



Policy and Procedure

Policy Number

13.06

Chapter Criminal Investigations

Article Polygraph Examinations

Authorized By:

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PURPOSE

To provide guidelines for the use of polygraphs as an investigative tool for criminal and internal investigations.

POLICY

Department investigators may use a polygraph examination when it appears that such examination would assist in a criminal investigation. Such examinations will be done in accordance with all applicable laws and with the understanding that the results of a polygraph examination are inadmissible in criminal trials under Colorado case law. <People v. Dunlap, 975 P.2d 723 (Colo. 1999)> In addition, the Department may request a polygraph during an administrative investigation, but administrative polygraph examinations may only be conducted if voluntary and done in accordance with City Administrative Regulations (AR) and this policy.

DEFINITIONS

None.

GENERAL GUIDELINES

Polygrapher Training <CALEA 42.2.6> <CALEA 32.2.5>

The Department will only use polygraph examiners (polygraphers) who have graduated from a qualified institution that provides training for this purpose. All Department polygraphers will be trained at a Department-approved, qualified examiner school prior to conducting any exams.

Use of the Polygraph for Criminal Investigations <CALEA 42.2.6>

If an officer decides a polygraph may assist in an investigation, the officer will, prior to requesting a subject submit to a polygraph, first consult with the polygraph examiner to determine whether a polygraph examination is appropriate. If the examiner determines that a polygraph would be appropriate, the officer will complete a TSU Request for a polygraph examination. The polygraph examiner will contact the subject and arrange a time for the exam. The subject's attorney may be present during the initial interview but will be required to leave the room before testing begins.

Written parental consent is required when a juvenile suspect is to be tested.

After the examination and review is complete, the examiner will share the findings with the investigating officer.





Victim Polygraph Examinations <CALEA 42.2.6> <CRS18-3-407.5>

Investigators shall not ask or require a victim to submit to a polygraph or other instrument for the detection of deception as a condition of proceeding with the investigation or prosecution of an offense. A law enforcement agency may conduct an examination only with the victim's written informed consent after the investigator has provided written notification of the victim's right to refuse to submit to the examination as well as the potential uses of the results of the examination. Victims may only be asked to undergo a polygraph examination if the suspect has taken an examination and passed, or there is an articulable suspicion that the victim is not being truthful.

Subject Interviews before Examination <CALEA 42.2.6>

The examiner will conduct an initial interview with the subject. The examiner will explain the Department's polygraph exam consent form prior to beginning the examination. The examiner will construct exam questions and review the questions with the subject, prior to testing.

Use of Polygraph Examination for Pre-Employment Investigations <CALEA 32.2.4> <CALEA 32.2.6>

All applicants for Department employment will undergo a polygraph examination. The polygraph examination will not be the sole determinant of employment status. Any unacceptable examination results will be discussed with the applicant. An admission during pre-test, test, or post-test interviews, together with other information, may be sufficient to support decisions relevant to employment status.

The examiner will provide each applicant with a list of areas from which polygraph questions will be drawn, prior to the examination.

Use of Polygraph Examinations of Department Employees during Department Complaint Investigations

A polygraph examination of Department employees in the course of a complaint investigation is most effective after all other investigative processes have been completed. A polygraph examination may not be used as an investigative shortcut. Department employees under a complaint investigation shall not be required to submit to a polygraph examination. An employee's decision not to submit to a polygraph examination requested by the City shall not affect the employee's employment status. Results of a polygraph examination may be the basis for exonerating an employee accused of misconduct, but shall not be used to sustain a complaint against an employee accused of misconduct other than as an additional and independent indication of misconduct.

If a supervisor has a reasonable suspicion that a crime or other misconduct has been committed by an employee and desires to have the employee submit to a polygraph examination, the supervisor must notify the Chief to determine whether to make a request that the employee submit to a polygraph examination. If approved by the Chief, the supervisor must provide the employee at least 48 hours before the polygraph examination is scheduled to occur, a written statement that:

- Identifies with specificity the policy violation and alleged misconduct being investigated and describes the basis for the reasonable suspicion of the employee's involvement in the misconduct;
- Notifies the employee that submission to a polygraph is entirely voluntary and that refusal to take a polygraph will not result in any adverse inference or disciplinary action; and
- Is signed by the employee's supervisor and by the employee acknowledging receipt of the statement





A polygraph examination may not be considered in Department complaint investigations unless the polygrapher conducting the examination is qualified. A polygrapher who complies with standards as established by the American Polygraph Association and the Colorado Association of Polygraph Examiners shall be deemed qualified.

Any employee who voluntarily decides to take a polygraph to be used by the Department in the course of the complaint investigation may do so, provided that the following conditions are met:

- The questions asked by the polygrapher during the polygraph examination should be relevant and narrow in scope and relate specifically to the alleged policy violation and misconduct;
- The employee is provided and executes a waiver indicating the decision to submit to a polygraph examination is completely voluntary and that the employee waives any right to make a claim in any subsequent disciplinary or legal process that the polygraph examination was involuntary;
- The employee acknowledges as part of the waiver that because the polygraph examination is voluntary, any admission of criminal conduct during the course of a polygraph examination might not be protected under *Garrity*.

The Department is responsible for the cost of the polygraph examination, unless the employee requests that the polygraph examination be conducted by a polygrapher other than the polygrapher hired by the employer. Any voluntary, qualified polygraph examination result, including one produced by an employee shall be permitted as evidence in an administrative investigation or disciplinary hearing. An employee may also submit a voluntary examination result from an instrument for the detection of deception other than a polygraph that is performed by an industry-certified individual and pursuant to an approved industry standard. Results of a polygraph examination or other examination permitted under this policy may be the basis for exonerating an employee accused of misconduct, but shall not be used to sustain a complaint against an employee accused of misconduct other than as an additional and independent indication of misconduct.

Conducting Polygraph Examinations for other City Departments

Polygraph examinations may be conducted for other City departments if requested by Human Resources.

Polygraph Records Maintenance

The examiner is required to keep a record of all polygraph examinations. Any Department examiner will complete a supplemental offense report to detail the examination. The remaining examination records may be maintained by the polygrapher. The Department will retain and maintain any report submitted by an outside polygrapher. All polygraph records will be maintained according to the Department's Records Retention and Disposition Schedule.

