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Legal Requirements for Sexual Assault Investigations

In every sexual assault investigation, there are several legal requirements which must be met to ensure the victims are aware of their rights and available resources. At a minimum, law enforcement is required to be in compliance with the following California Penal Code sections at the outset of a sexual assault investigation:

- Penal Code Section 264.2
 - Victims shall be immediately provided with “Victims of Domestic Violence” cards (Included in the Marsy’s Rights card).
 - The law enforcement officer or the law enforcement officer’s agency shall immediately notify the local rape victim counseling center whenever a person alleging to be a victim of California Penal Code sections 261, 261.5, 286, 287 or 289 is transported to a hospital for a medical evidentiary or physical examination. The SART nurse will complete this step at the time of scheduling.

- Penal Code Section 679.04
 - Immediately after establishing whether a crime has been committed and identifying the suspects, the following must be adhered to:
 - A victim of sexual assault as the result of any offense specified in Section 264.2 shall be notified in writing by the attending law enforcement authority 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, or at any interview by the defense attorney or their agents
 - The support person may be excluded from the interview if the investigator determines that the presence of that individual would be detrimental to the purpose of the interview
 - A victim has the right to have a person of the same, or opposite gender, in the room during the interview
 - A victim shall not be discouraged from obtaining a medical evidentiary or physical examination

- Penal Code Section 637.4
 - No complaining witness shall be required, or requested, to take a polygraph examination prior to filing a report

- Penal Code Section 680.2
 - A pamphlet containing the following information shall be provided to victims of sexual assault
 - The victim is not required to participate in the criminal justice system, or participate in any medical examination, to retain their rights
 - Contact information for nearby rape crisis center and sexual assault counselor
 - Information about law enforcement protections available, such as an EPO or TRO, and how to obtain said orders
 - How to request results of a SART exam
 - Information about restitution and cost reimbursement available to sexual assault victims
 - The information required by PC 264.2
 - Information about evidence degradation rate
 - Statement that any forensic evidence to be tested will be done within the time limits imposed under PC 803(g)
 - Statement that forensic evidence will be retained for 20 years, or until the victim turns 40 if they were under 18 at the time of the crime

- Penal Code Section 293
 - All domestic violence, sexual assault, child abuse, stalking, and hate crime victims shall be notified that their name will become a matter of public record unless they request confidentiality. The notification and response of the victim shall be memorialized in the written report
 - If a minor victim is too young to understand the advisement, ask the guardian.

Compliance with these statutory requirements will primarily be met by providing the “Sexual Assault Survivor’s Bill of Rights” pamphlet to the victim before the initial interview. It is also good practice to orally advise the victim of their right to have an advocate and support person present in the event the victim does not immediately read the pamphlet. Further, a Marsy’s Card with the case number shall be provided to the victim prior to leaving the scene.
