

**SUBJECT:** Establishing a sexual offense prevention and response program for TMD

**COMMITTEE:** Defense and Veterans' Affairs — favorable, without amendment

**VOTE:** 8 ayes — Raymond, Buckley, Biedermann, Cyrier, Gervin-Hawkins, Lambert, Lopez, E. Morales

0 nays

1 absent — Tinderholt

**SENATE VOTE:** On final passage, April 12 — 31-0

**WITNESSES:** For — Steven Price, The Texas Democratic Veterans and The Voices of our Veterans; (*Registered, but did not testify:* Thomas Parkinson)

Against — None

**DIGEST:** SB 623 would establish a state sexual offense prevention and response program for the Texas Military Department (TMD) and provide processes for the investigation of certain offenses, the application for protective orders, and the legislative oversight of sexual assault prevention and response in the department.

A member of the Texas military forces, which include the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard, who was not in federal service and who committed an offense of sexual assault, indecent assault, or aggravated sexual assault would be subject to investigation and punishment under the Texas Code of Military Justice.

**State sexual offense prevention and response program.** To the extent state funds were available, TMD would have to establish a state sexual offense prevention and response program and employ or designate a state sexual offense response coordinator to perform victim advocacy services, including ensuring that victims of sexual assault or indecent assault received appropriate responsive care and understood the options available

for reporting the assault. The program and coordinator would be within TMD but would exercise authority granted under the bill independently from the department's chain of command.

The coordinator would accept reports for alleged offenses of sexual assault, indecent assault, and aggravated sexual assault made by a member of the Texas military forces against an accused person who also was a member. The coordinator would have to notify each victim of a reported sexual assault of their eligibility for crime victims' compensation under state law.

The coordinator would be required to allow a service member who was the victim of an alleged offense to:

- file with the coordinator a restricted or unrestricted report or file a restricted report and later convert that report to an unrestricted report;
- participate in the U.S. Department of Defense Catch a Serial Offender program; and
- receive notice when the coordinator was made aware that the accused person had been subsequently accused of sexual assault, indecent assault, or aggravated sexual assault by a service member or any other person.

A "restricted report" would mean a reporting option that allowed a victim to confidentially disclose the offense to the coordinator and obtain medical treatment, including emergency care and counseling, without initiating an investigation. The report could not be referred to law enforcement officers or to command officials of the Texas military forces to initiate an official investigation unless the person who reported the offense consented. An "unrestricted report" would mean a reporting option that allowed a victim to report the offense to the coordinator if the person did not request confidentiality in reporting the offense or request a restricted report.

**Investigation.** On the filing of an unrestricted report alleging an offense

of sexual assault or aggravated sexual assault, the coordinator would have to refer the unrestricted report to the Texas Rangers division of the Department of Public Safety for investigation. The coordinator could refer the unrestricted report to the appropriate local law enforcement agency for the initial collection of evidence, and that agency would have to transfer all relevant evidence and information to the Texas Rangers on request.

The Texas Rangers would have to assign an officer to investigate the referred reports. If the investigation demonstrated probable cause that an offense of sexual assault or aggravated sexual assault was committed by a member of the Texas military forces, the investigator would have to refer the matter to the appropriate local district attorney, criminal district attorney, or county attorney with criminal jurisdiction.

On the filing of an unrestricted report alleging an offense of indecent assault, the coordinator would have to refer the unrestricted report to the appropriate local law enforcement agency for investigation.

**Protective order.** With the consent of the victim of an offense alleged to have been committed by a service member, the coordinator could file an application for a protective order on behalf of the victim.

A military protective order issued to a person because the person was a reported victim of an offense of sexual assault, indecent assault, or aggravated sexual assault would constitute sufficient information for a court to find there was a clear and present danger of sexual assault or abuse or other harm to the applicant.

**Legislative oversight.** The adjutant general or coordinator annually would have to submit a report on the activities under the program and the activities of TMD relating to sexual offense prevention and response to the governor, the lieutenant governor, House speaker, and the chairs of legislative committees with primary jurisdiction over the department.

Using state data collected by the coordinator, the report would have to include for the preceding state fiscal year:

- the policies and procedures implemented by the coordinator and adjutant general in response to incidents of sexual assault and indecent assault;
- an assessment of the implementation and effectiveness of the program and the policies and procedures on the prevention and oversight of and the state's response to reports of sexual assault and indecent assault within TMD;
- an analysis of the number of incidents involving service members; and
- deficiencies in the department's training of the coordinator.

Information provided in the report for restricted cases would be limited to aggregated statistical data to protect victim privacy and for unrestricted cases would be limited to aggregated statistical data that at a minimum included:

- statistics relating to the types of offenses investigated under the bill and relating to victims and accused persons;
- the status of investigations and prosecutions; and
- the status of administrative actions taken by TMD against service members who were on state active duty.

**Other provisions.** TMD would be required to implement a provision of the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money, the department could, but would not be required to, implement a provision of the bill using other available appropriations.

The bill would take effect September 1, 2021.

**SUPPORTERS  
SAY:**

SB 623 would address the problems facing victims of sexual assault in the Texas military forces and provide victims with additional resources and avenues for justice by establishing a sexual assault response coordinator outside the chain of command to provide victim advocacy services and by providing for the independent investigation of those offenses. Service

members who are victims of sexual assault often do not report the assault due to fear of social and professional retaliation, concerns of confidentiality breaches, and a lack of confidence in the military justice system.

Recent tragedies have highlighted the issue of sexual assault in the military and how the current system can fail to protect service members. In the U.S. military, victims of sexual assault can report offenses to a federally employed Sexual Assault Response Coordinator (SARC) who must alert the victim's commander if the victim chooses to pursue a criminal investigation. After reporting an offense of sexual assault, service members may receive a military protective order, which is a short-term order issued by a unit commander against an active-duty service member.

However, currently there is no sexual assault response coordinator for sexual assault cases occurring in the Texas military forces. To pursue criminal charges, a victim has to rely on local law enforcement agencies, which often are faced with jurisdictional challenges when investigating military sexual assault cases. There also is no dedicated, independent criminal investigator for sexual assault cases occurring in the Texas military forces, which would provide options outside the chain of command so crimes could be prosecuted to the fullest extent under law.

While the Legislature has no jurisdiction over the U.S. military, since Texas has the largest state military force, it should take action to establish processes and provide resources so service members feel safe and protected within their place of work. SB 623 would allow Texas to set an example by protecting its soldiers and increasing the resources and justice available to sexual assault victims in the Texas military forces.

CRITICS  
SAY:

No concerns identified.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of about \$217,000 to general revenue through fiscal 2023.