

Assembly Bill No. 1860

Passed the Assembly August 12, 2002

Chief Clerk of the Assembly

Passed the Senate August 8, 2002

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2002, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

An act to amend Section 13823.11 of the Penal Code, relating to sexual assault victims.

LEGISLATIVE COUNSEL'S DIGEST

AB 1860, Migden. Sexual assault victim: pregnancy counseling: emergency contraception.

Existing law sets forth minimum standards for the examination and treatment of victims of sexual assault, including the taking of a baseline gonorrhea culture, a syphilis serology, and specimens for a pregnancy test, if indicated by the history of contact.

This bill would provide, in addition, that where indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider, and postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

The people of the State of California do enact as follows:

SECTION 1. Section 13823.11 of the Penal Code is amended to read:

13823.11. The minimum standards for the examination and treatment of victims of sexual assault or attempted sexual assault, including child molestation and the collection and preservation of evidence therefrom include all of the following:

(a) Law enforcement authorities shall be notified.

(b) In conducting the physical examination, the outline indicated in the form adopted pursuant to subdivision (c) of Section 13823.5 shall be followed.

(c) Consent for a physical examination, treatment, and collection of evidence shall be obtained.

(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.



(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with usual hospital policy.

(3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken.

The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

(1) A history of the circumstances of the assault.

(2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by parent or person accompanying the child.

(3) Physical injuries reported.

(4) Sexual acts reported, whether or not ejaculation is suspected, and whether or not a condom or lubricant was used.

(5) Record of relevant medical history.

(e) (1) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.



(2) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

(f) Each adult and minor victim of sexual assault who consents to a medical examination for collection of evidentiary material shall have a physical examination which includes, but is not limited to, all of the following:

(1) Inspection of the clothing, body, and external genitalia for injuries and foreign materials.

(2) Examination of the mouth, vagina, cervix, penis, anus, and rectum, as indicated.

(3) Documentation of injuries and evidence collected.

Prepubertal children shall not have internal vaginal or anal examinations unless absolutely necessary (this does not preclude careful collection of evidence using a swab).

(g) The collection of physical evidence shall conform to the following procedures:

(1) Each victim of sexual assault who consents to an examination for collection of evidence shall have the following items of evidence collected, except where he or she specifically objects:

(A) Clothing worn during assault.

(B) Foreign materials revealed by an examination of the clothing, body, external genitalia, and pubic hair combings.

(C) Swabs and slides from the mouth, vagina, rectum, and penis, as indicated, to determine the presence or absence of sperm and sperm motility, and for genetic marker typing.

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except when he or she specifically objects thereto. A reference specimen is a standard from which to obtain baseline information (for example: pubic and head hair, blood, and saliva for genetic marker typing). These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) A baseline gonorrhea culture, and syphilis serology, shall be taken, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact.

(4) (A) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.



(B) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

(h) Preservation and disposition of physical evidence shall conform to the following procedures:

(1) All swabs and slides shall be air-dried prior to packaging.

(2) All items of evidence including laboratory specimens shall be clearly labeled as to the identity of the source and the identity of the person collecting them.

(3) The evidence shall have a form attached which documents its chain of custody and shall be properly sealed.

(4) The evidence shall be turned over to the proper law enforcement agency.



Approved _____, 2002

Governor

