



## Overview of HB 1172: Trauma Informed Investigations

HB1172 was passed during the 87th Legislative Session. The new law improves the reporting experience for adult survivors by addressing three areas of the initial reporting process: a ban on polygraphs, increased accessibility of forensic exams, and advocate accompaniment during law enforcement interviews. These changes have long been desired by advocates and survivors in the field to make the reporting process more trauma-informed and survivor-centered.

This resource will specifically focus on the portion of the bill that relates to the victim's right to have an advocate present during a law enforcement interview found in Art.56A.3515 of the Code of Criminal Procedure.

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### What is the intent of the law?

Victims of sexual assault often express that having an advocate present reduces the emotional trauma and fear they experience during an interview and mitigates concerns that prevent a victim from participating with the criminal justice process.<sup>1</sup> On a national level, advocates have provided support during law enforcement interviews for decades. This law standardizes this level of support and ensures that all victims are afforded the opportunity to have an advocate present during law enforcement interviews.

Art. 56A.3515. PRESENCE OF SEXUAL ASSAULT PROGRAM ADVOCATE OR OTHER VICTIM'S REPRESENTATIVE DURING LAW ENFORCEMENT INTERVIEW.

*(a) Before conducting an investigative interview with a victim reporting a sexual assault, other than a victim who is a minor as defined by Section 101.003, Family Code, the peace officer conducting the interview shall offer the victim the opportunity to have an advocate from a sexual assault program, as defined by Section 420.003, Government Code, be present with the victim during the interview, if the advocate is available at the time of the interview. The advocate must have completed a sexual assault training program described by Section 420.011(b), Government Code.*

### What does the law require?

Article 56A.3515(a) requires all peace officers to make a good faith effort to offer an adult victim the opportunity to have an advocate present before conducting an investigative interview.

The law prioritizes offering victims a community-based advocate that is independent of a law enforcement agency or prosecutor's office. It is modelled after the law that affords victims the right to the presence of an advocate during a forensic medical exam.<sup>2</sup> Advocates are specially trained by the sexual assault program to provide these services.

If a community-based advocate is not available at the time of the interview, the law allows the peace officer to offer the victim three alternatives: (1) a crime victim liaison from the law enforcement agency, (2) a victim's assistance counselor from a state or local agency, or (3) a separate peace officer who has completed training approved by the Attorney General.

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<sup>1</sup> Kerstetter, W.A. (1990). "Gateway to Justice: Police and Prosecutor Response to Sexual Assaults against Women." *The Journal of Criminal Law and Criminology*, Vol. 81, No. 2, pp.267-313. Spears, J.S. Horney, J. and Spohn, C. (1997). "The Effects of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases." *Justice Quarterly*, Vol. 14, No. 3, pp.501-524. ; Campbell, R. (2006). Rape survivors' experiences with the legal and medical systems: Do rape victim advocates make a difference? *Violence Against Women*, 12, 30-45.

<sup>2</sup> Texas Code of Criminal Procedure Article 56A.351.

*(b) If an advocate described by Subsection (a) is not available at the time of the interview, the peace officer conducting the interview shall offer the victim the opportunity to have a crime victim liaison from the law enforcement agency, a peace officer who has completed a sexual assault training program described by Section 420.011(b), Government Code, or a victim's assistance counselor from a state or local agency or other entity be present with the victim during the interview.*

The advocate may only provide counseling, support services and crime victims' rights information to the victim, and may not interfere with, impede or delay the interview process.

## Compliance with HB 1172: A Step by Step Guide

### DEFINITIONS OF KEY TERMS:

**Advocate:** an employee or volunteer of a Sexual Assault Program that has completed a sexual assault training program certified by the attorney general; a community-based advocate.

**Crime Victim Liaison (CVL):** a victim representative that works for or is directly affiliated with a law enforcement agency; a system-based advocate.

**Investigative Interview:** A follow-up interview typically conducted by a detective or investigator after the initial report is taken.

**Sexual Assault Program (SAP):** a local public or private nonprofit corporation, independent of a law enforcement agency or prosecutor's office, that is operated as an independent program or as part of a municipal, county, or state agency and that provides the following minimum services to adult survivors of stranger and non-stranger sexual assault: a 24-hour crisis hotline, crisis intervention, public education, advocacy and medical and legal accompaniment.

**Sexual Assault Training Program (SATP):** a program provided by Sexual Assault Programs that have received the Office of the Attorney General (OAG) certification.

- This training is NOT provided by the OAG. The OAG certifies the SAP's training and the SAP offers the training periodically for their advocates and volunteers.
- The SATP involves classroom instruction, and on-the-job training and supervision. The SAP providing the training monitors course attendance and completion, and it is at their discretion to accommodate individuals from outside organizations.
- Completing the SATP training does not certify an individual as a sexual assault advocate. The training program itself is certified.

**Victim's Assistance Counselor (VAC):** includes both Victim Assistance Coordinators who work at a prosecutor's office, as well as Victim Assistance Counselors who work with the Texas Department of Public Safety; a system-based advocate.

### Step 1: Determine if there is a Sexual Assault Program (SAP) in your community.

- ➔ You are required to offer an advocate from a SAP first. SAP advocates are specially trained to provide crisis intervention and counseling to sexual assault victims, and their private conversations with survivors are protected and privileged communications, which encourages a survivor's continued participation in the investigation process.
- ➔ If you are unfamiliar with existing SAPs in your community, contact TAASA for additional referrals and assistance.

### Step 2: If there are no SAPs in your community, determine which CVLs or VACs might be appropriate alternatives.

- ➔ Since CVLs and VACs typically receive specialized training for assisting victims and should already exist within the agency's current infrastructure, they should be the secondary option utilized if a SAP advocate is unavailable.

### Step 3: If there are no SAPs, CVLs or VACs available, consider coordinating SATP training for at least one peace officer in your agency.

- ➔ After making a good faith effort to offer a victim the presence of a SAP advocate or CVL/VAC, the peace officer may offer a specially trained peace officer to serve in place of an advocate, if the agency has personnel that meets these qualifications.
- ➔ The peace officer serving in this capacity must have completed the full SATP training approved by the attorney general's office.
- ➔ The victim ultimately has the right to decide if they want this alternative.

## Best Practices

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### Form relationships with existing SAPs:

- ➔ Prior to conducting or scheduling an interview, connect with your local SAP to learn about advocacy services and relevant procedures.
- ➔ If the program has the capacity, they can provide a private area for law enforcement to conduct their interview on a scheduled basis. Body cams and other forms of technology make it easier for interviews to be conducted in a more trauma-informed environment. This can be especially beneficial if your agency does not have a “soft” interview room.<sup>1</sup>

### Fully inform sexual assault victims about their rights and local resources:

- ➔ Review your policies and procedures for informing victims of their rights. Ensure information is given to victims in an accessible manner that is tailored to the victim’s needs, such as providing communication in the victim’s preferred language.
- ➔ Provide every sexual assault victim with information about the SAP in your community at your initial contact. This will make it easier for victims to access advocacy support when the detective calls to schedule an interview.
- ➔ Even when the victim does not choose the presence of an advocate at the interview, ensure that the victim has the contact information for the SAP, CVL and VAC in your community, for follow-up support and services per Art. 56A.402 of the Code of Criminal Procedure.

### Be flexible with schedule coordination:

- ➔ If the interview is scheduled for a time where an advocate is unavailable, and the victim wishes for an advocate to be present, the officer should reschedule the interview to accommodate the victim’s needs. Some organizations have developed shared calendar systems so that law enforcement partners can see when SAPs have an advocate available. This approach can help streamline advocacy support.
- ➔ If a CVL/VAC is more immediately available, a victim might elect to go forward with an interview with them present, rather than wait for a community-based advocate to arrive. In this case, consider offering the victim the opportunity to have both advocates present, and allow the community-based advocate to step in when they arrive.

💡 If possible, allow the victim time to meet with an advocate prior to the interview. Give the victim the chance to speak with the advocate and learn about the services and support they can provide before asking them to make a decision about whether or not to have the advocate present for their interview. This approach ensures the victim has the information they need to make an informed choice.

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<sup>1</sup> Research supports that survivors are often more comfortable when an interview takes place in a calming setting rather than at a police department. Lonsway, K. A., Archambault, J. (2020). Effective Victim Advocacy in the Criminal Justice System. End Violence Against Women International, pp 57

## FAQs

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### → What if the victim shows up to the police department with an advocate from a sexual assault program?

Regardless of whether or not you coordinated with a SAP advocate in advance, if a victim requests their presence, the agency should allow them to be present, even during preliminary interviews that take place when the victim is making the initial report.

### → Where can we find an approved sexual assault training program that is required for peace officers to serve in place of an advocate?

Only SAPs that have received the OAG SATP Certification can provide this training. Since this training is intended for individuals who work or volunteer for a sexual assault program, it is at the discretion of each individual agency to determine if they can accommodate individuals from outside organizations. Contact TAASA for assistance in locating a SATP.<sup>1</sup>

### → What if our agency doesn't have a CVL or VAC?

Each law enforcement agency is required to designate at least one person to serve as the agency's CVL and prosecutor's offices are required to designate a VAC.<sup>2</sup> Consider creating partnerships with your prosecutor's office in case your CVL is unavailable.

### → Do we need to wait for an advocate before starting the interview?

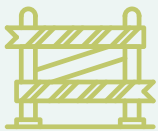
Yes, you should. Investigators should make a good faith effort to schedule interviews in advance so that an advocate is available for the time of the interview.

### → What if the victim changes their mind and decides they want an advocate during the interview?

If at any time the victim decides they want an advocate present, the peace officer conducting the interview should afford the victim with the opportunity to have an advocate present. This may involve rescheduling the interview.

### → Can both a SAP advocate and a CVL/VAC be present in interviews?

Yes, if a victim would like both qualifying advocates to be present, that should be at their discretion. Nothing in the law precludes multiple advocates from being present in the interview.



#### At the Crime Scene

Ensure the victim has information about how to contact an advocate. If an advocate is already present, they should be allowed to stay with the victim for any questioning.



#### At the Hospital

An advocate should already be present for the exam, and should be allowed to remain with the victim for any questioning.



#### At the Police Station

An advocate should be called and offered to a victim before any questioning begins.

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1 TAASA will be launching an online version of the SATP training that satisfies the classroom portion of the SATP training. Individuals who complete this training must still develop a partnership with a local program in order to obtain the remaining training requirements.

2 Texas Code of Criminal Procedure, Art.56A.203. If your community has not yet designated a CVL or VAC, this is a first step that should take priority over training a peace officer. Contact TAASA for training resources and assistance.



### Notes:

Identify your community's sexual assault program advocates, CVLs and VACs immediately. Form relationships with them, and establish protocols to follow when a victim makes an outcry.

For questions about these steps or how to identify a sexual assault program, or eligible training programs, please contact TAASA for information and assistance.