

BILL ANALYSIS

Senate Research Center
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S.B. 2239
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Texas is not in compliance with federal law and is at risk of losing \$6.2 million in Services, Training, Officers, Prosecutors (STOP) grant funds. To comply, Texas must certify that sexual assault victims in Texas can obtain a forensic examination free of charge without having to cooperate with law enforcement. Thus, if a victim is unable or unwilling to cooperate with law enforcement officials but later wishes to press charges, forensic examination results will be available for use.

As proposed, S.B. 2239 relates to the forensic medical examination of a sexual assault victim who has not reported the assault to a law enforcement agency.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 3 (Article 56.065, Code of Criminal Procedure) of this bill.

Rulemaking authority is expressly granted to the attorney general of the State of Texas in SECTION 3 (Article 56.065, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 56.02(a), Code of Criminal Procedure, as follows:

(a) Entitles a victim, guardian of a victim, or close relative of a deceased victim to certain rights within the criminal justice system including, to the extent provided by Articles 56.06 and 56.065, for a victim of a sexual assault, the right to a forensic medical examination if, within 96 hours of the sexual assault, the assault is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility. Deletes existing text entitling a victim, guardian of a victim, or close relative of a deceased victim to, except as provided by Article 56.06(a), for a victim of a sexual assault, the right to a forensic medical examination if the sexual assault is reported to a law enforcement agency within 96 hours of the assault.

SECTION 2. Amends the heading to Article 56.06, Code of Criminal Procedure, to read as follows:

Art. 56.06 MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS.

SECTION 3. Amends Subchapter A, Chapter 56, Code of Criminal Procedure, by adding Article 56.065, as follows:

Art. 56.065. MEDICAL EXAMINATION FOR SEXUAL ASSAULT VICTIM WHO HAS REPORTED ASSAULT; COSTS. (a) Defines "crime laboratory," "department," "sexual assault examiner," and "sexual assault nurse examiner."

(b) Provides that this article applies to the following health care facilities that provide diagnosis or treatment services to victims of sexual assault: a general or special hospital licensed under Chapter 241 (Hospitals), Health and Safety

Code; a general or special hospital owned by this state; an outpatient clinic; and a private physician's office.

(c) Requires a health care facility, except as provided by Subsection (e), to conduct in accordance with Subchapter B (Collection and Preservation of Evidence of Sex Offense), Chapter 420 (Sexual Assault Prevention and Crisis Services), Government Code, a forensic medical examination of the victim of an alleged sexual assault if the victim arrives at the facility within 96 hours after the assault occurred; the victim or a legal representative of the victim consents to the examination; at the time of the examination the victim has not reported the assault to a law enforcement agency; and a physician determines that it is not detrimental to the victim's health to conduct the examination.

(d) Requires the Department of Public Safety of the State of Texas (DPS) to pay for reasonable costs of the forensic portion of the medical examination 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. Requires the attorney general to reimburse DPS for costs paid under this subsection.

(e) Requires a health care facility, if the facility does not provide diagnosis or treatment services to victims of sexual assault, to refer a victim seeking a forensic medical examination under Subsection (c) to a health care facility that provides services to those victims.

(f) Requires DPS to develop procedures for the transfer of evidence collected under this article to a crime laboratory designated by DPS. Requires the designated laboratory to preserve the evidence until the earlier of the second anniversary of the date the laboratory received the evidence, or the date the victim or a legal representative of the victim signs a written consent to release the evidence.

(g) Prohibits the victim from being required to participate in the investigation or prosecution of an offense as a condition of receiving a forensic medical examination under this article or pay for the cost of the forensic portion of the medical examination or for the evidence collection kit.

(h) Requires the attorney general and DPS each to adopt rules as necessary to implement this article.

SECTION 4. Amends Section 323.004(b), Health and Safety Code, to require a health care facility providing care to a sexual assault survivor to provide the survivor with a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, if the examination has been requested, rather than approved, by a law enforcement agency under Article 56.06, Code of Criminal Procedure, or is conducted under Article 56.065, Code of Criminal Procedure. Makes a nonsubstantive change.

SECTION 5. Amends Section 323.005(a), Health and Safety Code, to require DPS to develop a standard information form for sexual assault survivors that must include information regarding crime victims compensation, including a statement that a law enforcement agency will pay for the cost of the forensic portion of an examination requested by the agency under Article 56.06, Code of Criminal Procedure, or DPS will pay for the reasonable costs of the forensic portion of an examination conducted under Article 56.065, Code of Criminal Procedure.

SECTION 6. (a) Requires the attorney general, as soon as practicable after the effective date of this Act, to adopt the rules required by Article 56.065(h), Code of Criminal Procedure, as added by this Act.

(b) Requires DPS, as soon as practicable after the effective date of this Act, to adopt the rules required by Article 56.065(h), Code of Criminal Procedure, as added by this Act.

(c) Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2009.