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**Testimony to the House Judiciary Committee
In Opposition to HB2536
February 3, 2022**

Chairman Patton and Committee Members,

Our associations encourage strong victim support mechanisms assuring access to victim support programs. However, too many of the provisions in this bill are problematic to providing strong law enforcement investigative support to victims of sexual assault. For that reason, we must oppose the bill as presented.

Our first concern is found on page 1, lines 6-11, creating the “right to consult with a sexual assault counselor and have a support person of the survivor’s choosing present during . . .any interview by law enforcement. . .” [Emphasis added.] Also in subsection (c) starting on page 1, line 30, requiring advisement of all the listed rights, “Before a law enforcement officer. . .interviews a survivor. . .” Those provisions apply to all law enforcement interviews.

Consider the contact made by the initial responding officer immediately following a sexual assault. As soon as the victim identifies as a sexual assault victim, the officer will be required to not interview until the rights are provided and, if the victim wants a counselor or support person, the officer will be required to wait until one or both of those are contacted and respond. During this time the provision prevents the officer from interviewing the victim to obtain suspect information, location of the event, or other place where evidence may be found. This delay will allow the suspect more time to escape or to cover their tracks or to destroy or conceal key evidence.

Second, consider the impact of this on an interview of the victim after the initial contact if a potential suspect is located. Such interviews may be needed to verify any information that can be used to hold the suspect for further investigation.

Some of our investigators have noted that in their experience a third party in a law enforcement interview has inhibited the victim from describing details of the event that are critical to the investigation. What if we have a sexual assault victim who is being trafficked? It is not unlikely some would ask for their trafficker to be present. We are uncertain if the exceptions on page 2, lines 6-9 are adequate.

A second concern is with the requirement found on page 1 lines 33-36 requiring providing the written document and then requiring the victim to sign the document (“ . . .shall be signed by the survivor. . .”) Sexual assault victims are very distraught and traumatized especially immediately following the attack. To put a piece of paper in their hand with a requirement that they sign it does not seem very compassionate and closely mirrors advising suspects of their rights. We are

not convinced at this time this is a good practice. Worse, it could be counterproductive in the process of identifying key information related to the investigation.

We believe repeatedly forcing the rights document at every contact with the system with a demand the victim sign it may be more harmful than good. The information to be on the form presented repeatedly to a victim is extensive. We are concerned, especially in the earliest stages after the crime has occurred, if the victim is in the proper state of mind to comprehend everything on such a document and how much of a delay will be created as we attempt to respond to the many questions it may raise for the victim.

Another thing that doesn't appear to be addressed in the bill is what happens if the victim declines to sign the rights form. Does that mean we must walk away and not interview the victim? Even if the victim wants to cooperate with us but just doesn't feel comfortable signing a document under pressure?

Third, we have major concerns with the provision on page 2, line 41 through page 3, line 4, requiring victim access to "complete and unaltered" copies of "all law enforcement reports" concerning their sexual assault. This is just a bad idea on many levels and we cannot think of any other crime where such access to investigative reports is provided. Access like this can provide information that could taint the victim's testimony of the events or jeopardize later investigation. Reports may contain accusatory information regarding other people contacted in the investigation that later is found to be not true. These reports can contain very personal and sensitive information about a variety of persons contacted during the investigation. While we agree the victim should be kept informed of developments in the case, sometimes the nature of the information makes that inadvisable and potentially harmful to the criminal case.

Fourth, the right to an attorney as provided on page 3, lines 12-16 is also concerning. Again, advising the victim they have a right to an attorney is eerily similar to what we are required to do with suspects. Victims often perceive that they are the ones on trial and that they may not be believed. We believe advising them they have a right to have an attorney present is unnecessary and ill advised.

Fifth, the creation of civil liability on page 3, lines 17-20. Creating civil liability for any form of violation of any of the requirements is troubling. This is a very broad civil liability provision absent any requirement of willful misconduct or verified harm to the victim. We oppose this provision.

In summary, even follow-up interviews with victims can be delayed while repeatedly attempting to inform the victim of these rights and while coordinating the schedule of the investigator, the victim, a counselor, an attorney, and a support person. These may delay the discovery of evidence or the ability to take the suspect into custody.

To be clear, we support sexual assault victim access to trained counselors and support persons. However, requiring it to the degree suggested in this bill is, in our opinion, is out of balance with investigative needs and perhaps even some of the victim's needs. Especially those immediately following the attack. We must remember a thorough and prompt investigation is also an important support component for victims.

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