

## A Right is Not a Right Without Access and Understanding

*Angie McCown, Director of Victim Services Division*

In this edition of *The Victim's Informer* we provides a review of the 83rd Texas Legislative Session and those bills that directly impact victims' rights and services. I remember early in my victim services career handing victim/survivor rights brochures to victims at crime scenes, hospitals and my office. At the time, I was new to the field and I had read the victims' rights listed in the brochure and I thought I understood them. I would explain to victim/survivors that they could review the rights and call me should they have any questions, and the only right that I typically reviewed in any detail was Article 56.02 (a) (6), Code of Criminal Procedure the right to receive information regarding compensation.

I don't recall any victim/survivors calling me to ask questions about the rights. During this same early phase of my career I taught law enforcement officers about the impact of crime on victim/survivors and victim sensitivity, including the importance of distributing the victims' rights brochure. I would have power

point slides (or it may have been overhead transparencies) that listed each right in Article 56.02. I don't remember any officers asking me any questions about these rights.

In 1996 I was sitting with a homicide survivor whose daughter had been murdered. It was several weeks after the murder and although the police had the suspect in custody, the case was still under investigation. I remember her pulling the brochure out of her purse and saying, "I am an educated woman but these rights are written in legalese, and since "\_\_\_\_\_ " was murdered I just can't seem to think straight. Would you explain to me what this means and how I am supposed to go about exercising these rights?" That was the first time I really thought about how it might be difficult to understand the rights as written, and that there was a definite need to explain to a victim/survivor how to exercise their rights.

For many of the victim/survivors we work with, these victims' rights become their "guide" to understand and navigate the criminal justice



system, and give them a sense of control over their destiny after they have been harmed by crime. As you review the article on Legislative Updates and the changes to the Code of Criminal Procedure, Chapter 56 Rights of Crime Victims, I challenge you to think about all crime victims' rights, their importance to victim/survivors and to those of us who provide victim services. I challenge you to make a commitment to yourself and to those victim/survivors you serve to take the time to explain these rights to them and to discuss with them the steps they might take to exercise their rights and begin to take control of their destiny within the criminal justice system. ★

## 83rd Legislative Session

### Legislation Updates With a Focus on Victim Services

by Brooke Ellison

During the Regular Session of the 83rd Legislature, 10,630 bills were introduced and 5,909 passed (Source Texas Legislature Online). Of the bills that passed, many will impact the criminal justice system and the victim services field.

Below is a summary of some of the bills that passed that directly address the Victim Impact Statement (VIS), crime victims' rights, parole review for certain types of offenses, and a pretrial victim offender mediation dialogue.

#### **SB 213 (Sec. 24, 25, 26 & 39)**

**Topic:** VIS received indication on the judgment, duties of the prosecutor and court regarding the VIS, and development of VIS recommendations

**Status:** Effective Date is 9-1-2013

#### **Amended/Added Statutes:**

Articles 42.01, 56.03, and 56.04, Code of Criminal Procedure (CCP)

**Discussion:** This bill:

- requires the judgment to indicate if a VIS was returned to the attorney representing the state;
- directs the court, prior to the imposition of the sentence, to inquire, as applicable in the case, if a VIS was returned to the attorney representing the state and, if so, consider the VIS;
- requires, on the inquiry of the court, the attorney representing the state to make available a copy of the VIS for consideration by the court sentencing the defendant;
- requires the court to attach a copy of the victim impact statement to the offender's commitment papers, if the court sentences the defendant to imprisonment in the TDCJ;
- requires the attorney representing the state to forward any victim impact statement received in the case to the community supervision and corrections department, if the

*Remember that TDCJ VSD offers email notifications in addition to letter notifications! Email allows for immediate notification via computer, mobile device, or wherever internet access is available. Those already registered with the confidential Victim Notification System (VNS) should have received a letter with instructions on how to take advantage of this new option.*

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## 83rd Legislative Session - Legislation update (cont.)

court sentences the defendant to a term of community supervision; and

- requires the TDCJ Victim Services Division, in consultation with the Board of Pardons and Paroles, law enforcement agencies, prosecutors' offices and other participants in the criminal justice process to develop recommendations to ensure that completed VISs are submitted to the TDCJ.

### **SB 1192**

**Topic:** Crime victims' rights for sexual assault victims

**Status:** Effective Date 9-1-2013.

*NOTE: A law enforcement agency, prosecutor or other participant in the criminal justice system is not required to use a VIS form that complies with Article 56.03, CCP until January 1, 2014, (as it relates to the inclusion of the crime victims' rights for sexual assault victims).*

**Amended Statutes:** Articles 56.01, 56.02, 56.03, 56.021, 56.04, 56.045, CCP and Section 57.002, Family Code.

**Discussion:** This bill:

- in addition to the crime victims' rights in Article 56.02, CCP, adds crime victim's rights for sexual assault victims (Art. 56.021, CCP);

- if requested, the right to a disclosure of information regarding any evidence that was collected during the investigation of the offense, unless disclosing the information would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which that information is expected to be disclosed (Subsection (a)(1));

- if requested, the right to a disclosure of information regarding the status of any analysis being performed of any evidence that was collected during the investigation of the offense - (Subsection (a)(2));

- if requested, the right to be notified: at the time a request is submitted to a crime laboratory to process and analyze any evidence that was collected during the investigation of the offense; at the time of the submission of a request to compare any biological evidence collected during the investigation of the offense with DNA profiles maintained in a state or federal DNA database; and of the results of the comparison described by Paragraph (B), unless disclosing the results would interfere with

the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which those results are expected to be disclosed - (Subsection (a)(3));

- if requested, the right to counseling regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection - (Subsection (a)(4));

- for the victim of the offense, testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS - (Subsection (a)(5)); and

- to the extent provided by Articles 56.06 and 56.065, for the victim of the offense, the right to a forensic medical examination if, within 96 hours of the offense, the offense is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility (Subsection (a)(6)).

- A victim, guardian, or relative who requests to be notified under Subsection (a)(3) must

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# D'An Anders receives Ellen Halbert Victims' Advocacy Award from the Texas Corrections Association



*D'An Anders speaks during the Suzanne McDaniel Memorial Tree Planting Ceremony during the 2013 National Crime Victims' Rights Week (left), and later receives the Ellen Halbert Victims' Advocacy Award from Stuart Jenkins, TDCJ Parole Division Director (right).*

## *TDCJ Staff*

The TDCJ Victim Services Division would like to take this opportunity to thank D'An Anders, of the Texas Legal Services Center, for her continued work in advocating for victims and congratulate her on her recent service award from the Texas Corrections Association.

The Texas Corrections Association recently presented D'An Anders with the Ellen Halbert Victims' Advocacy Award at its annual conference. The award recognizes an individual who has demonstrated effective advocacy for the rights of crime victims at the local, state, or national level and who

has exhibited understanding and compassion in his or her efforts on behalf of crime victims.

D'An Anders demonstrates such effective advocacy for crime victims' rights and their safety by assisting crime victims in obtaining protective orders and protective order extensions.

Pursuant to Section 85.025(c), Family Code and Article 7A.07(c), Code of Criminal Procedure, a protective order is extended for one year - from the date of the offender's release - if the protective order expired while the offender was confined or incarcerated.

The TDCJ Victim Services Division routinely refers crime victims to the Texas Legal Services Center, where D'An is employed, for assistance in obtaining a protective order with the new expiration date. This is vital information for law enforcement agencies who are responding to a report of a violation of a protective order.

Through her willingness to educate criminal justice professionals of the importance of crime victims' safety and her commitment to assist victims of crime, D'An effectively advocates for crime victims in the state of Texas. ★

# Who's Voting the Case?

*from the Board of Pardons and Paroles*

Crime victims often wonder who will be responsible for reviewing and deciding if their offender will be released to parole or mandatory supervision. It is natural to want to know who will vote on parole for the offender who committed the crime, and crime victims may wish to speak with the Board member prior to their decision.

With a state as geographically expansive as Texas, and with thousands of parole decisions made each year, the Board of Pardons and Paroles has established six Board offices throughout the state. Each Board office is assigned to review and to make decisions on the cases of offenders in prisons, state jails, and other facilities in their area.

In most cases, the parole panel hearing a case will be composed of the Board member and two parole commissioners located at the office to which the prison facility is assigned. For example, an offender housed at the McConnell unit in Beeville will have his or her case reviewed by the San Antonio parole panel, with a few exceptions addressed later in this article.

As a victim, if you wish to speak to the lead voter in that case prior to the panel decision, the TDCJ Victim Services Division will send your name and contact information to the Board office. The lead voter will arrange a time to speak with you, typically over the telephone, though personal meetings may also be arranged if you prefer.

The Board web site lists the six offices under Contact Information on the left-hand side of its website. Clicking on a particular office provides information about the voters at that facility and the assigned units. The Assigned Units links provide listings of the prison facilities in an office's jurisdiction.

Board offices are located in Amarillo, Angleton, Gatesville, Huntsville, Palestine and San Antonio. While the Board also has offices in Austin, those are administrative offices and no cases are voted from these locations.

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## **Wish to speak with the lead voter in your case prior to a Board decision?**

**Please contact the TDCJ Victim Services Division or the Board office which has responsibility for that case.**

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The most significant exception to a Board office-based parole panel deciding a case is when a full Board vote is required (referred to as SB 45 cases based on the law passed during the 74th Legislature). Only the seven Board members may vote in these cases. These cases are limited to capital felons, those convicted of certain sexual crimes, or those serving more than 35 calendar years of prison time.

In these cases, the lead voter is still geographically assigned to the appropriate Board member. The case then travels to each Board member for review and vote. The



law requires a two-thirds majority of the voting members for parole approval and, if parole is denied, it stipulates a three-year set off (or Serve All if less than three years remain on the sentence).

Special parole panels also are established in particular cases. The Amarillo office currently is charged with any special reviews resulting from new information, and the Huntsville office handles all Medically Recommended Intensive Supervision (MRIS).

While the parole panels consist of individual voters, each panel has specific information which it reviews in each case. A variety of factors are considered in evaluating an offender's potential for successful reentry into society. Research-based Parole Guidelines assessment provides a score ranking of the offender and a benchmark for voters, but they also consider victim and trial official statements, letters of support and protest and other factors. ★

*This article is provided by the Board of Pardons and Paroles. Board Member David Gutierrez is the liaison between TDCJ Victim Services Division and the Board.*

# AGENCY PROFILE: TEXAS ASSOCIATION AGAINST SEXUAL ASSAULT

*by John Nelson*

You may have noticed in the last edition of the *Victim's Informer* the National Crime Victim's Rights announcement from the Office of Justice Program's Office for Victims of Crime awarding the Ronald W. Reagan Public Policy Award to the Texas Association Against Sexual Assault (TAASA).

TAASA advocates legislation favorable to victims and advocates, and the award specifically addresses a 2007 law funding sexual assault services through a \$5 per customer fee at sexually oriented businesses permitting the sale or consumption of alcohol. Under the current law, \$25 million every two years would be set aside to support sexual assault services, rape crisis centers, and other services, with the remainder of the monies going to fund other state programs. This program has inspired other states in the country to pursue similar legislation.

TAASA's stated mission is to assist sexual assault survivors and to create a Texas free from sexual violence. The fees collected under the 2007 law would support a range of projects TAASA oversees.

For example, TAASA recently advocated for legislation that would require all emergency rooms in Texas to provide sexual

assault forensic examinations or provide transportation to a facility that staffs a certified sexual assault nurse examiner (SANE).

Previously a facility that did not staff a SANE could provide basic treatment but could not provide a proper forensic exam. The victim would be forced to travel to another hospital, which in some rural areas of Texas may be over a hundred miles away. This is an example of the type of revictimization that can be so devastating for victims and frustrating for victim services professionals.

TAASA is also working on a pilot project as part of the Prison Rape Elimination Act (PREA), a federal

law passed in 2003 to combat sexual assault and rape occurring in jails, prisons, and detention facilities around the country.

TAASA works with TDCJ in state prisons, as well as with other agencies that manage and operate any and all detention facilities through the state, including local jails, private prisons, immigrant detention centers, and juvenile correction centers, in order to educate facility staff and inmates about sexual assault.

The TDCJ works with TAASA through the PREA Ombudsman and the Safe Prison Program.

In accordance with Section



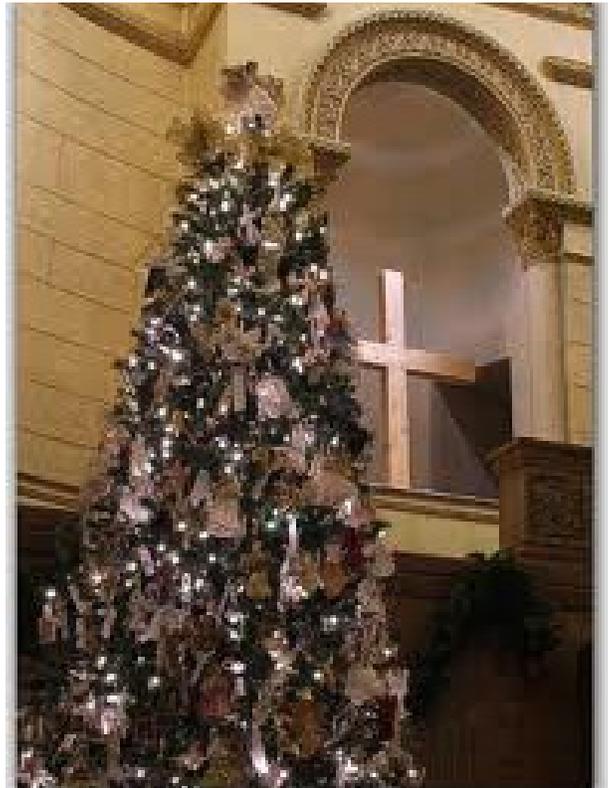
*Victoria Camp and Annette Burrhus-Clay receive the Ronald W. Reagan Public Policy Award on behalf of TAASA from Attorney General Eric Holder and the Office for Victims of Crime.*

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# WHAT IS THE TREE OF ANGELS?



A meaningful Christmas program for victims of violent crime, and so much more...



*by Carol Tompkins*

The Tree of Angels is a meaningful Christmas program specifically held in memory and support of victims of violent crime. The Tree of Angels allows your community to recognize that the holiday season is a difficult time for families and friends who have suffered the crushing impact of a violent crime.

This special event honors and supports surviving victims and victims' families by making it possible for loved ones to bring an angel ornament to place on a Christmas tree. The first program was implemented in December 1991 by People Against Violent Crime (PAVC) in Austin. Over the past 22 years the Tree of Angels

has become a memorable tradition observed in many communities, providing comfort, hope, support, and healing.

## **Interested in hosting a "Tree of Angels" in your community?**

A "How-To-Guide" is available electronically on how to establish a "Tree of Angels" ceremony in your community. The Tree of Angels is a registered trademark of PAVC and we are extremely sensitive to ensuring that the original meaning and purpose of the Tree of Angels continues and is not distorted in any way. For this reason, PAVC asks that if your city or county is interested in receiving a copy of the How-To-Guide, please complete

a basic informational form on the website: [www.treeofangels.org](http://www.treeofangels.org)

After the form is completed electronically and submitted back to PAVC, you will receive instructions on how to download the How-To-Guide. Once you receive confirmation and are provided with the instructions, you will be able to download the How-To-Guide. Please do not share to avoid unauthorized use or distribution of the material.

If you have any questions regarding the How-To-Guide, contact Carol Tompkins at PAVC (512-837-PAVC) or e-mail [carol@peopleagainstviolentcrime.org](mailto:carol@peopleagainstviolentcrime.org). ★

## WE WANT TO HEAR FROM YOU !

### OUR GOAL IS TO PRINT NEWS OF INTEREST FOR VICTIMS AND VICTIM ADVOCATES

The *Victim's Informer* newsletter is published quarterly. Articles, meeting notices, and other submissions should be sent to TDCJ Victim Services Division, Texas Crime Victim Clearinghouse, 8712 Shoal Creek Blvd, Suite 265, Austin, Texas 78757-6899; faxed to 512-452-0825; or e-mailed to [tdcj.clearinghouse@tdcj.texas.gov](mailto:tdcj.clearinghouse@tdcj.texas.gov). For questions or comments, please call us at 800-848-4284 or 512-406-5931.

#### Please Note:

You may access the publication at the TDCJ VSD Internet website. If you wish, we will notify you via e-mail each time *The Victim's Informer* becomes available on the TDCJ VSD Internet website and provide an electronic link to *The Victim's Informer*. Send your e-mail address to:

[tdcj.clearinghouse@tdcj.texas.gov](mailto:tdcj.clearinghouse@tdcj.texas.gov)

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501.172, Texas Government Code, the Texas Board of Criminal Justice's PREA Ombudsman coordinates the agency's efforts to eliminate sexual assault in TDCJ correctional facilities and provides an independent office to receive and respond to allegations of sexual assault.

Other campaigns sponsored by TAASA combat prejudice, sexual assault and dating violence. They are geared for today's youth and for school and university campuses nationwide.

One example is TAASA's "Break the Box" ads, a new media campaign that explores the connections between gender stereotyping and sexual violence while prompting people to reconsider their thinking on gender roles and prejudices. These ads are part of TAASA's wider public awareness campaign available on its website, [www.taasa.org](http://www.taasa.org), and on video sites such as YouTube.

Another such campaign is the Texas Peace Project, which is an opportunity for youth across Texas to become activists to promote change and equality to end all forms of oppression, which creates space for sexual and dating violence to exist.

TAASA believes these and other projects would benefit from a sustainable source of funding thanks to the fee on sexually oriented businesses. Initial objections and appeals made by night club owners regarding the constitutionality of fees on



One example of the TAASA print ad campaign helping to fight the stigma of rape and help survivors find the help and strength they need.

sexually oriented businesses were rejected by the Texas Supreme Court in 2011. At that time the issue received much coverage from local news organizations in Texas, national newspapers, and even *The Economist*.

According to TAASA's Deputy Director Victoria Camp, debates on how exactly to implement the fee and disperse funds continue in court. In the meantime, funds that have been collected since the law took effect, almost \$15 million, are held by the Texas Comptroller of Public Accounts until the matter is resolved. Until then, victim service professionals here in Texas and throughout the country will continue working with and advocating for victims. ★

# 83rd Legislative Session - Legislation update (cont.)

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provide a current address and phone number to the attorney representing the state and the law enforcement agency that is investigating the offense. The victim, guardian, or relative must inform the attorney representing the state and the law enforcement agency of any change in the address or phone number - (Subsection (b)).

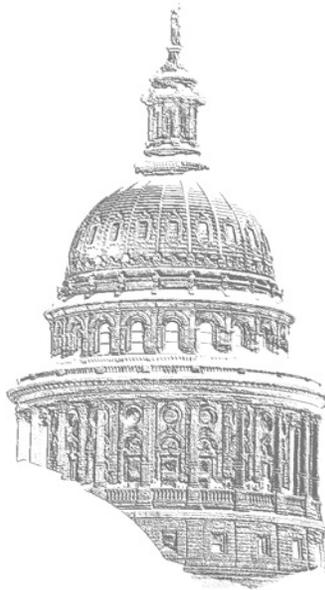
- A victim, guardian, or relative may designate a person, including an entity that provides services to victims of sexual assault, to receive any notice requested under Subsection (a) (3) - (Subsection (b)).

- requires the Victim Impact Statement to include “a clear statement of rights provided by Articles 56.02 and 56.021 [CCP];”

- requires the victim assistance coordinator to ensure that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted in Articles 56.02 and 56.021, CCP;

- allows a sexual assault advocate or representative (whom may be present during a forensic medical exam) to provide information regarding the rights of crime victims in Articles 56.02 and 56.021 [CCP];”

- requires the law enforcement agency, having the responsibility for investigating the crime, to provide the victim a written notice containing the rights of crime



victims under Articles 56.02 and 56.021, CCP; and

- provides the rights in Articles 56.02 and 56.021 [CCP] to victims of juvenile offenders.

## **HB 899**

**Topic:** Crime victims’ rights in capital felony cases

**Status:** Effective Date is 9-1-2013

**Amended Statutes:** Article 56.02, CCP

**Discussion:** This bill:

- adds a crime victims’ right, if the offense is a capital felony, to:

- receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist;

- not be contacted by the victim outreach specialist unless the victim, guardian, or relative

has consented to the contact by providing a written notice to the court; and

- designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

## **HB 1435**

**Topic:** Acquittal by Reason of Insanity: Notice to Victims of Release

**Status:** Effective Date is 9-1-2013

**Amended Statutes:** Article 46C.003, CCP

**Discussion:** This bill:

- permits a victim assistance coordinator, upon request, to provide the clerk of the court with information or other assistance necessary when the clerk is providing notification to a victim, guardian of a victim or close relative of a deceased victim regarding a court order that requires the release of an acquitted person on discharge or on regiment of outpatient care.

## **HB 431**

**Topic:** Parole Review for Injury to a Child, Elderly or Disabled Individual, 2nd or 3rd degree

**Status:** Effective Date is 6-14-2013

**Amended Statutes:** Section 508.141, Government Code

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# 83rd Legislative Session - Legislation update (cont.)

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**Discussion:** This bill:

- requires the Texas Board of Pardons and Paroles to adopt a policy establishing the date on which the Board may reconsider for release an inmate who previously has been denied for an offense punishable as a felony of 2nd or 3rd degree for injury to a child, elderly or disabled individual.

**Note:** *The policy gives the Board of Pardons and Paroles discretion to set-off an offender for up to five years. The policy also includes offenses listed in Section 508.149(a), Government Code.*

## **SB 1237**

**Topic:** Alternative Dispute Resolution / Pretrial Victim Offender Mediation Dialogue

**Status:** Effective Date is 9-1-2013

**Amended Statutes:** Sections 152.002(b), 152.003, 152.006, 152.007, Civil Practices and Remedies Code

**Discussion:** This bill:

- allows the commissioners court

to make reasonable rules relating to the alternative dispute resolution system, including rules specifying whether criminal cases may be referred to the system;

- allows a judge of a district court, county court, statutory county court, probate court, or justice of the peace court in a county in which an alternative dispute resolution system has been established, on the motion of a party or on the judge's or justice's own motion, refer a civil or, if the system accepts criminal cases and on the request of an attorney representing the state, a criminal case to the system, regardless of whether the defendant in the criminal case has been formally charged;

- requires the attorney representing the state to obtain the consent of the victim and the defendant to the referral, before requesting a referral of a criminal case; and

- prohibits a criminal case from being referred to the system if the defendant is charged with or convicted of an offense listed in

Section 3g(a)(1), Article 42.12, CCP or if convicted of an offense, the judgment for which contains an affirmative finding of a deadly weapon. ★

*To learn more about the 83rd Legislative Session, you may consider contacting the legislative coordinator in your organization, if applicable.*

*In addition, some organizations provide legislative updates via webinars or live training.*

*The Texas Association Against Sexual Assault has a pre-recorded webinar, [Update for the 83rd Legislative Session](#).*

*The Texas District and County Attorneys Association [2013 Legislative Update Texas Tour](#) will be provided through September 17, 2013 in various Texas cities.*

Texas Victim Assistance Training Online

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CALENDAR

The Texas Crime Victim Clearinghouse wishes to remind all our readers that a calendar feature has been added for the Texas Victim Assistance Training (TVAT) Online.

Criminal justice and victim services professionals can [view, search, and submit](#) victim-related trainings and events on the TVAT Calendar webpage.

[www.tdcj.texas.gov/php/vscalendar/index.php](http://www.tdcj.texas.gov/php/vscalendar/index.php)