

SUBJECT: Expanding rights of sexual assault victims during reporting, investigation

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — White, Bowers, Goodwin, Harless, E. Morales, Patterson, Tinderholt

2 nays — Hefner, Schaefer

WITNESSES: For — Jenny Black, SAFE Alliance; David Scott, TCFV; Katherine Strandberg, Texas Association Against Sexual Assault (TAASA); *(Registered, but did not testify):* Ken Shetter, One Safe Place; Idona Griffith; Georgia Keysor; Thomas Parkinson; Janice Riley)

Against — None

On — *(Registered, but did not testify):* Brian Hawthorne and AJ Louderback, Sheriffs Association of Texas)

BACKGROUND: Government Code sec. 420.003 defines "sexual assault program" to mean any 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 city, county, or state agency and that provides the minimum service to adult survivors of stranger and non-stranger sexual assault.

Code of Criminal Procedure art. 15.051 prohibits a peace officer or a prosecutor from requiring a polygraph exam of a person who charges or seeks to charge in a complaint the commission of certain offenses, including continuous sexual abuse of young child or children, indecency with a child, sexual assault, aggravated sexual assault, and prohibited sexual conduct. If the peace officer or attorney requests a polygraph exam, the complainant must be informed that the exam is not required.

DIGEST: CSHB 1172 would require a peace officer, before conducting an interview

with a victim reporting a sexual assault, other than a victim who was a minor, to offer the victim the opportunity to have an advocate from a sexual assault program be present during the interview. If an advocate was not available, the officer would have to offer the opportunity to have a crime victim liaison from the law enforcement agency or a victim's assistance counselor from a state or local entity be present during the interview.

An advocate, liaison, or counselor authorized to be present during an interview could only provide the victim with counseling and other support services and information on the rights of crime victims under state law. The advocate, liaison, or counselor and the sexual assault program could not delay or otherwise impede the interview process. A sexual assault program providing an advocate or an entity providing a victim's assistance counselor would have to pay all associated costs.

A peace officer or law enforcement agency that provided an advocate, liaison, or counselor with access to a victim would not be subject to civil or criminal liability for providing that access.

If a victim was confined in a penal institution at the time the victim sustained injuries from an alleged sexual assault, the penal institution would have to provide, at the victim's request, a representative to be present during an interview related to the investigation conducted by a peace officer. A representative could not delay or otherwise impede the interview process.

The bill would prohibit requiring, requesting, or taking a polygraph exam of a complainant who charged or sought to charge the commission of the offenses of continuous sexual abuse of young child or children, indecency with a child, sexual assault, aggravated sexual assault, and prohibited sexual conduct.

The bill would repeal a provision that allows a law enforcement agency to decline to request a forensic medical exam if the person reporting the sexual assault had made one or more false reports of sexual assault to any

law enforcement agency and there was no other evidence to corroborate the current allegations.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSHB 1172 would expand the rights of sexual assault survivors during engagement with law enforcement, protecting the dignity of survivors and increasing the likelihood that they would stay engaged with the criminal justice process. The bill would continue efforts to create a system in Texas within which survivors could feel safe, encouraging more to come forward.

Improving the law enforcement interviewing process would support survivors, build trust in the criminal justice system, and lead to better and more just outcomes. Survivors currently have the right to have an advocate present during sexual assault forensic exams. These advocates offer emotional support and assistance navigating legal, criminal, and mental health systems. The law enforcement interview often is difficult and re-traumatizing for survivors and thus survivors also should have the right to an advocate's presence during law enforcement interviews. The bill would not burden law enforcement agencies as it only would require an officer to offer an advocate if one was available.

The bill also would support survivors and remove barriers to reporting by eliminating two processes that could communicate mistrust and intimidate survivors. Some survivors cite the fear of the reporting process and concerns they will not be believed or respected by law enforcement as reasons for not reporting sexual assaults to authorities. To improve survivor experience in the criminal justice system, the bill would ensure the right of survivors to forensic medical exams and appropriately prohibit the use of polygraph exams on survivors, a process some have reported as dehumanizing.

**CRITICS
SAY:**

CSHB 1172 would impose a burden on rural law enforcement agencies as many may not have access to an advocate from a sexual assault program or a victim's liaison from their agency, making implementing the bill a

challenge. To reduce the impact on rural agencies that already are short on resources, the bill should encourage instead of require peace officers to offer the opportunity to have an advocate present during an interview. The bill also could allow for victims' advocates to be present through videoconference in the way telemedicine currently is being implemented.