

SUBJECT: Funding medical examinations for victims not reporting sexual assaults

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 9 ayes — Merritt, Frost, Burnam, Driver, P. King, Lewis, Mallory Caraway, Rodriguez, Vo
0 nays

WITNESSES: For — Torie Camp, Texas Association Against Sexual Assault; Elizabeth Sjoberg, Texas Hospital Association; (*Registered, but did not testify:* Carolyn Belk, The Methodist Hospital System of Houston; Ed Berger, Seton Family of Hospitals; Steven Briston, Parkland Health and Hospital System; Marisa Finley, Scott & White Center for Healthcare Policy; Tom Gaylor, Texas Municipal Police Association; Greg Herzug, Texas Medical Association; Elizabeth Lippincott, Christus Health; Aaron Setliff, The Texas Council on Family Violence; Andrew Smith, University Health System; James Willmann, Texas Nurses Association; Christine Yanas, Teaching Hospitals of Texas)
Against — None
On — Christopher Burnett, Office of the Governor Criminal Justice Division; (*Registered, but did not testify:* Dennis Loockerman, Texas Department of Public Safety; Gene McCleskey, Attorney General's Office)

BACKGROUND: After a sexual assault is reported, most victims undergo a forensic examination. The purpose of the exam is to collect and document physical evidence that may prove a sexual assault occurred, such as hair or DNA samples from sperm or saliva, as well as any apparent injuries to the alleged victim. Law enforcement agencies take the victim to a medical professional, who performs the exam.

The average cost of a forensic examination is about \$395, although it may vary depending on medical and legal factors. Police departments may apply for reimbursement of the cost of forensic exams from the state Crime Victims Compensation Fund (CVCF).

In 2005, the 79th Legislature enacted HB 544 by Naishtat, which required that law enforcement officials request a forensic medical examination be performed for a sexual assault victim if the report occurred within 96 hours of the assault. HB 544 also amended the list of crime victims' rights in the Code of Criminal Procedure to require that sexual victim must consent to any forensic exam.

The Federal Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA) provided grant funding to state governments to pay for forensic testing and other sexual assault prevention programs. However, state governments cannot require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursement for charges incurred on account of such an exam, or both.

DIGEST:

CSHB 2626 would amend Code of Criminal Procedure, art. 56.06 to require that a medical care facility conduct a forensic medical examination of a victim of an alleged sexual assault if the victim:

- arrived at the facility within 96 hours after the assault occurred;
- consented to the examination; and
- had not reported the assault to a law enforcement agency before the examination was conducted.

Should the medical care facility not provide diagnosis or treatment services for sexual assault victims, it would be required to refer the victim to a facility that provides those services.

The victim would not be required to:

- participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination; nor
- pay for the forensic examination or the evidence collection kit.

The Department of Public Safety (DPS) would be required to develop procedures for how evidence collection kits are transferred to and preserved by a suitable crime laboratory. The DPS could develop additional procedures for submitting and collecting other evidence besides the evidence collection kit. All evidence would be required to be preserved for at least two years or until the victim or a legal representative signed written consent to release the evidence.

DPS would be required to pay for the cost of the forensic medical examinations and would be reimbursed through the CVCF administered by the Attorney General's Office. Both the DPS and attorney general would be authorized to adopt rules to implement CSHB 2626 as soon as practical after the bill became effective.

CSHB 2626 also would amend the crime victims' list of rights under Code of Criminal Procedure to include a right to a forensic medical examination within 96 hours of a sexual assault and would amend Health and Safety Code, sec. 323.005 (a) to include a statement that DPS would pay for the examination as part of standard medical form provided for all sexual assault survivors.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009. The bill would apply to a forensic medical examination conducted on or after its effective date.

**SUPPORTERS
SAY:**

CSHB 2626 would ensure that Texas complied with federal requirements to receive more than \$15.2 million in grants, including \$9 million in VAWA funds, as part of the American Recovery and Reinvestment Act of 2009. As reauthorized in 2005, VAWA required states to verify by January 5, 2009, that victims of sexual assault were not obligated to involve law enforcement in order to be provided with a forensic medical exam. Because Texas is not in compliance with federal requirements, the state risks losing both stimulus funds and \$6.2 million in S.T.O.P. (Services, Training, Officers, Prosecutors) grants. There should be a sense of urgency in enacting this legislation.

In a March 10 letter to the U.S. Department of Justice Office on Violence Against Women, Gov. Rick Perry promised that Texas would act expeditiously to enact legislation to bring the state into compliance with federal requirements. He also asked that the victims of sexual assault, domestic violence, stalking, and dating violence not be penalized because the legislative calendar prevented Texas from remedying these concerns until this spring.

Sexual assault continues to have the lowest reporting rate of all violent crimes, and only 18 percent of adult victims and survivors of sexual assault in Texas file reports to law enforcement agencies. Victims frequently decline because of feelings of shame, guilt, or embarrassment.

CSHB 2626 would provide encouragement for victims to get a forensic examination within 96 hours, when the evidence still could be present on their bodies. Otherwise, valuable evidence could be lost and the investigation and prosecution hampered if victims waited until they became emotionally ready to cooperate with law enforcement agencies and prosecutors.

Any additional expenses for the CVCF would be insignificant. Funding for this program comes from fees assessed on criminal offenders. Also, it is unreasonable to put a price tag on justice, especially if CSHB 2626 helped more sexual assault victims come out of the shadows and report the crimes against them.

OPPONENTS
SAY:

No apparent opposition

NOTES:

The committee substitute differs from the bill as filed in that it would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. As filed, the bill would have become effective September 1, 2009.

The companion bill, SB 2239 by Zaffirini, is scheduled for a hearing by the Senate Criminal Justice Committee on April 21.