Communications between sexual assault victims and advocates

SB 1175 by Lucio (Naishtat)

DIGEST:

SB 1175 would have made communications between a victim of sexual assault and a person who provides advocacy services to the victim as an employee or volunteer of a sexual assault program confidential and privileged. Such communications could have been disclosed only under certain specified exceptions. Records of the identity, personal history or background of a victim or certain other information that was provided to an advocate or maintained by a sexual assault program would have been confidential and privileged. The confidentiality could have been claimed in a criminal, civil or administrative proceeding by the victim or the advocate acting on the victim's behalf. Advocates would been defined as persons who provide advocacy services as an employee or volunteer of a sexual assault program.

The Texas Board of Health would have been authorized to adopt minimum standards for certifying training programs for advocates. SB 1175 also would have allowed certified sexual assault programs to obtain criminal history record information on employees, job applicants and advocates.

GOVERNOR'S REASON FOR VETO:

"Senate Bill 1175 is harmful to sexual assault victims. The bill provides that the communications between a sexual assault victim and the victim's advocate are legally confidential and privileged. Because a defendant has a constitutional right to confront and cross-examine witnesses with prior statements, this privilege is unconstitutional. If a defendant is precluded from cross-examining a victim about prior statements, then all of the victim's statements may be excluded on appeal. Consequently, without any testimony from the victim, the prosecutor may be forced to dismiss the case."

RESPONSE:

Sen. Eddie Lucio, the author of SB 1175, said: "This bill had the word 'privileged' added to confidential information regarding release of information and may have been challenged on a Constitutional basis. In Texas, privileged is used only between patient and physician, client and attorney, and between spouses. Other than this technical problem which can be rectified next session, the standardization of training programs for

advocates for survivors of sexual assault will help ensure a minimum of training for advocates that will result in improved services for survivors."

Rep. Elliott Naishtat, the House sponsor of the bill, said: "This bill was an attempt to make sure that advocates who provide counseling and related services to victims of sexual assault are adequately trained and certified to do their jobs. If the section dealing with privileged and confidential communications between a certified advocate and a victim needs to be revised to ensure that defendants are not precluded from confronting and cross-examining witnesses or victims, then we will address this issue next session."

NOTES: SB 1175 passed the House on the Local and Consent Calendar and was not analyzed in a *Daily Floor Report*.