

- SUBJECT:** Changing conditions for requesting rape kits for reported sexual assaults
- COMMITTEE:** Homeland Security and Public Safety — favorable, without amendment
- VOTE:** 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt
- 0 nays
- WITNESSES:** For — Amy Derrick, Dallas County Criminal District Attorney; Bertha Lavinia Masters, TAASA Sexual Assault Advisory Board; Kimberly D’Avignon, Tarrant County District Attorney’s Office and TDCAA; (*Registered, but did not testify:* Frederick Frazier, Dallas Police Association and State FOP; Stephanie Arthur, Everytown for Gun Safety and Moms Demand Action; Noel Johnson, JPCA; Carlos Lopez, Justices of the Peace and Constables Association of Texas; Lindy Borchardt, Tarrant County Criminal District Attorney; Kristen Lenau, Texas Association Against Sexual Assault; Seetha Kulandaisamy, Texas Council on Family Violence; and eight individuals)
- Against — (*Registered, but did not testify:* Michael Fossum; Zoila Vega-Marchena)
- On — (*Registered, but did not testify:* Gene McCleskey, Office of the Attorney General; Brady Mills, Texas DPS Crime Laboratory)
- BACKGROUND:** Under Code of Criminal Procedure art. 56A.251, if a sexual assault is reported to a law enforcement agency within a prescribed amount of time, the law enforcement agency, with the consent of the victim, must request a forensic medical exam for use in the investigation or prosecution of the offense. If a sexual assault is not reported within the prescribed time period, a law enforcement agency may request a forensic medical exam as considered appropriate by the agency.
- A law enforcement agency may decline to request a forensic medical exam only if the person reporting the sexual assault has made one or more

false reports of sexual assault to any law enforcement agency and there is no other evidence to corroborate the current allegations.

DIGEST:

HB 2462 would specify the conditions under which a law enforcement agency could request a forensic medical exam of a victim of a reported sexual assault if it was reported outside a prescribed 120-hour period. In this circumstance rather than when considered appropriate, a law enforcement agency could request an exam for use in the investigation or prosecution of the offense if:

- based on the circumstances of the reported assault, the agency believed an exam would further that investigation or prosecution; or
- a physician, sexual assault examiner, or sexual assault nurse examiner notified the agency after a medical evaluation that a forensic medical exam should be conducted.

The bill would remove a law enforcement agency's authority to decline to request a forensic medical exam for a sexual assault reported within 120 hours because the person reporting the assault had made false reports of sexual assault to any law enforcement agency and there was no other evidence corroborating the current allegations.

For a sexual assault reported to a law enforcement agency, regardless of whether it was reported within the 120-hour period, the agency would have to document, in the form and manner required by the attorney general, whether it requested a forensic medical exam. The agency would have to provide the documentation to the victim and to the health care facility, physician, sexual assault examiner, or sexual assault nurse examiner who provided services to the victim. The agency would have to maintain the documentation in accordance with record retention policies.

The bill would take effect September 1, 2021, and would apply only to a sexual assault reported on or after that date.

SUPPORTERS

HB 2462 would further improve the collection and analysis of sexual

SAY: assault evidence and bring survivors justice by ensuring that every victim who comes forward with a sexual assault allegation and submits to an examination is able to be heard. This change would enact a recommendation from the governor's Sexual Assault Survivors' Task Force.

The bill would address concerns that a victim reporting a sexual assault could be denied a forensic medical exam under certain circumstances, such as if the person had made previous false reports of sexual assault and there was no other evidence to corroborate the current allegations. This authority provides law enforcement too much discretion in assessing the credibility of a victim, especially when stereotypes and other factors could play into that assessment. Further, a law enforcement agency may not be able to assess whether it had corroborating evidence for the reported assault until a rape kit was collected and tested.

The bill would require law enforcement to complete the Office of the Attorney General's Law Enforcement Request for Sexual Assault Exam form for every reported sexual assault, which in practice has been successful in improving how sexual violence is addressed in Texas and helpful in improving forensic medical exams and getting rape kits tested. The form provides other avenues for law enforcement to request an exam outside of the 120-hour window and retains an agency's authority to decline a forensic medical exam.

Although the bill likely would result in an increase in applications for sexual assault exam reimbursements from the crime victims' compensation fund, the exact impact to the fund is unknown as the state budget process is ongoing and any potential costs are outweighed by the need to ensure justice is available to the victims of sexual assault.

CRITICS  
SAY: HB 2462 could result in an increase in forensic medical exams and thus subsequent applications for sexual assault exam reimbursements. This would add to the burden on the crime victims' compensation fund, which is projected to have a negative balance by the end of fiscal 2023.

NOTES: According to the Legislative Budget Board, the bill would result in an estimated \$3.8 million cost to the Crime Victims' Compensation Account through fiscal 2022-23.