

STATUTORY COMPILATION

PRESENCE OF VICTIM ADVOCATE IN SEXUAL ASSAULT EXAM

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State victim rights laws generally, as related to the presence of victim advocates in examinations, fall into one of two categories: (1) laws that specifically relate to victims of sexual assault and (2) laws that provide the right to advocate presence for all victims.

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CALIFORNIA

CAL. PEN. CODE §679.04. VICTIM OF SEXUAL ASSAULT; RIGHT TO ADVOCATE AND SUPPORT PERSON

(a) A victim of sexual assault as the result of any offense specified in paragraph (1) of subdivision (b) of Section 264.2 has the right to have victim advocates and a support person of the victim's choosing present at any interview by law enforcement authorities, district attorneys, or defense attorneys. However, the support person may be excluded from an interview by law enforcement or the district attorney if the law enforcement authority or the district attorney determines that the presence of that individual would be detrimental to the purpose of the interview. As used in this section, "victim advocate" means a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, or a victim advocate working in a center established under Article 2 (commencing with Section 13835) of Chapter 4 of Title 6 of Part 4.

(b)(1) Prior to the commencement of the initial interview by law enforcement authorities or the district attorney pertaining to any criminal action arising out of a sexual assault, a victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified orally or in writing by the attending law enforcement authority or district attorney that the victim has the right to have victim advocates and a support person of the victim's choosing present at the interview or contact. This subdivision applies to investigators and agents employed or retained by law enforcement or the district attorney.

(2) At the time the victim is advised of his or her rights pursuant to paragraph (1), the attending law enforcement authority or district attorney shall also advise the victim of the right to have victim advocates and a support person present at any interview by the defense attorney or investigators or agents employed by the defense attorney.

(c) An initial investigation by law enforcement to determine whether a crime has been committed and the identity of the suspects shall not constitute a law enforcement interview for purposes of this section.

CAL. PEN. CODE §264.2(B)(2). "VICTIM OF DOMESTIC VIOLENCE" CARD; NOTIFICATION OF COUNSELING CENTER.

(a) Whenever there is an alleged violation or violations of subdivision (e) of Section 243, or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card, as specified in subparagraph (G) of paragraph (9) of subdivision (c) of Section 13701.

(b)(1) The law enforcement officer, or his or her agency, shall immediately notify the local rape victim counseling center, whenever a victim of an alleged violation of Section 261, 261.5, 262, 286, 288a, or 289 is transported to a hospital for any medical evidentiary or physical examination. The victim shall have the right to have a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, and a support person of the victim's choosing present at any medical evidentiary or physical examination.

(2) Prior to the commencement of any initial medical evidentiary or physical examination arising out of a sexual assault, a victim shall be notified orally or in writing by the medical provider that the victim has the right to have present a sexual assault counselor and at least one other support person of the victim's choosing.

(3) The hospital may verify with the law enforcement officer, or his or her agency, whether the local rape victim counseling center has been notified, upon the approval of the victim.

(4) A support person may be excluded from a medical evidentiary or physical examination if the law enforcement officer or medical provider determines that the presence of that individual would be detrimental to the purpose of the examination.

FLORIDA

WEST'S F.S.A. §960.001(1)(q). Guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.¹

(1) The Department of Legal Affairs, the state attorneys, the Department of Corrections, the Department of Juvenile Justice, the Parole Commission, the State Courts Administrator and circuit court administrators, the Department of Law Enforcement, and every sheriff's department, police department, or other law enforcement agency as defined in s. 943.10(4) shall develop and implement guidelines for the use of their respective agencies, which guidelines are consistent with the purposes of this act and s. 16(b), Art. I of the State Constitution and are designed to implement the provisions of s. 16(b), Art. I of the State Constitution and to achieve the following objectives:

(u) *Presence of victim advocates during forensic medical examination.*--At the request of the victim or the victim's parent, guardian, or lawful representative, a victim advocate from a certified rape crisis center shall be permitted to attend any forensic medical examination.

¹ Statute truncated due to size.

IOWA

IOWA CODE ANN. §915.20. VICTIM COUNSELORS.

1. As used in this section, unless the context otherwise requires:

a. "Proceedings related to the offense" means any activities engaged in or proceedings commenced by a law enforcement agency, judicial district department of correctional services, or a court pertaining to the commission of a public offense against the victim, in which the victim is present, as well as examinations of the victim in an emergency medical facility due to injuries from the public offense which do not require surgical procedures. "Proceedings related to the offense" includes, but is not limited to, law enforcement investigations, pretrial court hearings, trial and sentencing proceedings, and proceedings relating to the preparation of a presentence investigation report in which the victim is present.

b. "Victim counselor" means a victim counselor as defined in section 915.20A.

2. A victim counselor who is present as a result of a request by a victim shall not be denied access to any proceedings related to the offense.

3. This section does not affect the inherent power of the court to regulate the conduct of discovery pursuant to the Iowa rules of criminal or civil procedure or to preside over and control the conduct of criminal or civil hearings or trials.

LOUISIANA

LSA – R.S. 46: 1844. BASIC RIGHTS FOR VICTIM AND WITNESS²

C. Interviewing the victim and witness of a crime.

(1) The district attorney, prior to trial, shall make reasonable efforts to interview the victim or designated family member to determine the facts of the case and whether the victim or the family is requesting restitution.

(2) All law enforcement or judicial agencies shall provide a private setting for all interviewing of victims of crime. "Private setting" shall mean an enclosed room from which the occupants are not visible or otherwise identifiable and whose conversations cannot be heard from outside such room. Only those persons directly and immediately related to the

² Statute truncated due to size.

interviewing of the victim, specifically the victim, a social worker, psychologist, or other professional, the victim advocate designated by the sheriff's office, or a representative from a not-for-profit victim service organization, including but not limited to rape crisis centers, domestic violence advocacy groups, and alcohol abuse or substance abuse groups providing emotional support to the victim, shall be present, unless the victim requests the exclusion of such person from the interview, and, when appropriate, the parent or parents of the victim.

(3) The victim and the victim's family may refuse any requests for interviews with the attorney for the defendant or any employee or agent working for the attorney for the defendant. If the victim is a minor, the parent or guardian of the victim may refuse to permit the minor to be interviewed by the attorney for the defendant or any employee or agent working for the attorney for the defendant. Before any victim may be subpoenaed to testify on behalf of a defendant at any pretrial hearing, the defendant shall show good cause at a contradictory hearing with the district attorney why the subpoena should be issued. Willful disregard of the rights of victims and witnesses as enumerated in this Paragraph may be punishable as contempt of court.

MONTANA

MCA 46-24-106. CRIME VICTIMS--FAMILY MEMBERS--RIGHT TO ATTEND PROCEEDINGS--EXCEPTIONS--RIGHT TO RECEIVE DOCUMENTS--RIGHTS DURING INTERVIEW.

(1) Except as provided in subsection (2), a victim of a criminal offense has the right to be present during any trial or hearing conducted by a court that pertains to the offense, including a court proceeding conducted under Title 41, chapter 5. A victim of a criminal offense may not be excluded from any trial or hearing based solely on the fact that the victim has been subpoenaed or required to testify as a witness in the trial or hearing.

(2) A judge may exclude a victim of a criminal offense from:

(a) a trial or hearing upon the finding of specific facts supporting exclusion or for disruptive behavior; or

(b) a portion of a proceeding under Title 41, chapter 5, that deals with sensitive personal matters of a youth or a youth's family and that does not directly relate to the act or alleged act committed against the victim.

(3) If a victim is excluded from a trial or hearing upon the finding of specific facts supporting exclusion, the victim must be allowed to address the court on the issue of exclusion prior to the findings.

(4) A family member of a victim may not be excluded from a trial or hearing based solely on the fact that the family member is subpoenaed or required to testify as a witness in the trial or hearing unless there is a showing that the family member can give relevant testimony as to the guilt or innocence of the defendant or that the defendant's right to a fair trial would be jeopardized if the family member is not excluded.

(5) As used in this section, "victim" means:

(a) a person who suffers loss of property, bodily injury, or reasonable apprehension of bodily injury as a result of:

(i) the commission of an offense;

(ii) the good faith effort to prevent the commission of an offense; or

(iii) the good faith effort to apprehend a person reasonably suspected of committing an offense; or

(b) a member of the immediate family of a homicide victim.

(6)(a) Except as provided in subsection (6)(c), a victim of a criminal offense has the right to receive, upon request and at no cost to the victim, one copy of all public documents filed in the court file.

(b) If the victim is under 18 years of age, copies provided under subsection (6)(a) must be provided to the victim's parent or guardian instead of to the minor victim.

(c) Subsection (6)(a) does not apply to:

(i) trial transcripts;

(ii) trial exhibits;

(iii) court proceedings conducted under Title 41, chapter 5; or

(iv) documents the prosecutor determines would adversely affect the prosecution if released.

(7) A victim of a criminal offense has the right, upon request, to have a victim advocate present when the victim is interviewed about the offense.

NEW YORK

MCKINNEY'S EXEC. LAW §642. CRITERIA FOR FAIR TREATMENT STANDARDS

Such fair treatment standards shall provide that:

1. The victim of a violent felony offense, a felony involving physical injury to the victim, a felony involving property loss or damage in excess of two hundred fifty dollars, a felony involving attempted or threatened physical injury or property loss or damage in excess of two hundred fifty dollars or a felony involving larceny against the person shall, unless he or she refuses or is unable to cooperate or his or her whereabouts are unknown, be consulted by the district attorney in order to obtain the views of the victim regarding disposition of the criminal case by dismissal, plea of guilty or trial. In such a case in which the victim is a minor child, or in the case of a homicide, the district attorney shall, unless the family refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult for such purpose with the family of the victim. In addition, the district attorney shall, unless he or she (or, in the case in which the victim is a minor child or a victim of homicide, his or her family) refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult and obtain the views of the victim or family of the victim, as appropriate, concerning the release of the defendant in the victim's case pending judicial proceedings upon an indictment, and concerning the availability of sentencing alternatives such as community supervision and restitution from the defendant. The failure of the district attorney to so obtain the views of the victim or family of the victim shall not be cause for delaying the proceedings against the defendant nor shall it affect the validity of a conviction, judgment or order.

2. The victims and other prosecution witnesses shall, where possible, be provided, when awaiting court appearances, a secure waiting area that is separate from all other witnesses.

2-a. (a) All police departments, as that term is defined in subdivision a of section eight hundred thirty-seven-c of this chapter, district attorneys' offices and presentment agencies, as that term is defined in subdivision twelve of section 301.2 of the family court act, shall provide a private setting for interviewing victims of a crime defined in article one hundred thirty or section 255.25, 255.26 or 255.27 of the penal law. For purposes of this subdivision, "private setting" shall mean an enclosed room from which the occupants are not visible or otherwise identifiable, and whose conversations cannot be heard, from outside such room. Only (i) those persons directly and immediately related to the interviewing of a particular victim, (ii) the victim, (iii) a social worker, rape crisis counselor, psychologist or other professional providing emotional support to the victim, unless the victim objects to the presence of such person and requests the exclusion of such person from the interview, and (iv) where appropriate, the parent or parents of the victim, if requested by the victim, shall be present during the interview of the victim.

(b) All police departments, as that term is defined in subdivision a of section eight hundred thirty-seven-c of this chapter, shall provide victims of a crime defined in article one hundred thirty of the penal law with the name, address, and telephone of the nearest rape crisis center in writing.

3. Law enforcement agencies and district attorneys shall promptly return property held for evidentiary purposes unless there is a compelling reason for retaining it relating to proof at trial.

4. The victim or witness who so requests shall be assisted by law enforcement agencies and district attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. In addition, a victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or the district attorney in the investigation or prosecution of a crime is unable to meet obligations to a creditor, creditors or others should be assisted by such agencies or the district attorney in providing to such creditor, creditors or others accurate information about the circumstances of the crime, including the nature of any loss or injury suffered by the victim, or about the victim's or witness' cooperation, where appropriate.

5. Victim assistance education and training, with special consideration to be given to victims of domestic violence, sex offense victims, elderly victims, child victims, and the families of homicide victims, shall be given to persons taking courses at state law enforcement training facilities and by district attorneys so that victims may be promptly, properly and completely assisted.

OREGON

OR. CODE §147.425. VICTIM'S PERSONAL REPRESENTATIVE.

(1) As used in this section:

(a) "Health care provider" has the meaning given that term in ORS 192.519.

(b) "Law enforcement agency" means:

(A) A city or municipal police department.

(B) A county sheriff's office.

(C) The Oregon State Police.

(D) A district attorney.

(E) A special campus security officer commissioned under ORS 352.385 or 353.050.

(c) "Person crime" means a person felony or person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission.

(d) "Personal representative" means a person selected under subsection (2) of this section to accompany the victim of a crime to certain phases of an investigation and prosecution.

(e) "Protective service worker" means an employee or contractor of a local or state agency whose role it is to protect children or vulnerable adults from abuse or neglect.

(2) A victim of a person crime, who is at least 15 years of age at the time the crime is committed, may select a person who is at least 18 years of age as the victim's personal representative for purposes of this section. The victim may not select a person who is a suspect in, or a party or witness to, the crime as a personal representative.

(3) Except for grand jury proceedings and child abuse assessments occurring at a child advocacy center recognized by the Department of Justice, a personal representative may accompany the victim to those phases of the investigation, including medical examinations, and prosecution of the crime at which the victim is entitled or required to be present.

(4) A health care provider, law enforcement agency, protective service worker or court may not prohibit a personal representative from accompanying a victim as authorized by subsection (3) of this section unless the health care provider, law enforcement agency, protective service worker or court believes that the personal representative would compromise the process.

(5) A health care provider, law enforcement agency, protective service worker or court is immune from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to a decision under subsection (4) of this section to prohibit a personal representative from accompanying a victim.

(6) The fact that a personal representative was allowed or was not allowed to accompany a victim may not be used as a basis for excluding otherwise admissible evidence.

(7) The fact that a victim has or has not selected a personal representative under this section may not be used as evidence in the criminal case.

TEXAS

TEXAS C.C.P. ART. 56.045. PRESENCE OF ADVOCATE OR REPRESENTATIVE DURING FORENSIC MEDICAL EXAMINATION.

(a) Before conducting a forensic medical examination of a person who consents to such an examination for the collection of evidence for an alleged sexual assault, the physician or

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other medical services personnel conducting the examination shall offer the person the opportunity to have an advocate from a sexual assault program as defined by Section 420.003, Government Code, who has completed a sexual assault training program described by Section 420.011(b), Government Code, present with the person during the examination, if the advocate is available at the time of the examination.

(b) The advocate may only provide the injured person with:

(1) counseling and other support services; and

(2) information regarding the rights of crime victims under Article 56. 02.

(c) Notwithstanding Subsection (a), the advocate and the sexual assault program providing the advocate may not delay or otherwise impede the screening or stabilization of an emergency medical condition.

(d) The sexual assault program providing the advocate shall pay all costs associated with providing the advocate.

(e) Any individual or entity, including a health care facility, that provides an advocate with access to a person consenting to an examination under Subsection (a) is not subject to civil or criminal liability for providing that access. In this subsection, "health care facility" includes a hospital licensed under Chapter 241, Health and Safety Code.

(f) If a person alleging to have sustained injuries as the victim of a sexual assault was confined in a penal institution, as defined by Section 1.07, Penal Code, at the time of the alleged assault, the penal institution shall provide, at the person's request, a representative to be present with the person at any forensic medical examination conducted for the purpose of collecting and preserving evidence related to the investigation or prosecution of the alleged assault. The representative may only provide the injured person with counseling and other support services and with information regarding the rights of crime victims under Article 56.02 and may not delay or otherwise impede the screening or stabilization of an emergency medical condition. The representative must be approved by the penal institution and must be a:

(1) psychologist;

(2) sociologist;

(3) chaplain;

(4) social worker;

(5) case manager; or

(6) volunteer who has completed a sexual assault training program described by Section 420.011(b), Government Code.

WASHINGTON

WASH. REV. CODE ANN. §70.125.060. PERSONAL REPRESENTATIVE MAY ACCOMPANY VICTIM DURING TREATMENT OR PROCEEDINGS

If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

WYOMING

W.S. 1977 §1-40-203. VICTIM AND WITNESS BILL OF RIGHTS.³

- (a) All victims and witnesses of crime shall be treated with compassion, respect and sensitivity.
- (b) Crime victims, key witnesses and, upon request, other witnesses shall have the following rights:
 - (i) To be provided notification and information about events affecting the status of the case. These events shall include, but are not limited to, the following as specified in W.S. 1-40-204:
 - (A) The general status of the case, provided the release of information does not compromise the investigation or endanger witnesses;
 - (B) The scheduled hearings and dispositions of the case;
 - (C) The sentencing phase of the case;
 - (D) The imprisonment or release of the accused or convicted defendant.
 - (ii) To be provided information about the right to receive judicially ordered restitution as provided in W.S. 7-9-102;

³ This law was enacted on January 20, 2011 and will take effect on July 1, 2011.

(iii) To be provided information about their rights, privileges and interests under this act as provided in W.S. 1-40-204;

(iv) To be provided information about compensation available under the Crime Victims Compensation Act as provided in W.S. 1-40-101 through 1-40-119;

(v) To be provided information about services and assistance available to victims and witnesses as provided in W.S. 1-40-204;

(vi) To be provided information about available legal recourse and other measures if subjected to threats or intimidation as provided in W.S. 1-40-205;

(vii) To be provided, at the discretion of the prosecuting attorney or criminal justice personnel, reasonable protection and safety immediately before, during and after criminal justice proceedings;

(viii) To be provided with the names, official telephone numbers and official addresses of the primary law enforcement officer and prosecutor assigned to investigate the case;

(ix) To attend and participate in criminal justice system proceedings as provided in W.S. 1-40-206;

(x) To have the accused brought to trial as provided in W.S. 1-40-207. Nothing in this paragraph shall inhibit the ability of counsel for the state and the defendant from entering into any negotiated disposition of any charge or charges which have been levied against the accused;

(xi) To prompt return of property seized as evidence as provided in W.S. 1-40-208;

(xii) To be protected from discharge or discipline by an employer due to involvement with the criminal justice process as provided in W.S. 1-40-209;

(xiii) To be notified about the defendant's conviction as provided in W.S. 7-21-102(a);

(xiv) To be notified about the victim's opportunity to make a victim impact statement for use in the preparation of a presentence investigation report concerning the defendant as provided in W.S. 7-21-102(a)(iii);

(xv) To be provided with the address and telephone number of each probation office which is to prepare the presentence investigation as provided in W.S. 7-21-102(a)(iv);

(xvi) To be notified that the presentence investigation report and any statement of the victim in the report will be made available to the defendant as provided in W.S. 7-21-102(a)(v);

(xvii) To be notified about the opportunity to make an impact statement at sentencing as provided in W.S. 7-21-102(a); and

(xviii) To be notified of the time and place of the sentencing proceeding and any changes thereof as provided in W.S. 7-21-102(a)(vii).

(c) Courts shall enforce crime victim and witness rights under this act to the extent the recognition of those rights do not conflict with constitutional and statutory rights of the defendant.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 1-40-203 by creating a new subsection (d) is amended to read:

1-40-203. Victim and witness bill of rights.

(d) All victims of sexual assault as defined in W.S. 6-2-301(a)(v) shall have the right to have an advocate as defined in W.S. 1-12-116(a)(i) present with the victim, if requested, at the time of questioning by law enforcement personnel.