in accordance with applicable state law if the examination has been required by a law enforcement agency or if the assault has not been reported to law enforcement and the victim consents to the examination under the appropriate circumstances. The bill establishes the following with regards to the examination and medical treatment:

- only a sexual assault examiner or a sexual assault nurse examiner may perform the examination;
- the examiner or nurse examiner must obtain the survivor's informed, written consent before performing the examination or providing medical treatment to the survivor; and
- the survivor who receives the examination may not be required to do any of the following:
 - participate in the investigation or prosecution of an offense as a prerequisite to receiving the examination or medical treatment; or
 - pay for the costs of the forensic portion of the examination or for the evidence collection kit.

C.S.H.B. 2706 prohibits a person from operating a SAFE program that does not meet the established minimum operations standards or provide forensic medical examinations to sexual assault survivors in accordance with the bill's provisions. The bill requires the Health and Human Services Commission (HHSC) to designate a SAFE program that does meet those standards and provide the appropriate examinations as a SAFE-ready facility 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 physician licensed to practice in Texas.

C.S.H.B. 2706 amends the Code of Criminal Procedure to make SAFE programs eligible to receive payment of costs and reimbursements from the attorney general for certain services and care rendered to sexual assault survivors.

Emergency Services for Sexual Assault Survivors

C.S.H.B. 2706 amends the Health and Safety Code to revise the requirement for a non-SAFE-ready facility to provide a sexual assault survivor who arrives at the facility following the assault the name and location of only the closest SAFE-ready facility so as to require that non-SAFE ready facilities instead provide the name and location of the nearby SAFE-ready facilities. The bill further requires that the facility inform the survivor that they are entitled to be referred to receive care at a SAFE-ready facility.

C.S.H.B. 2706 transfers the requirement to develop certain information forms for sexual assault survivors and certain data collection and publication requirements regarding SAFE-ready facilities from the Department of State Health Services to HHSC.

Requests for Forensic Medical Examinations by Law Enforcement

C.S.H.B. 2706 amends the Code of Criminal Procedure to remove a law enforcement agency's authority to decline to request a forensic medical examination of a victim of a sexual assault that was reported within the prescribed 120-hour period following an assault because the person

reporting the assault has made one or more false reports of sexual assault to any law enforcement agency and there is no other evidence corroborating the current allegations.

C.S.H.B. 2706 requires a law enforcement agency receiving the report of a sexual assault of a minor outside of the prescribed 120-hour period to still request a forensic medical examination of the victim for use in the investigation or prosecution of the offense, contingent on the agency receiving consent from an authorized party. The bill changes the circumstances under which a law enforcement agency may request such an examination for the victim of a sexual assault reported outside of that 120-hour period who is not a minor from when the agency considered it appropriate to either of the following:

- based on the circumstances of the reported assault, the agency believes a forensic medical examination would further that investigation or prosecution; or
- after a medical evaluation by a physician, sexual assault examiner, or sexual assault nurse examiner, the physician or examiner notifies the agency that the examination should be conducted.

Sexual Assault Prevention and Crisis Act

C.S.H.B. 2706 amends the Government Code to require the statewide electronic tracking system for evidence collected in relation to a sexual assault or other sex offense to include all evidence collected in relation to a sexual assault or other sex offense, regardless of whether evidence is collected in relation to an individual who is alive or deceased. The bill requires a health care facility or other entity that performs a medical examination for purposes of collecting such evidence that receives signed written consent to release the evidence to enter the identification number of the evidence collection kit into the tracking system not later than 24 hours after the examination is performed.

C.S.H.B. 2706 requires the Department of Public Safety (DPS) to submit a report to the governor not later than October 1 of each year titled "Statewide Electronic Tracking System Report" that identifies the number of evidence collection kits that have not yet been submitted for laboratory analysis or for which the laboratory analysis has not yet been completed, as applicable. The bill requires the report also to be posted on the DPS website. The bill removes the standalone requirement for each law enforcement agency and public accredited crime laboratory to submit a quarterly report to DPS that contains that same information.

C.S.H.B. 2706 revises the provision authorizing the failure to comply with requirements regarding the analysis of evidence of a sexual assault or other sex offense to be used to determine eligibility for receiving state grant funds to do the following:

- authorize the failure to comply with requirements regarding the collection, preservation, and tracking of that evidence also to be used to determine that eligibility; and
- specify that the level of noncompliance that may be used to determine eligibility is a failure to substantially comply with the applicable requirements.

C.S.H.B. 2706 includes as a condition for a case regarding a sexual assault or other sex offense to be considered an active criminal case under the act the condition that a law enforcement agency documents that an offense has been committed and reported.

General Provisions

C.S.H.B. 2706 replaces certain references to facilities with references to providers to reflect the expansion of the scope of those provisions to encompass SAFE programs. Additionally, the bill removes certain references in law to a sexual assault being an alleged assault.

Repealer

C.S.H.B. 2706 repeals Section 420.042(b), Government Code, which requires a person who submits evidence of a sexual assault or other sex offense to a public accredited crime laboratory to provide a signed written certification with the submission stating that the person is submitting the evidence in connection with a criminal investigation.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2706 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the original's provisions regulating the operation of SAFE programs to do the following:

- authorize any person, rather than only health facilities as in the original, to operate a SAFE program, contingent on the program meeting the established minimum operations standards and providing forensic medical examinations according to the prescribed requirements; and
- remove the requirement that the program be operated on the premises of a health facility.

To account for this change, the substitute makes a number of changes to the original's provisions to replace references to "facility" with references to "provider" and includes additional provisions not included in the original solely to make this change.

With respect to the minimum operations standards for SAFE programs, the substitute makes the following changes to the original's provisions:

- assigns a definition to "sexual assault program";
- omits a specification that the efforts to improve the quality of the program be continual; and
- replaces the requirement to maintain capacity for immediate triage with a requirement to maintain capacity for appropriate triage.

The substitute includes a provision not in the original specifying that the level of noncompliance with certain statutory requirements regarding evidence of sexual assault and other sex crimes that may be used to determine eligibility for state grant funds is a failure to substantially comply with the applicable requirements