

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 779
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In a criminal offense involving the transmission of a communicable disease, medical records are required in order to properly charge a defendant of an alleged offense, or to escalate an offense to an aggravated offense, which carries a more severe penalty.

The Health Insurance Portability and Accountability Act (HIPAA), limits the judiciary from accessing a defendant's medical records or test results and the Texas Health and Safety Code places stricter limitations on the release of such information. HIPAA may not use or disclose protected health information, except as permitted by the Code of Federal Regulations Section 164.512(e-f). HIV is the only known disease in which medical records cannot be accessed through these provisions.

As a result, prosecutors are unable to legally access the defendant's medical records and are unable to prove in court that the defendant is HIV positive and knowingly transmitted the disease to the victims in the commission of the offense.

C.S.S.B. 779 grants the state, like the defendant, the same power to issue subpoenas to access to these medical records and is consistent with (but not more expansive than) HIPAA for use in criminal proceedings. C.S.S.B. 779 includes added protection that before the test results may be admitted to a grand jury or a criminal proceeding, the court shall issue a protective order or take other action to limit its release. At all times, the information is forever sealed and never subject to open records and revealed to the public.

C.S.S.B. 779 aligns HIV more closely with other diseases, specifically to avoid any stigma associated with HIV, and provides additional privacy protections for use in a grand jury or criminal proceeding.

C.S.S.B. 779 amends current law relating to access to certain medical test results in a criminal proceeding, and amends provisions subject to a criminal penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 81.103(a), Health and Safety Code, by adding Subsections (c-1), (c-2), and (k-1), as follows:

(c-1) Provides that subject to Subsection (k-1), a test result is subject to and may be released or disclosed under a subpoena issued under Chapter 20 (Duties and Powers of the Grand Jury) or 24 (Subpoena and Attachment), Code of Criminal Procedure, in a criminal proceeding.

(c-2) Provides that, notwithstanding any other law, a person who releases or discloses a test result in response to a subpoena issued under Chapter 20 or 24, Code of Criminal Procedure, in a criminal proceeding is not subject to any criminal or civil liability or

professional disciplinary action for releasing or disclosing the test result, except in a case of gross negligence or wilful misconduct.

(k-1) Requires the court in which the test result is to be presented as evidence or otherwise released or disclosed, before entering into evidence or otherwise releasing or disclosing a test result obtained by subpoena under Subsection (c-1) in a criminal proceeding, to issue a protective order or take other action to limit the release or disclosure of the test result. Requires the court responsible for the grand jury, for a test result obtained under a grand jury subpoena, to issue the order or take other action to limit the release or disclosure of the test result before the test result is presented to the grand jury.

SECTION 2. Effective date: upon passage or September 1, 2015.