

Limitations on the Use of Polygraph Exams in Criminal Sexual Conduct Cases

The purpose of this fact sheet is to explain the limitations on polygraph use by law enforcement in criminal sexual conduct cases. According to the STOP Violence Against Women Formula Grant Program administered by the United States Department of Justice, all states, Indian tribal governments, territorial governments, and units of local governments receiving funds must comply with a **prohibition on requiring victims of sexual violence to submit to a polygraph examination as a condition for proceeding with a criminal investigation**. The law went into effect in Minnesota on July 1, 2008 as Minn. Stat. §611A.26.

Definition of a Polygraph Examination

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.

Prohibition Against Requirement of Polygraph in Investigation, Charging or Prosecution

No law enforcement agency or prosecutor shall **require** that a victim/survivor of a criminal sexual conduct offense submit to a polygraph examination as part of or a condition for proceeding with the investigation, charging, or prosecution of such offense.

Required Referral to Sexual Assault Counseling

No law enforcement agency or prosecutor may **ask** the victim/survivor to submit to a polygraph examination as part of the investigation, charging, or prosecution of an offense unless the victim/survivor has been referred to, and had the opportunity to exercise the option of consulting with a sexual assault counselor (see below for legal definition of a sexual assault counselor).

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| <p>Informed Consent to Take a Polygraph Examination</p> | <p>Law enforcement may conduct a polygraph examination with the victim/survivor’s written, informed consent, meaning:</p> <ul style="list-style-type: none"> • The exam is voluntary and solely at victim/survivor’s request; • The law enforcement agency or prosecutor may not ask or require the victim/survivor to submit to the polygraph examination; • The results of the examination are not admissible in court; and • The victim/survivor’s refusal to take a polygraph examination may not be used as the basis for law enforcement or the prosecutor not to investigate, charge or prosecute the offender. |
| <p>No Consequences for Refusal to Take Polygraph Examination</p> | <p>The victim/survivor’s refusal to take a polygraph examination <u>shall not</u> prevent the investigation, charging, or prosecution of the offense.</p> |
| <p>Advocacy Issues</p> | <p>Because the statute directs law enforcement to engage an advocate if asking the victim to submit to a polygraph, it is important that advocates understand their role and the assistance they can offer to a victim. The following are suggestions for responding to this law.</p> <ul style="list-style-type: none"> • Meet with your local law enforcement agencies to ensure they know about this prohibition in the law. • Let them know that your advocacy center will be happy to meet with a victim should the potential of a polygraph arise. • Help victims understand that if they are asked they can respectfully decline to participate in the polygraph. By statute, their case should still go forward. • Inform yourself about polygraphs— the benefits and liabilities—so that you can assist a victim in making an informed decision. • Stay in touch with MNCASA if you feel there are problems with implementing this law in your area. If victims are routinely being asked to take polygraph exams, please let MNCASA know. • If a victim becomes a suspect in a case, this does not prevent law enforcement from asking the now suspect to take a polygraph. • Note that polygraph issues may come up on rare occasion in other settings such as child protection or family law cases. A victim should always consult with an advocate and preferably a lawyer before deciding to submit to a polygraph under these circumstances. |

Who is a Sexual Assault Counselor?

Under Minn. Stat. §595.02 subd. (k), a sexual assault counselor must meet the following requirements:

- have undergone at least 40 hours of crisis counseling training; and
- work under the direction of a supervisor in a crisis center whose primary purpose must be to render advice, counseling, or assistance to victims of sexual assault

For more information about the victim/survivor and a sexual assault counselor relationship, please see our fact sheet entitled “Communication Between an Advocate and a Victim/Survivor is Not Always Confidential.”

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