Know Your Rights:

Polygraph Exam Information for Victims of Sex Crimes

www.kasap.org
502-226-2704

What are my rights as a victim of a sex crime?

- You have the right to refuse to take a polygraph exam.
  - Officials cannot require you to take a polygraph as a condition of continuing the investigation or prosecution of the crime.
  - In fact, you must give your consent in writing before the exam begins.
  - If you have been told that the case would not go forward unless you agreed to take an exam, you should be sure to tell the polygraph examiner when you are asked whether or not you consent to the exam. Such statements are strictly prohibited.
- You have the right to terminate the exam at any time.
- You have the right to have a victim advocate come with you. Upon your request, the advocate must be allowed to observe the exam and debriefing through a 2-way mirror or closed-circuit television.
- You have the same 'Miranda rights' everyone has, including the right to remain silent and the right to have an attorney.
- You have the right to complain if your rights are violated. Complaints should be made in writing to the Secretary of the Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, KY 40601.

What kinds of questions are asked during a polygraph exam?

- The main polygraph test questions are directly related to the sex crime.
- However, general background questions are asked for comparison.
- Questions about the victim's past sexual history are strictly prohibited.
- The polygraph examiner must go over all the test questions with the victim, word-for-word, before the exam begins.
- There should not be any trick questions or surprise questions. But, questions are repeated.
- No questions should be asked that were not discussed prior to the exam.

'I'm nervous & upset about this whole situation. How could that affect the test results?'

- Polygraph experts insist that nervousness does NOT look the same as lying. Everyone is nervous when taking polygraph tests. So, examiners are trained to distinguish nervousness from lying.
- Nervousness registers consistently throughout the test, as opposed to lying which registers in response to specific questions.
- It is normal for an innocent person to be nervous and the polygraph examiner knows this.
- If you are taking any type of medication, let the polygraph examiner know before the exam.
- Do not stop taking any prescribed medications. Let the examiner know if there has been any change.

Are there any positive aspects of taking a polygraph exam?

- Being asked to take a polygraph exam does not necessarily mean that police do not believe you.
- Sometimes, taking a polygraph exam can help your case, for example if the suspect has refused to take a test. A polygraph test can also verify the truth of your statement.
- Your taking the test can be used by the police to put pressure on the suspect(s).
- However, you do not have to agree to take a polygraph exam and cannot be forced to do so.

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How long will the polygraph exam take?

- You should plan to be at the office for about 3 hours, but only part of the time will be the test.
- Before the test begins, the examiner will spend about an hour with you to give you information about the test and answer any questions that you may have. The examiner will address any questions you ask about how the test works, your rights, or related issues.
- After the test, the examiner will conduct a 'debriefing,' or go over the results with you and give you an opportunity to explain any problems with any of the questions about the crime.
- Tell the polygraph examiner if you need to take a break at any time.

What other rules regulate polygraphing victims of sex crimes?

- A polygraph examination of a victim cannot be conducted UNLESS:
    1. The suspect has passed, declined, been found unsuitable for exam, or cannot be identified or located after a "thorough investigation," as defined in 502 KAR 20:020 Section 1(4); and
    2. There must be a clear issue to test on based on a thorough investigation; and
    3. Before the examination, the investigating officer provides a signed, written document:
        a. describing any inconsistencies in the victim's allegation; and
        b. stating if any inconsistency can be substantiated by existing evidence; and
        c. listing investigative strategies which have been used in the case; and
        d. declaring that the victim has not been told that the investigation would cease if the victim refuses to consent; and
        e. containing no reference to whether the victim is behaving as a 'typical' victim.
- The entire examination must be videotaped, with audio.
- The victim must not be interrogated before, during, or after the examination.
- Visual and audio contact between victim and suspect during the examination process must be avoided.
- Examinations may be conducted if voluntarily requested by a victim. However, a request is not considered to be at the victim's request if it was made in response to a request by the investigator.

Where can I get more information or assistance?

- You can contact an advocate from the regional Rape Crisis Center that serves victims in your area. You can be connected by calling the hotline at 800-656-HOPE, or you can find out more information about the center near you on-line at www.kasap.org. An advocate can give you more information, accompany you when you talk to law enforcement officials, take a polygraph exam, go to court, or in other situations. Advocates can also connect you with other helpful resources.
- Rules regarding polygraphing of sex crimes victims are part of the regulation that controls polygraph examiners, 502 KAR 20:020 Section 4. You can get a copy online at www.lrc.ky.gov/kar/502/020/020.htm .
- Federal law also prohibits law enforcement officials, prosecutors, and other government officials from asking or requiring a victim of a sex crime to submit to polygraph examinations as a condition for proceeding with an investigation. The federal law is 42 USCS Section 3796gg8(a).
- The Kentucky State Police Polygraph Program Manager Richard Kurtz is available to discuss questions and concerns. He can be reached at 502-573-2100.
- Complaints must be filed in writing to the Secretary of the Kentucky Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, KY 40601-2108.