To: Rape Crisis and Family Violence Centers

Re: SB8

***The following information is not meant to serve as legal advice.***

We hear and share your concerns, triggered by Senate Bill 8 going into effect, for all Texans, and particularly survivors and the vital advocacy services we provide. TAASA and TCFV stand in strong support of survivors’ rights to make their own decisions about their healthcare. We believe that bodily autonomy is a core value for our movement. Removing options available to survivors diminishes safety and this law greatly reduces access to abortion services as clinics and providers attempt to comply. Further, the law creates a climate of fear for anyone who is or may become pregnant and any person supporting them- eviscerating two main protective factors – connection and social support. In essence, SB 8 compounds barriers and threats for countless survivors of sexual assault and domestic violence.

**What is SB 8?**

SB 8, titled the “Texas Heartbeat Act,” took effect on September 1, 2021. The law prohibits physicians from performing or inducing an abortion if there is a detected ‘fetal heartbeat’[[1]](#footnote-1), unless there is a medical emergency due to a medical condition of the mother that necessitates the abortion.[[2]](#footnote-2)

Enforcement Through Private Civil Action : The law allows any person to file a lawsuit against a physician who performs an abortion if there is a detected ‘fetal heartbeat’. The law also allows any person to file a lawsuit against any person who *“knowingly engages in conduct that aids or abets the performance or inducement of an abortion.”* This includes paying for or reimbursing the costs of an abortion. The law does not allow a person to sue the person on whom an abortion is performed.

Civil Liability: A plaintiff who is successful in their lawsuit may be awarded a minimum of $10,000 for each abortion performed, as well as costs and attorney’s fees. By contrast, defendants who successfully defend the lawsuit are not entitled to attorney’s fees.

Statute of Limitations: The law applies to any abortion services occurring on or after September 1, 2021, and a plaintiff has 4 years from the date of the abortion to bring a lawsuit against a provider or third party.

**Are there any exceptions or defenses to SB 8?**

Who may NOT file a lawsuit:

* State employees: An officer or employee of a state or local governmental entity may not file a lawsuit under this law, and may not enforce the law. Enforcement of law has been shifted from public, governmental entities to the private sector.
* Sexual assault offenders: A person who caused pregnancy through rape, sexual assault, incest, or any other act prohibited by Texas criminal sexual assault statutes may not bring a lawsuit under this law. However, the law is silent on how a person establishes that this crime occurred.

Protection of Free Speech: The law appears to protect third parties’ 1st Amendment right to free speech with the following language: *“This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution.”*

Affirmative Defense: A third party who is sued for aiding and abetting an abortion can assert the affirmative defense that they reasonably believed that the physician performing the abortion would comply with the law (i.e., not perform the abortion if there is a fetal heartbeat detected).

**How does SB 8 impact service providers?**

Advocacy entails providing information and referrals to survivors of domestic and sexual violence to further their safety, healing, and recovery. It includes discussions about reproductive coercion- an extremely prevalent tactic used by IPV perpetrators- and empowering survivors to engage in autonomous planning and decision-making regarding reproduction. Advocacy centers conversations with sexual assault survivors about their choices about their body. It also can include information about terminating an unwanted pregnancy or a pregnancy that presents even more safety risks for a survivor. Inherent to an advocate role is the recognition and support of survivors as the experts of their own safety and wholly autonomous decision makers in their life choices.

**Is this advocacy now considered *aiding and abetting an abortion?***

The courts will interpret what constitutes aiding and abetting*,* and this will require a private civil action to be taken against someone thought to be *aiding and abetting* to result in an interpretation.  Texas law lacks statutory definitions for these terms, and SB 8 provides no guidance.

Importantly, the law’s protection of 1st Amendment rights would appear to support advocates and other service providers who provide information about the law, and offer resources, referrals and information, as long as a service provider refrains from actively advocating for a survivor to seek an abortion after the time period for which the service is deemed illegal.

**How does Advocate Privilege intersect with SB 8?**

While not a direct response to this law, Texas now has victim-advocate privilege laws that support both victims of sexual assault and family violence. These laws prohibit disclosure of information shared with staff at Family Violence and Rape Crisis Centers (RCC)- with few exceptions- and would provide that any communication held about a survivor’s choice is privileged and/or confidential in a court setting.

There is no exception that would apply under this lawsuit unless the ***survivor chooses*** to disclose the information. To learn more about these laws please reach out to TAASA or TCFV’s Policy team.

**Advocacy within the bounds of SB 8:**

Advocates can and should support survivors, and their rights to bodily autonomy, within the bounds of SB 8.

* Conversations about reproductive health and pregnancy should occur immediately upon interfacing with survivor or during intake and throughout the course of service provision so that advocates can offer information about this law and engage in ongoing conversations regarding reproductive life planning.
* Residential and non-residential programs should consider stocking over-the-counter pregnancy tests, contraception, and pregnancy prophylaxis that is readily available and easily accessible to clients. Further, advocates should be prepared to explain how emergency contraception works, and the timing for its effective use.

\**TCFV will be hosting a webinar discussing responsive reproductive life planning advocacy, including resources for advocates and survivors having these conversations, on Health Cares About Domestic Violence Day (HCADV), October 13th, at 1pm. Please register for this important conversation* [*here*](https://tx.coalitionmanager.org/eventmanager/onlinetraining/details/2043)*.*

As the implications and interpretations of SB 8 continue, programs and advocates working with survivors are of vital importance. Survivors deserve information to make informed choices as they are the experts on their bodies and circumstances. Survivors should be afforded the dignity and safety that advocate support and privacy can bring following trauma.

Together we will get through this with our continued unified our support for survivors of domestic violence and sexual assault in Texas.

* TAASA & TCFV

For Questions Please Email:

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1. It is important to note that at the 6-week developmental stage of a fetus, a heart does not yet exist and [medical science](https://www.livescience.com/65501-fetal-heartbeat-at-6-weeks-explained.html) and medical associations like the American College of Obstetrics and Gynecology have asserted the [misleading nature](https://www.theguardian.com/world/2019/jun/05/abortion-doctors-fetal-heartbeat-bills-language-misleading) of characterizing the tone created by an ultrasound as a ‘heartbeat.’ [↑](#footnote-ref-1)
2. If a medical emergency exists, the physician must specify that medical condition and the medical rationale for the reason the abortion is necessary in a written certification to be kept in the woman’s medical records, as well as in the physician’s practice records. [↑](#footnote-ref-2)