

Polygraphs, Authorization and Use

504.1 VERSION

Review Date	Effective Date	Approving Authority
02/06/19	07/09/18	Eric D. English, Chief of Police

504.2 POLICY AND PURPOSE

Polygraph examinations are useful tools for evaluating the veracity of suspects and witnesses in criminal cases. Over the years, the Department has utilized the polygraph in criminal investigations, determining it to be an effective process in solving a significant number of serious crimes. The polygraph technique is not to be considered conclusive but rather another investigative tool.

The Department has also found that polygraph examinations are useful in evaluating the fitness of applicants for employment by the Department, when used in conjunction with other portions of the selection process.

It is the policy of the Harrisonburg Police Department to properly train and equip our polygraph examiners, which will instill confidence in the testing process and results. The Department intends to administer polygraph examinations, only as authorized by law and in the manner prescribed by our policies, to ensure meaningful use of the polygraph and to provide adequate safeguards for protection of the rights and privacy of the individuals considered for, or subjected to, examinations. The Chief of Police or designee shall approve the conduct of polygraph examinations in criminal and internal situations, and for pre-employment purposes pursuant to this section.

504.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

504.4 DEFINITIONS

Examine – Shall mean the testing of a person by a polygraph examiner using the polygraph machine.

Departmental examiner or examiner – Shall mean those polygraph examiners employed by the Harrisonburg Police Department or another qualified, licensed examiner.

Polygraph unit – Shall mean the Harrisonburg Police Department examiners and their supervisor.

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504.5 OPERATIONAL CONSIDERATIONS

The person being considered for a polygraph examination shall be given timely notification of the date, time and location of the examination.

The polygraph shall be utilized only when the person to be examined has consented to the examination. This consent shall be evidenced by execution of a signed release form (142A-Employment Polygraph Release Form.pdf) and (142B-Investigative Polygraph Release Form.pdf).

Juvenile examinees must sign and have their legal parent or guardian sign the release form in order to be subjected to a polygraph examination. Exceptions shall be made only in the case of examinations requested by a Juvenile Court judge where custody is awarded to the court, or by the representative of the Department of Social Service to which custody has been designated, in which case permission of the respective entity shall be obtained. (Code Section Section §16.1-241)

504.6 PROCEDURE FOR CRIMINAL INVESTIGATIONS

- (a) Polygraph examinations should not be mentioned during the initial stages of an investigation. If inconsistencies or conflicts appear, all alternate methods of checking leads will be exhausted prior to requesting a polygraph examination. The statement, "Are you willing to take a polygraph?" is to be avoided in the early stages of an investigation.
- (b) If, after exhausting all alternative investigative methods, inconsistencies still exist, officers/detectives will request the use of the polygraph by contacting the examiner.
- (c) Criminal Suspects should be polygraphed before the examination of victim(s), complainant(s) is considered. Victim(s) or complainant(s) should be examined first only in exceptional cases, i.e. when there is evidence to indicate the complaint is false and no suspect is identified.
- (d) Polygraph examinations should not be scheduled for victims or suspects immediately following the offense or after lengthy interrogation. Since the results of a polygraph depend upon the physiological reactions of the examinee, accurate results cannot be obtained if the subject is distraught or emotionally exhausted. Immediate examinations will be given only if extenuating circumstances exist. The decision of the polygraph examiner as to the suitability of the subject will be final. Officers/detectives shall contact the victim, witness or suspect to be tested at least one day prior to the examination being administered to confirm their presence at the appointment. Examiners shall immediately be notified of any cancellations.
- (e) Officers/detectives who have scheduled polygraph examinations shall report in person to the polygraph examiner assigned their case prior to the test being administered and present the Incident Report and discuss the case.
- (f) Officers/detectives who have scheduled polygraph examination are expected to be present on the date of the examination. If unable to be present, notification shall be made to the examiner.

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- (g) Failure to comply with the procedures outlined in this section shall result in the cancellation of the polygraph examination and notification of the officer/detective's supervisor. Emergency situations resulting in noncompliance will be considered on a case-by-case basis.
- (h) Special Circumstances:
 1. Department examiners shall not conduct criminal polygraph examinations at the request of defense attorneys. Any such examination(s) shall be conducted by a private or commercial polygraph examiner at the expense of the requesting party.
 2. Requests for examinations by the Commonwealth's Attorney shall be approved by the examiner's supervisor on a case-by-case basis.
 3. Polygraph examinations requested/ordered by the court as part of a plea or pre-sentencing agreement shall be performed only after the terms of the agreement are completely documented and approved in writing by the judge and/or defense attorney, and prosecutor.

504.7 PROCEDURE FOR PRE-EMPLOYMENT TESTS

The conduct of pre-employment polygraph examinations for applicants for Departmental positions are authorized by this order without further action of the Chief of Police, provided that the applicant has been successfully processed to that stage under a conditional offer of employment.

The conduct of pre-employment examinations for applicants for non-Departmental positions shall be authorized by the Chief of Police or designee, provided that the polygraph procedure conforms to existing regulation and applicable law.

504.8 POLYGRAPH TESTING OF DEPARTMENT MEMBERS

No member of the Department shall be examined by a polygraph examiner employed by the Department except when so ordered by the Chief of Police.

504.9 UNUSUAL REQUESTS FOR EXAMINATIONS

Outside agencies or police-related Departments shall make requests for polygraph assistance through the examiner or through a Major Crimes Unit Supervisor.

Questions regarding the propriety of a polygraph authorization, the conduct of a polygraph examination, and requests for exception to the provisions of this General Order shall be determined by the Chief of Police.

504.10 EXAMINERS

Polygraph examiners employed by the Department shall have successfully completed a polygraph examiner training course, accredited by the American Polygraph Association (APA) and recognized by the Virginia Department of Professional and Occupational Regulation.

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Examiners shall be currently licensed by the Virginia Department of Professional and Occupational Regulation. Notwithstanding the foregoing, polygraph examiner interns who are serving the six months internship required by the Department of Professional and Occupational Regulation may perform polygraph tests under the direct supervision of their intern supervisor.

Departmental examiners shall participate in related retraining seminars/courses at least once every twelve months.

504.11 INSTRUMENTS

Polygraph instruments used in the Department will meet the requirements established by the Virginia Department of Professional and Occupational Regulation, Polygraph Regulations and other applicable statutes.