

SUBJECT: Revising confidentiality of communications of victims of sexual assault

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Julie Johnson, Krause, Middleton, Schofield, Smith

0 nays

3 absent — Davis, Dutton, Moody

WITNESSES: For — Kristen Lenau, Texas Association Against Sexual Assault;
(*Registered, but did not testify*: Ian Randolph, Animal Legal Defense Fund; Ken Shetter, One Safe Place; Jennifer Mudge, Texas Council on Family Violence; Thomas Parkinson)

Against — None

On — Amanda Oder, Texas Advocacy Project

BACKGROUND: Government Code ch. 420 is the state's Sexual Assault Prevention and Crisis Services Act. Under sec. 420.071, communications between an advocate and a survivor that are made in the course of providing sexual assault advocacy services to the survivor are confidential and may not be disclosed except as provided by the act. Sec. 420.072 governs the disclosure of the information.

Concerns have been raised that survivors of sexual assault do not have full confidentiality protections for communications and records when seeking crisis center assistance. Some have proposed giving these survivors a higher level of confidentiality, mirroring that given to domestic violence survivors.

DIGEST: CSHB 1374 would revise provisions in the Sexual Assault Prevention and Crisis Services Act relating to the confidentiality of communications and records made between an advocate and a survivor in the course of providing sexual assault advocacy services to the survivor and the

disclosure of such information.

Confidentiality of information. The bill would expand confidentiality currently given to communications to include confidentiality of certain records. The bill would specify that confidential communications would be those made in the course of advising, counseling, and assisting survivors, rather than the current reference to communications made in the course of providing sexual assault advocacy services. The confidentiality of records would apply if the record related to the services provided to a survivor.

Disclosure of information. CSHB 1374 would revise provisions establishing when information that was confidential under the law could be disclosed.

Survivors would be given a privilege to refuse to disclose and to prevent others from disclosing confidential communications or records in civil, criminal, administrative, or legislative proceedings. The bill would establish that an unauthorized disclosure of a portion of a confidential communication or record would not constitute a waiver of this privilege. CSHB 1374 would establish provisions governing the waiver of portions of confidential communications relating to relevant court or administrative proceedings.

References to the disclosure of evidence would be removed and disclosures of communications and records would be authorized if a survivor waived the privilege.

Provisions governing when information could be disclosed if there was an imminent physical danger would be revised to remove a restriction on who could receive information in these circumstances. A new requirement would be established that the disclosures could only be made if, in the absence of the disclosure, there was a probability of imminent physical danger to any person or immediate mental or emotional injury to the survivor.

The bill would remove an authorization for disclosure to any governmental agency if required by law and would establish an authorization to disclose information if it was necessary to comply with investigations relating to child abuse and neglect and to protective services for persons who were elderly or persons with disabilities.

The bill would specify that current provisions limiting disclosure of information to parents or guardians of survivors when the parent or guardian was a suspect or accomplice in the sexual assault of a minor would remain in place regardless of whether the parent or guardian gave consent for the release. Provisions governing disclosures to employees or volunteers of sexual assault programs also would be revised.

CSHB 1374 would establish that the Texas Rules of Evidence would govern the disclosure of confidential information in certain civil or criminal proceedings concerning certain expert witnesses. The bill would repeal provisions that require persons to disclose communications, records, or evidence that is confidential for use in a criminal investigation or proceeding in response to a subpoena.

The bill would take effect September 1, 2021, and would apply to any communications or records regardless of the date they were created.