

Digital Evidence Review

Community consultation paper



**Sexual Violence
Review Board**

Key information

About the Sexual Violence Review Board

The Sexual Violence Review Board is an independent group that looks at how Queensland's criminal justice system responds to sexual offences. It examines issues that affect how sexual offences are reported, investigated and prosecuted.

Note on language

Victim / victim-survivor

The Sexual Violence Review Board uses the terms 'victim' and 'victim-survivor'. We know that different people use different words to describe their experiences.

We use both terms to respect everyone's choice and experience.

Sexual offence

When we say 'sexual offence', we mean a sexual act that happened to a victim-survivor without consent. People might use different words for this, such as sexual abuse, sexual assault, unwanted sexual acts, forced sexual acts or rape.



Content warning

This document discusses sexual violence and criminal justice processes. Some people may find this distressing. Please take a break if needed and seek support.

Support services

If this topic raises concerns for you, consider contacting 1800RESPECT (1800 737 732), Lifeline (13 11 14), your local sexual assault service, or another trusted support service.

What we want you to do

Read the information, consider the questions and tell us what you think. You do not need to answer every question. Please provide your submission by **5pm on 6 November 2026**.

How to provide feedback

We welcome additional comments, experiences and suggestions.

Email: SVRBsecretariat@victimscommissioner.qld.gov.au (we prefer to receive email submissions)

Post: SVRB Secretariat, GPO Box 149, Brisbane Qld 400

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About the review

The review is considering whether current laws, policies and practices relating to digital evidence are working well and whether changes are needed.

The review aims to improve the experiences of victim-survivors while ensuring investigations and court proceedings remain fair and effective.

What is digital evidence?

Digital evidence includes information stored or shared through phones, computers, tablets and online accounts. This can include messages, photos, videos, social media posts, emails, information about internet browsing history and location data.



Why is digital evidence important in sexual offence cases?

Because so much information is contained on our phones and devices these days, digital evidence plays a significant role in how sexual offences are reported to police, investigated by police and prosecuted in court.

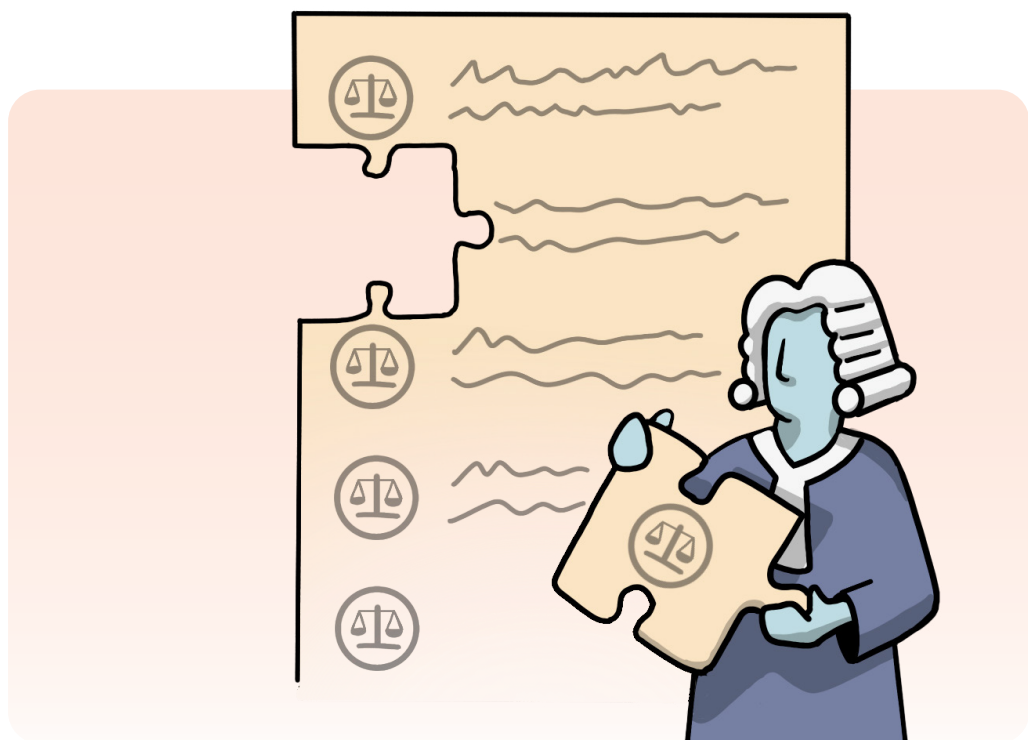
Digital evidence may be collected from phones, laptops or other devices of victims, witnesses and suspects.

The prosecution may be able to use digital evidence to confirm what the victim has said, or to support their argument that the victim did not consent.

The defence may be able to use digital evidence to support their argument that there was consent, or that the victim's version of what happened is not reliable.

Why are we doing this review?

- Current laws, policies and practices may not have kept pace with changes in technology and the growing amount of information stored on personal devices.
- Some victims report that having digital evidence taken from them can be invasive, particularly when they don't have a clear picture of what is being taken, how it will be shared and how it will be used in court.
- At the same time, digital evidence can be important to investigating allegations, testing evidence and ensuring accused people have the right to a fair trial.
- Queensland does not have laws that are specifically about the use of digital evidence in sexual offence cases. This may contribute to different approaches being taken in sexual offence cases across Queensland.
- Without specific laws or guidance, it can be challenging for police, prosecutors and defence lawyers to balance:
 - getting enough digital evidence to do a thorough investigation
 - protecting the right to a fair trial, and
 - protecting victims' privacy and wellbeing.



What are the key issues?

People hold differing views about digital evidence in sexual offence cases.

Some stakeholders consider greater safeguards are needed to protect privacy, consent and wellbeing.

Others emphasise the importance of access to information that may be relevant to investigations and fair trial rights. The review is seeking the public's views on whether current arrangements appropriately balance these interests.

Privacy and consent

A mobile phone can contain years, if not decades, of personal information, including messages, photographs, health information, financial records, social media activity, location history and internet searches.

Police may ask a victim to provide access to some or all of this information as part of an investigation into a sexual offence case.

However, victims may have information on their phone that they do not want to be accessed or shared. They may be concerned because their device contains private information and they do not know what information will be collected, who will have access to it, and whether it could be used in court. They also might not want to be without their phone while the police collect that information, especially if that could take days or weeks.



These concerns may influence some victim-survivors' decisions about whether to report sexual violence to police or continue participating in the case.

If victim-survivors are asked to provide access to digital information at a stressful time, they may not fully understand what information is being collected, why it is being collected or how it may later be used.

We want to understand how digital evidence processes could be improved to better protect victims' privacy. We would also like to know how police help victims understand what digital evidence will be taken, how it will be used and stored, and how a victim's consent is sought before digital evidence is collected.

Why this matters:

Privacy concerns may affect whether victims feel comfortable engaging with the justice system and it can impact their experience through the criminal justice process.

What do you think?

- What information are victim-survivors most concerned about when asked to share their phone or other device?
- What information should victims receive before police access information on their device? What information do they usually receive?
- How do the police make sure the victim-survivors genuinely consent to sharing their digital evidence?
- How could processes be improved to make sure victim-survivors have enough information to genuinely consent to sharing their digital evidence?



Safety and wellbeing

Reporting sexual violence can already be stressful. Requests for digital evidence may add to this stress. Many people can feel fear, distress and shame about sharing deeply personal information or handing over a phone, especially when it is now very common for people to have intimate messages and photos on their phone.

Many victim-survivors rely on their device to stay connected with family, support services and emergency contacts. Being without their device can cause practical challenges for victim-survivors, especially for those who use their device for their job, to do banking, to arrange child-care and to do other practical tasks.



The process may be particularly difficult or expose the victim to violence if the perpetrator becomes aware that evidence – for example, screenshots of messages – is being collected.

We want to understand how the current process of collecting digital evidence affects people's safety and how it impacts them emotionally and practically.

Why this matters:

Digital evidence processes can affect the safety, wellbeing and participation of victim-survivors in the justice system.

What do you think?

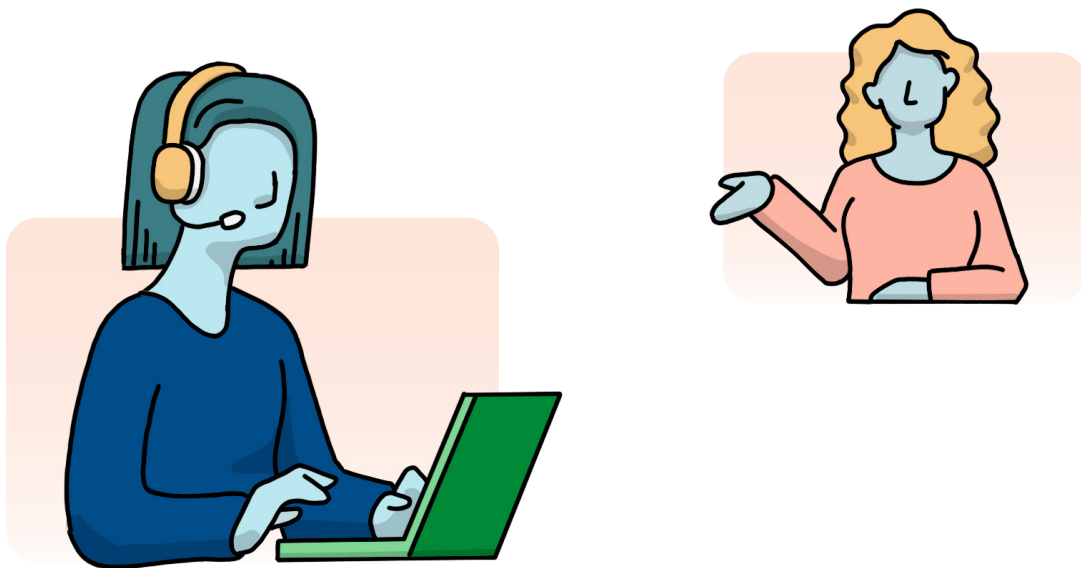
- How long are victim-survivors without their phone / device during digital evidence collection?
- How does this impact on victims' safety and wellbeing?
- Are there particular groups of people who may be affected differently by requests for digital evidence? If so, how?

Access to support

Victim-survivors may need emotional, practical or legal support when digital evidence is involved. For example, support can help victims to understand digital evidence collection and make informed decisions about what might happen if they do provide it. Legal advice can help victims navigate requests for further digital evidence and know how to respond.

However, access to support can vary depending on location, service availability and personal circumstances.

We want to understand what support is currently available and what gaps exist.



Why this matters:

Good support can improve a victim's knowledge of and confidence in the process. This helps make sure their consent to provide digital evidence is genuine, improves their safety and reduces distress.

What do you think?

- What support and guidance is available for victim-survivors to help them through the digital evidence process?
- What additional support should be made available?
- Are there any barriers that make it difficult for victims to get the support they need?

Decisions to report or continue with a case

Some victim-survivors may choose not to report sexual violence or may stop participating in a case. Sometimes concerns about sharing their digital evidence can influence these decisions.

They may be concerned about a lack of privacy, unsure about what information will be accessed and worried about who will see it. These concerns can be heightened when full phone downloads are done, where victim-survivors are not given clear explanations about digital evidence processes or when victims do not trust police.

The criminal justice process can be challenging and distressing for some victim-survivors of sexual assault. Some victim-survivors report concerns that digital evidence requests feel invasive and deter them from reporting or continuing with a case.

We want to understand to what extent these concerns affect reporting and participation.



Why this matters

People should feel safe and supported when reporting sexual violence.

What do you think?

- Why might people choose not to make a report or continue when asked to provide digital evidence?
- Are changes needed? If so, what changes would help?

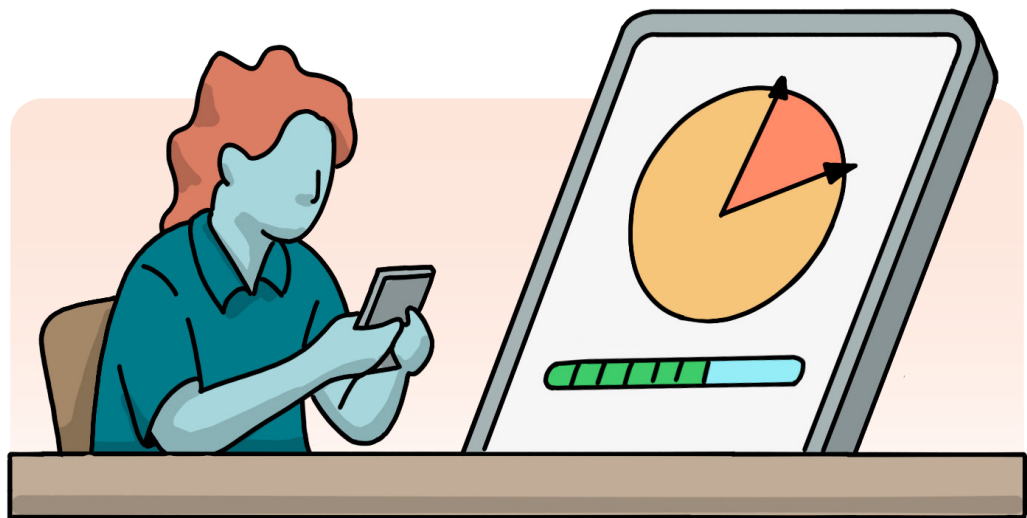
Delays and technology challenges

Modern devices can hold thousands of messages, images and files. Reviewing this information can take a lot of time and that can add time to police investigations or court cases.

Technology changes rapidly. Police and lawyers need the skills, systems and resources to keep up.

Delays can negatively affect victim-survivors, other witnesses and the accused person.

We are interested in practical ways to improve efficiency in digital evidence processes while protecting privacy and fairness.



Why this matters

The right processes, systems and tools are needed to respond to the increased volume of digital evidence in sexual offence cases. Ineffective and inefficient practices can cause delays, which can increase stress and reduce confidence in the justice process.

What do you think?

- How do digital evidence practices cause delays in sexual offence cases? What impact do delays have?
- How could digital evidence processes be improved?

How much digital information should be collected?

Police may collect digital evidence in different ways. It can depend on the practices of police districts, individual officers' level of understanding, the needs of the case and available resources, tools and technology.

In some cases, police may use software to copy the full contents of the phone or device. If software allows, police may be able to collect only selected information. Alternatively, they could use screenshots or video recordings to collect specific messages, photos, videos and other evidence. Sometimes victim-survivors upload or email screenshots to police.

This raises an important question: how much information should be collected to ensure a thorough investigation without accessing unnecessary personal information and causing the victim-survivor further trauma?

Different approaches are currently used across Queensland. The review is considering whether greater consistency is needed and, if so, what good practices could be encouraged.

Why this matters

Some victim-survivors may feel more confident engaging with the justice system if digital evidence collection can be done in a way that avoids unnecessary personal information being accessed.

What do you think?

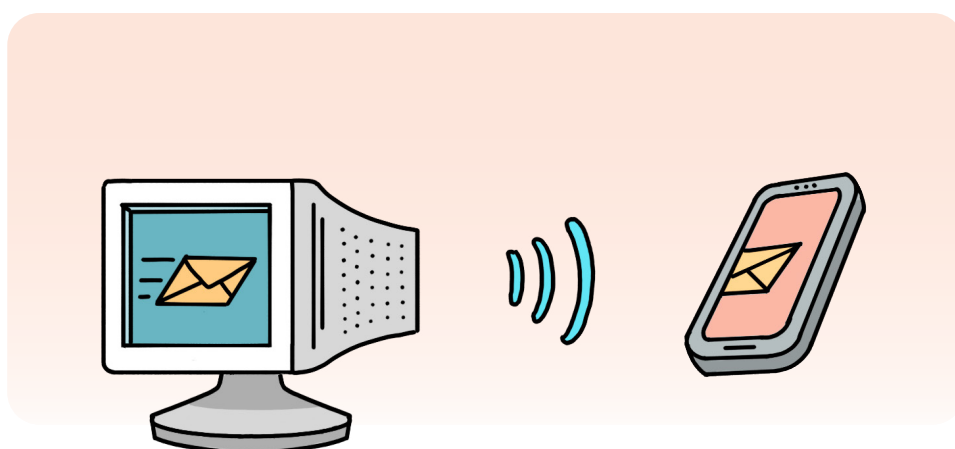
- How do police collect digital evidence from victim-survivors?
- What impacts, if any, do digital evidence collection practices have on victim-survivors?
- What are the best ways that police can collect digital evidence from victim-survivors?
- In what circumstances, if any, should full device downloads be used?
- Should the information collected by police from a victim's phone relate directly to the offence, or should it also include information that could be used to understand more about the victim?
- What information should people receive before digital evidence is collected?

How should digital information be shared?

In criminal cases, prosecutors must share relevant evidence with the defence so that an accused person can receive a fair trial. This is known as disclosure. Digital evidence can form part of that process.

Defence lawyers may argue that access to digital evidence is often necessary to test the reliability of evidence, explore alternative explanations, identify inconsistencies or obtain information relevant to disputed issues in a case.

The challenge is that phones often contain a large amount of personal information that has nothing to do with the case. Determining what information is relevant and what should not be disclosed can be difficult.



Sometimes the defence can request more digital evidence from police and prosecutors after an investigation has started. In some circumstances, defence lawyers can apply for legal orders requiring victims to produce information or devices.

Victim-survivors may find requests to provide more digital evidence confusing, stressful or overwhelming, particularly if they are required to obtain their own legal advice about what information they must provide and whether they can say 'no' to the request.

Some people believe greater safeguards are needed to protect privacy. Others believe it is more important to ensure the defence has access to all the information available to test the evidence and provide a fair trial.

We want to understand how these interests can be balanced.

Why this matters

Some stakeholders think there needs to be stronger privacy protections for victim-survivors whose personal information is collected and disclosed during criminal investigations. Other stakeholders emphasise that it is important that the defence can access information that may be relevant to disputed issues in a case.

What do you think?

- How should the justice system balance a victim's privacy with an accused person's right to a fair trial?
- What information from a victim's phone that the police have collected should be disclosed to the defence?
- Should there be a requirement that the information disclosed should only relate to the offence (not the victim's circumstances or character)?
- Should requests for particularly sensitive digital information be subject to independent review or oversight before the information is shared? Why or why not?
- What protections should be in place before personal information is shared with others in the justice system?
- What information should be given to victim-survivors about what and how digital evidence will be disclosed to the defence?

How should digital evidence be used in court?

Digital evidence can help to establish what happened in a case. It may support a person's account, provide context, identify communications between people or help explain the events leading up to and after an incident.

At the same time, concerns have been raised about how text messages, social media posts and other digital communications can sometimes be interpreted without enough context.

Researchers and victim advocates have also raised concerns that personal information may be used to challenge a victim-survivor's credibility unfairly or reinforce harmful stereotypes about how people affected by sexual violence should behave.

Others argue that digital evidence can be important in assessing credibility, reliability and disputed factual issues.

We want to understand whether current practices are fair, appropriate and consistent with community expectations.

Why this matters

Digital evidence can be powerful, but it should be used in a way that is fair, relevant and respectful of everyone involved.

What do you think?

- Have you observed or experienced the use of digital evidence in a sexual offence case? If so, how was it used?
- Are current court processes sufficient to ensure digital evidence is interpreted fairly?
- Are there risks that digital evidence may reinforce misconceptions or stereotypes about sexual violence?
- Are changes needed to improve confidence in the way digital evidence is used in court?

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