

**SUBJECT:** Allowing presence of an advocate during sexual assault examinations

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 7 ayes — Hinojosa, Dunnam, Garcia, Green, Kitchen, Martinez Fischer, Shields  
0 nays  
2 absent — Keel, Talton

**WITNESSES:** For — Sherry Boyles, Texas Association Against Sexual Assault; Christine Yang Cramer; Linda Hunter, Hays-Caldwell Women’s Center; Roseann Richardson; Matthew T. Wall, Texas Hospital Association; Laura Wolf, SafePlace; *Registered but did not testify:* Bree Buchanan, Texas Council on Family Violence, Kevin F. Lawrence, Texas Municipal Police Association  
  
Against — Sonja Eddleman, Driscoll Children’s Hospital CARE Team and Doctor’s Regional Medical Center

**BACKGROUND:** Under Government Code, sec. 420.003, “sexual assault program” means 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 municipal, county, or state agency and that provides sexual assault prevention and crisis services under chapter 420.  
  
Code of Criminal Procedure (CCP), art. 56.02 lists crime victims’ rights under Texas law, including rights to safety, information, and possible compensation.

**DIGEST:** HB 1234 would allow a person who alleged to have sustained injuries as the victim of a sexual assault to have an advocate from a sexual assault program present during a forensic medical examination. The physician or other medical personnel conducting the exam would have to offer the alleged victim the opportunity to have the advocate present during the exam if the advocate was available at the time.  
  
The advocate could provide the injured person only with counseling and other support services and information regarding crime victims’ rights, as

outlined under CCP, art. 56.02. The advocate and the sexual assault program could not delay or impede the screening or stabilization of an emergency medical condition. The sexual assault program would have to pay all costs associated with providing the advocate. Any licensed hospital or health-care facility that allowed an alleged victim access to an advocate would not be subject to civil or criminal liability for providing that access.

The bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

HB 1234 would help prevent additional psychological damage to victims of sexual assault who already have been traumatized. Many victims report experiencing the forensic medical examination as another assault. This bill would allow victims to have an advocate from a local sexual assault program with them during the examination. These advocates are trained to comfort and provide emotional support to victims and help them to be more at ease during the examination, and they can make the exam go more smoothly for both the victim and the medical provider. An advocate's support can give victims a sense of control and empowerment during a very vulnerable time. The initial response the sexual assault survivor receives when reporting the crime or seeking services can have a profound influence on the victim's ability to recover from the assault. Seventy percent of rape victims suffer from post-traumatic stress disorder after an attack, but that number falls to 40 percent when an advocate is involved in post-attack services.

HB 1234 would give victims across Texas the choice to have an advocate with them during a sexual assault examination. Currently, that choice belongs to medical and law enforcement personnel. Under this bill, victims would not have to have an advocate present if they did not want one. Some hospitals in Texas already allow advocates in the examining room, but others do not permit them. This bill would establish a law similar to laws already in effect in Florida, Washington, Iowa, and California.

HB 1234 would help victims get the continuing support they may need from a local sexual assault program. Survivors of sexual assault are more likely to obtain follow-up support services such as counseling after an initial personal contact with an advocate from the local sexual assault program. A majority of victims know their attacker and may be hesitant to seek help. An advocate serves as a calming presence and can help the victim obtain needed services.

HB 1234 would not create an additional expense for local hospitals or governments. Sexual assault programs would have to pay any costs associated with providing the advocate. Also, the bill would immunize licensed hospitals and medical centers from lawsuits or criminal liability resulting from the advocate's involvement.

OPPONENTS  
SAY:

HB 1234 could make victims feel obligated to have a sexual assault advocate with them in the examining room, even if they did not want one. During a sexual assault exam, a physician or nurse examiner asks many personal questions, some of which are not related to the assault. A victim may feel uncomfortable discussing personal issues like domestic violence problems or drug abuse in front of nonmedical personnel. A victim in this situation is disrobed, and few people would be comfortable being naked in front of a group of strangers, especially right after a sexual assault.

Having an advocate present during a forensic medical examination could jeopardize a victim's legal case. The medical examiner takes a verbal history of what occurred in addition to physical evidence. The defense attorney for a rapist could subpoena the advocate to testify in the trial about what the victim said during the exam and how credible the victim seemed. An advocate often is a volunteer who has no training in testifying in a sexual assault trial, and his or her testimony could be damaging to the victim.

It benefits victims to limit the number of strangers they have to deal with after a sexual assault. Often, everyone involved in the examination process is a stranger to the victim, and an advocate is just one more stranger in the examining room.

HB 1234 makes no provision for the age of the assault victim. Many times, children under 18 are the victims of sexual assault or abuse. A four-year-old is not capable of making a decision about whether to have a stranger who is a sexual assault advocate attend the examination.

NOTES:

A bill in the 76th Legislature, HB 1205 by Naishtat, would have required that victims not be denied the opportunity to have a crime victims' advocate present at any emergency medical exam or legal proceeding related to the investigation or prosecution of an offense. An exception would have been if

the advocate caused unnecessary delay in the investigation or prosecution.  
The bill died in the House Criminal Jurisprudence Committee.