

BILL ANALYSIS

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C.S.H.B. 2462
By: Neave et al. (Paxton)
Criminal Justice
5/19/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2019, the Texas Legislature passed H.B. 8, the Lavinia Masters Act, an omnibus bill relating to the criminal statute of limitations for certain sex offenses that, in part, addressed the collection and analysis of sexual assault evidence and the backlog of thousands of untested rape kits. However, there remain concerns that a person reporting a sexual assault may be denied a forensic medical examination for collecting evidence for a sexual assault case under certain circumstances, including the limited time frame within which the alleged assault must be reported. The governor's Sexual Assault Survivors' Task Force has evaluated existing practices around how sexual violence is addressed in Texas and developed recommendations to further improve forensic medical examinations. H.B. 2462 seeks to address this issue and the recommendations by removing a law enforcement agency's authority to decline to request a forensic examination of the victim of a sexual assault that is reported within 120 hours following the assault due to certain circumstances and by changing the circumstances under which a law enforcement agency may request such an examination.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2462 amends current law relating to the reporting of a sexual assault and to the collection and submission of evidence with respect to that offense.

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 Article 56A.052(a), Code of Criminal Procedure, to conform to Section 2, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and further amends it to provide that, if the offense is a sexual assault, a victim, guardian of a victim, or close relative of a deceased victim is entitled to certain rights within the criminal justice system, including, for the victim, the right to a forensic medical examination to the extent provided by Subchapters F (Forensic Medical Examination of Sexual Assault Victim Reporting Assault) and G (Forensic Medical Examination of Sexual Assault Victim Not Reporting Assault) if, within 120 hours, rather than within 96 hours, of the offense a forensic medical examination is otherwise conducted at a health care provider, rather than at a health care facility.

SECTION 2. Amends Subchapter F, Chapter 56A, Code of Criminal Procedure, to conform to Section 3, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, by adding Article 56A.2505, and amends that article further, as follows:

Art. 56A.2505. APPLICABILITY. Provides that Subchapter F applies to health care providers described by Article 56A.302 (Applicability).

SECTION 3. Amends Subchapter F, Chapter 56A, Code of Criminal Procedure, by adding Article 56A.2506, as follows:

Art. 56A.2506. DEFINITION. Defines, for purposes of Subchapter F, "reported sexual assault."

SECTION 4. Amends Article 56A.251, Code of Criminal Procedure, to conform to Section 3, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and amends it further, as follows:

Art. 56A.251. REQUEST FOR FORENSIC MEDICAL EXAMINATION. (a) Requires a law enforcement agency, if a sexual assault is reported to the law enforcement agency within 120 hours after the assault, to, with the consent of certain persons, including the victim of the reported assault, to request a forensic medical examination of the victim for use in the investigation or prosecution of the offense. Deletes existing text requiring a law enforcement agency, except as provided by Subsection (b), if a sexual assault is reported to a law enforcement agency within 96 hours after the assault, to, with the consent of certain persons, including the victim of the alleged assault, request a forensic medical examination of the victim for use in the investigation or prosecution of the offense.

(b) Requires a law enforcement agency, if a sexual assault is not reported within the period described by Subsection (a) and the victim is a minor as defined by Section 101.003 (Child or Minor; Adult), Family Code, on receiving the consent described by Subsection (a) or the consent described by Section 32.003 (Consent to Treatment by Child) or 32.005 (Examination Without Consent of Abuse or Neglect of Child), Family Code, to request a forensic medical examination of the victim for use in the investigation or prosecution of the offense. Deletes existing text authorizing a law enforcement agency to decline to request a forensic medical examination under Subsection (a) 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 of sexual assault.

(c) Authorizes a law enforcement agency, if a sexual assault is not reported within the period described by Subsection (a) and the victim is not a minor as defined by Section 101.003, Family Code, on receiving the consent described by Subsection (a), to request a forensic medical examination of a victim of a reported sexual assault for use in the investigation or prosecution of the offense if:

(1) based on the circumstances of the reported assault, the agency believes a forensic medical examination would further that investigation or prosecution; or

(2) after a medical evaluation by a physician, sexual assault examiner, or sexual assault nurse examiner, the physician or examiner notifies the agency that a forensic medical examination should be conducted. Deletes existing text authorizing a law enforcement agency, if a sexual assault is not reported within the period described by Subsection (a), on receiving the consent described by that subsection, to request a forensic medical examination of a victim of an alleged sexual assault as considered appropriate by the law enforcement agency.

(d) Requires a law enforcement agency, if a sexual assault is reported to a law enforcement agency as provided by Subsection (a), (b), or (c), to document, in the form and manner required by the attorney general, whether the agency requested a forensic medical examination. Requires the law enforcement agency to:

(1) provide the documentation of the agency's decision regarding a request for a forensic medical examination to:

(A) the health care provider and the physician, sexual assault examiner, or sexual assault nurse examiner, as applicable, who

provides services to the victim that are related to the sexual assault;
and

(B) the victim or the person who consented to the forensic medical
examination on behalf of the victim; and

(2) maintain the documentation of the agency's decision in accordance
with the agency's record retention policies.

SECTION 5. Amends Article 56A.252, Code of Criminal Procedure, to conform to Sections 3
and 8, Chapter 1037 (H.B. 616, Acts of the 86th Legislature, Regular Session, 2019, and further
amends it, as follows:

Art. 56A.252. PAYMENT OF COSTS OF EXAMINATION. (a) Creates this subsection
from existing text. Provides that, on application to the attorney general, a health care
provider that provides a forensic medical examination to a sexual assault survivor in
accordance with Subchapter F, or the sexual assault examiner or sexual assault nurse
examiner who conducts that examination, as applicable, is entitled to be reimbursed in an
amount set by attorney general rule for:

(1) the reasonable costs of the forensic portion of that examination; and

(2) the evidence collection kit.

Deletes existing text requiring a law enforcement agency that requests a forensic
medical examination under Article 56A.251 to pay all costs of the examination.
Deletes existing text providing that the law enforcement agency, on application to
the attorney general, is entitled to be reimbursed for the reasonable costs of the
examination if the examination was performed by a physician or by a sexual
assault examiner or sexual assault nurse examiner, as defined by Section 420.003
(Definitions), Government Code.

(b) Requires that the application under Subsection (a) be in the form and manner
prescribed by the attorney general and include:

(1) the documentation that the law enforcement agency requested the
forensic medical examination, as required under Article 56A.251(d); and

(2) a complete and itemized bill of the reasonable costs of the forensic
portion of the examination.

(c) Requires a health care provider or sexual assault examiner or sexual assault
nurse examiner, as applicable, who applies for reimbursement under Subsection
(a) to accept reimbursement from the attorney general as payment for the costs
unless:

(1) the health care provider or the sexual assault examiner or sexual
assault nurse examiner, as applicable:

(A) requests, in writing, additional reimbursement from the
attorney general; and

(B) provides documentation in support of the additional
reimbursement, as reasonably requested by the attorney general;
and

(2) the attorney general determines that there is a reasonable justification
for additional reimbursement.

(d) Provides that a health care provider is not entitled to reimbursement under this article unless the forensic medical examination was conducted by a physician, sexual assault examiner, or sexual assault nurse examiner.

(e) Authorizes the attorney general, on request, to provide training to a health care provider regarding the process for applying for reimbursement under this article.

SECTION 6. Amends Article 56A.302, Code of Criminal Procedure, to make a conforming change.

SECTION 7. Amends Article 56A.303, Code of Criminal Procedure, to conform to Section 4, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and amends it further to make conforming and nonsubstantive changes.

SECTION 8. Amends Article 56A.304, Code of Criminal Procedure, to conform to Sections 4 and 8, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and amends it further, as follows:

Art. 56A.304. PAYMENT OF FEES RELATED TO EXAMINATION. (a) Provides that, on application to the attorney general, a health care provider that provides a forensic medical examination to a sexual assault survivor in accordance with Subchapter G, or the sexual assault examiner or sexual assault nurse examiner who conducts that examination, as applicable, within 120 hours after the sexual assault occurred is entitled to be reimbursed in an amount set by attorney general rule for:

- (1) the reasonable costs of the forensic portion of that examination; and
- (2) the evidence collection kit.

Deletes existing text requiring the Department of Public Safety of the State of Texas (DPS) to pay the appropriate fees, as set by attorney general rule, for the forensic portion of a forensic medical examination conducted under Article 56A.303(a) (relating to requiring a health care facility to conduct a forensic medical examination of a victim of an alleged sexual assault if the victim takes certain actions) and for the evidence collection kit if a physician, sexual assault examiner, or sexual assault nurse examiner conducts the forensic portion of the examination within 96 hours after the alleged sexual assault occurred.

(b) Requires that the application under Subsection (a) be in the form and manner prescribed by the attorney general and include certification that the examination was conducted in accordance with the requirements of Article 56A.303(a) and a complete and itemized bill of the reasonable costs of the forensic portion of the examination. Deletes existing text requiring the attorney general to reimburse DPS for fees paid under Subsection (a).

(c) Requires a health care provider or a sexual assault examiner or sexual assault nurse examiner, as applicable, who applies for reimbursement under Subsection (a) to accept reimbursement from the attorney general as payment for the costs unless:

- (1) the health care provider or sexual assault examiner or sexual assault nurse examiner, as applicable:
 - (A) requests, in writing, additional reimbursement from the attorney general; and
 - (B) provides documentation in support of the additional reimbursement, as reasonably requested by the attorney general; and

(2) the attorney general determines that there is a reasonable justification for additional reimbursement.

(d) Provides that a health care provider is not entitled to reimbursement under this article unless the forensic medical examination was conducted at the provider by a physician, sexual assault examiner, or sexual assault nurse examiner.

(e) Authorizes the attorney general, on request, to provide training to a health care provider regarding the process for applying for reimbursement under this article.

(f) Creates this subsection from existing text and makes a conforming change.

SECTION 9. Amends Article 56A.307, Code of Criminal Procedure, to make a conforming change.

SECTION 10. Amends Article 56B.453(d), Code of Criminal Procedure, to conform to Section 5, Chapter 1037 (H.B. 616), Acts of the 86th Legislature, Regular Session, 2019, and amends it further, as follows:

(d) Authorizes the attorney general to use the compensation to victims of crime fund to reimburse a health care provider or a sexual assault examiner or sexual assault nurse examiner for certain costs of a forensic medical examination that are incurred by the provider or examiner under Subchapter F or G, Chapter 56A, as provided by those subchapters. Deletes existing text authorizing the attorney general to use the fund to reimburse a law enforcement agency for the reasonable costs of a forensic medical examination that are incurred by the agency.

SECTION 11. Provides that, to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 12. Makes application of this Act prospective.

SECTION 13. Effective date: September 1, 2021.