

**Polygraphs  
SART Listserv  
September 2007**

**Issue:** What states perform polygraphs on victims?

[Note: In 2005, Congress reauthorized the Violence Against Women Act of 1994 in legislation commonly referred to as VAWA 2005.

In order to be eligible for grants VAWA STOP formula grants, a State, Indian Tribal Government, Territory Government, or unit of Local Government must certify that by January 5, 2009, their laws, policies, or practices will ensure that no law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, Tribal, State, Territory, or local law to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense.

The refusal of a victim to submit to an examination described [above] shall not prevent the investigation, charging, or prosecution of the offense].<sup>i</sup>

**Florida**

- A new victim's rights statute states that no law enforcement officer, prosecuting attorney or government official shall ask or require a victim of a sexual offense to submit to a polygraph examination or other truth-telling device as a condition of the investigation.

**Indiana**

- As of July 1, 2007, a law enforcement officer may not require an alleged victim of sex crime to submit to a polygraph examination. Also, law enforcement may not refuse to investigate charge or prosecute an offense under the sex crimes statute because the alleged victim of the offense has not submitted to a polygraph exam. It does not prohibit an alleged victim of an offense under the sex crimes statute from voluntarily submitting to a polygraph exam. Notice this does not apply to voice stress analysis.

**Michigan**

- Victim polygraphs are illegal in Michigan.
- Victim's can request one, but cannot be asked to take one.

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## ***Supplemental Resources***

### **Limits on Polygraphing Victims of Sex Crimes**

Comments on 502 KAR 20:020 Section 3

(Regulation governing Polygraph Examiners in Kentucky)

[http://www.kasap.org/site/pdfs/Polygraph\\_Facts\\_for\\_Professionals.pdf](http://www.kasap.org/site/pdfs/Polygraph_Facts_for_Professionals.pdf)

### **California**

Penal Code § 637.4.

a) No state or local governmental agency involved in the investigation or prosecution of crimes, or any employee thereof, shall require or request any complaining witness, in a case involving the use of force, violence, duress, menace, or threat of great bodily harm in the commission of any sex offense, to submit to a polygraph examination as a prerequisite to filing an accusatory pleading.

(b) Any person who has been injured by a violator of this section may bring an action against the violator for his actual damages or one thousand dollars (\$1,000), whichever is greater.

### **Colorado**

C.R.S. §18-3-407.5.

SECTION 3. Part 4 of article 3 of title 18, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

18-3-407.5. Victim evidence - forensic evidence - electronic lie detector exam without victim's consent prohibited. (1) any direct cost associated with the collection of forensic evidence from the victim shall be paid by the referring or requesting law enforcement agency.

(2) no law enforcement agency may require a victim of a sexual offense to submit to a polygraph examination or any form of a mechanical or electrical lie detector examination as the sole condition for proceeding with any criminal investigation or prosecution. A law enforcement agency shall conduct any such examination only with the victim's written informed consent. Consent shall not be considered informed unless the law enforcement agency informs the victim in writing of the victim's right to refuse to submit to the examination. In addition, the law enforcement agency shall orally provide to the victim information about the potential uses of the results of such tests.

### **Connecticut**

CONN. Gen. Stat. § 54-86 (j)

An act concerning polygraph examinations of sexual assault victims.

(NEW) (a) No member of any municipal police department, the state police or the division of criminal justice may request or require any victim of a sexual assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a of the general statutes to submit to or take a polygraph examination.

(b) For the purposes of this section, "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test or question individuals for the purpose of determining truthfulness.

## **Illinois**

### **CRIMINAL PROCEDURE**

(725 ILCS 200/) Sex Offense Victim Polygraph Act

(725 ILCS 200/0.01) (from Ch. 38, par. 1550)

Sec. 0.01. Short title. This Act may be cited as the Sex Offense Victim Polygraph Act.

(Source: P.A. 86 1324.)

(725 ILCS 200/1) (from Ch. 38, par. 1551)

Sec. 1. Lie Detector Tests. (a) No law enforcement officer, State's Attorney or other official shall require an alleged victim of an offense described in Sections 12 13 through 12 16 of the Criminal Code of 1961, as amended, to submit to a polygraph examination or any form of a mechanical or electrical lie detector test as a condition for proceeding with the investigation, charging or prosecution of such offense, and such test shall be administered to such victim solely at the victim's request.

(b) A victim's refusal to submit to a polygraph or any form of a mechanical or electrical lie detector test shall not mitigate against the investigation, charging or prosecution of the pending case as originally charged.

(Source: P.A. 85 664.)

## **Iowa**

915.44 Polygraph examinations of victims or witnesses -- limitations.

1. A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or claiming to be a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter.

2. An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault shall inform the person of the following:

a. That taking the polygraph examination is voluntary.

b. That the results of the examination are not admissible in court.

c. That the person's decision to submit or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

3. An agency which declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person."

## **New York**

§ 160.45 Polygraph tests; prohibition against.

1. No district attorney, police officer or employee of any law enforcement agency shall request or require any victim of a sexual assault crime to submit to any polygraph test or psychological stress evaluator examination.

2. As used in this section, "victim of a sexual assault crime" means any person alleged to have sustained an offense under article one hundred thirty or section 255.25 of the penal law

### **North Carolina** (Effective July 2007)

"§ 15A-831.1. Polygraph examinations of victims of sexual assaults.

(a) A criminal or juvenile justice agency shall not require a person claiming to be a victim of sexual assault or claiming to be a witness regarding the sexual assault of another person to submit to a polygraph or similar examination as a precondition to the agency conducting an investigation into the matter.

(b) An agency wishing to perform a polygraph examination of a person claiming to be a victim or witness of sexual assault shall inform the person of the following:

(1) That taking the polygraph examination is voluntary.

(2) That the results of the examination are not admissible in court.

(3) That the person's decision to submit to or refuse a polygraph examination will not be the sole basis for a decision by the agency not to investigate the matter.

(c) An agency, which declines to investigate an alleged case of sexual assault following a decision by a person claiming to be a victim not to submit to a polygraph examination shall provide to that person, in writing, the reasons why the agency did not pursue the investigation at the request of the person."

### **Oregon**

163.705 Polygraph examination of victims in certain criminal cases prohibited. No district attorney or other law enforcement officer or investigator involved in the investigation or prosecution of crimes, or any employee thereof, shall require any complaining witness in a case involving the use of force, violence, duress, menace or threat of physical injury in the commission of any sex crime under ORS 163.305 to 163.575, to submit to a polygraph examination as a prerequisite to filing an accusatory pleading. [1981 c.877 §1]

### **Tennessee**

(Effective July 1, 2006)

TN 38-3-123. Prohibition against requiring victims of sexual offenses to submit to polygraph.(a) No law enforcement officer shall require any victim of a sexual offense, as defined in § , to submit to a polygraph examination or any other test designed to detect deception or verify the truth of statements through instrumentation or by means of a mechanical device, as a condition of the officer proceeding with the investigation of the offense.(b) A violation of this section shall subject the officer to appropriate departmental disciplinary action.

### **Texas**

Code of Criminal Procedure

Art. 15.051. Requiring Polygraph Examination of Complainant Prohibited

(a) A peace officer or an attorney representing the state may not require a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense under Section 21.11, 22.011, 22.021, or 25.02, Penal Code.

(b) If a peace officer or an attorney representing the state requests a polygraph examination of a person who charges or seeks to charge in a complaint the commission of an offense listed in Subsection (a), the officer or attorney must inform the complainant that the examination is not required and that a complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

(c) A peace officer or an attorney representing the state may not take a polygraph examination of a person who charges or seeks to charge the commission of an offense listed in Subsection (a) unless the officer or attorney provides the information in Subsection (b) to the person and the person signs a statement indicating the person understands the information.

(d) A complaint may not be dismissed solely:

(1) because a complainant did not take a polygraph examination; or

(2) on the basis of the results of a polygraph examination taken by the complainant.

Added by Acts 1995, 74th Leg., ch. 24, § 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 608, § 1, eff. Sept. 1, 1997.

## **Virginia**

Virginia doesn't have a statute specific to victims of sexual assault, but does have a statute requiring written notice that the polygraph is voluntary, results are inadmissible as evidence, and agreement of victim to take polygraph shouldn't be only condition for initiating or continuing the investigation.

Statute is below:

§ 19.2-9.1. Written notice required for complaining witness who is requested to take polygraph test.

If a complaining witness is requested to submit to a polygraph examination during the course of a criminal investigation, such witness shall be informed in writing prior to the examination that (i) the examination is voluntary, (ii) the results thereof are inadmissible as evidence and (iii) the agreement of the complaining witness to submit thereto shall not be the sole condition for initiating or continuing the criminal investigation.

(1994, c. 336.)

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+19.2-9.1+408572>

## **Wisconsin**

968.265 Lie detector tests; sexual assault victims.

968.265(1)

(1) In this section, "lie detector" has the meaning given in s. 111.37 (1) (b).

968.265(2)

(2) If a person reports to a law enforcement officer that he or she was the victim of an offense under s. 940.22 (2), 940.225, or 948.02 (1) or (2), no law enforcement officer may in connection with the report order, request, or suggest that the person submit to a

test using a lie detector, or provide the person information regarding tests using lie detectors unless the person requests information regarding tests using lie detectors.

968.265(3)

(3) If a person reports to a district attorney that he or she was the victim of an offense under s. 940.22 (2), 940.225, or 948.02 (1) or (2), no district attorney may do any of the following in connection with the report:

968.265(3)(a)

(a) Order that the person submit to a test using a lie detector.

968.265(3)(b)

(b) Suggest or request that the person submit to a test using a lie detector without first providing the person with notice and an explanation of his or her right not to submit to such a test.

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<sup>i</sup> United States Department of Justice Office on Violence Against Women Frequently Asked Questions On Stop Formula Grants Updated November 21, 2007