Let Families Confer With the Prosecutor — Privately

Makes what a victim tells the prosecutor, in exercising the constitutional right to confer, privileged — so families can speak candidly without the defence reading it.

90TH LEGISLATURE • PROPOSAL
Adds Code of Criminal Procedure Art. 56A.056; conforming change to Art. 39.14
Status: draft — ready for an author

GUIDING PRINCIPLES
Support victims through the criminal justice system • Justice requires innocence protection

CHAMPION SOUGHT
Author / co-author / endorser / testifier / adviser — whichever role your group can take

THE ASK We ask victims' advocacy organisations to **champion, endorse, testify for, or advise on** this bill — and members of the 90th Legislature to consider authoring it. No organisation is a supporter until it commits.

1 — THE PROBLEM VICTIMS FACE TODAY

Article I, §30 of the Texas Constitution gives every victim, on request, the right to *confer* with the prosecutor's office. Nothing protects that conversation. One father texted rebuttal questions to the prosecutor during his daughter's first trial, then spent a year building a binder for the retrial. On the retrial's eve, the defence claimed he had run a "private investigation outside the protection of *Brady*" — and the court ordered all his correspondence with the prosecutor handed over. Every family after his learns the lesson: say less.

2 — WHAT THIS BILL DOES

- **Creates a privilege for conferring communications** — views on charging, dismissal, plea and sentence; questions; and analysis or strategy offered to the prosecutor — never facts. It codifies §30 in §30's own terms.
- **The privilege belongs to the victim or family member themselves** — never the prosecutor, and no designated representative may stand in for family. Only the holder waives, in writing; for a joint message, only its author or authors can waive it — being copied gives nobody a veto.
- **Adds notice, a stay, and a one-time explanation.** Before any court-ordered disclosure, the holder gets notice and standing to seek a stay; at the start, one plain-language explanation of what is protected and what is not.

3 — HOW IT HELPS VICTIMS

BEFORE	AFTER
A family that helps the prosecutor can have its correspondence handed to the defence on the eve of trial — so advocates warn families to be careful what they tell the prosecutor.	The same family confers candidly under a privilege it holds itself. Facts stay discoverable; anything exculpatory reaches the defence only through a judge's sealed review.

> *"Conferring with the prosecutor should not be conducted under surveillance by the defence."*
> — Lawrence Baitland, father of Cayley Mandadi, murdered October 29, 2017

4 — BALANCE & SAFEGUARDS

The accused's rights come first; the line is drawn by *content, not who is speaking*. A victim who testifies keeps the privilege only over genuine conferring — never over factual statements, reachable under Art. 39.14 and Rule 615 as today. Anything exculpatory, impeaching or mitigating loses protection through sealed in camera review; the prosecutor's duties under Art. 39.14(h) and Rule 3.09(d) are preserved, unconditioned.

5 — HOW HARD WILL THIS BE TO PASS?

●●●●○ **High**

Research found no such privilege in any other state — a strength ("Texas leads") and the central risk, pending audit confirmation. Expect Morton-legacy arguments and split prosecutors. Likely stall point: committee scrutiny of the *Brady* fencing. Non-negotiable: facts stay unprivileged, *Brady* absolute.

6 — RISKS & MITIGATIONS

RISK / OBJECTION	MITIGATION IN THE BILL OR MESSAGE
"It will hide exculpatory material — the next Morton case"	Fact material is excluded entirely; exculpatory portions go through sealed in camera review (Gov't Code §420.074 model); the Art. 39.14(h) duty is preserved.
"The victim is a witness — her statements are impeachment"	Correct for facts — never privileged. Rule 615 production is expressly untouched.
"A secret second prosecution file"	Prosecutor work product is already non-discoverable. Classification is by content, whatever the label, and a sealed log lets a judge audit claims.

7 — WHO IS LIKELY WITH US — AND AGAINST US

POTENTIAL ALLIES

Texas Crime Victims United — survivor-run; mission fits. Status: to approach.

Texas Assoc. Against Sexual Assault — championed the advocate-privilege law this extends. Ask: endorse, testify.

Texas Council on Family Violence — parallel Fam. Code ch. 93 privilege. Ask: endorse, advise.

LIKELY OPPONENTS

Texas Criminal Defense Lawyers Assoc. — privilege-litigation and equality grounds.

ACLU of Texas / Innocence Project of Texas — *Brady* and Morton-legacy grounds.

Some prosecutors — split: exposure and workload; engage their association early.

Best counter: this protects a citizen's input — not evidence.

8 — POTENTIAL AUTHORS FROM BILL SCORING

CANDIDATE	SCORE*	WHY THEY FIT
Sen. Joan Huffman — SD 17	**71**	Former prosecutor and judge; legislated on both conferring (SB 1120) and discovery (SB 1124).
Sen. Tan Parker — SD 12	**67.5**	Vice-Chair, Senate Criminal Justice (89th); author of SB 1704.
Sen. Juan "Chuy" Hinojosa — SD 20	**64.5**	Senate Criminal Justice member; SB 1120 co-author; author of SB 761.

* Score = the advocates' prior bill-scoring rating (89th backtest). Re-verify in January; results unofficial until the canvass.

COST
No significant fiscal note expected — procedural; works through existing prosecutor offices and courts.

EVIDENCE IT CAN WORK
Texas already runs this model for sexual-assault and family-violence advocates (Gov't Code §§420.071–.074; Fam. Code ch. 93); the U.S. Supreme Court approved it in *Ritchie* (1987).

NEXT STEP
A 20-minute briefing, then a yes or no on championing. Contact: Lawrence Baitland.