

CITY OF ANDERSON POLICE DEPARTMENT

Anderson, South Carolina

DIRECTIVE TYPE General Order	EFFECTIVE DATE May 12, 2011	NUMBER 3001
SUBJECT Polygraph	REVISED May 12, 2011	
REFERENCE SCLEA 6.4-6.14 2 nd edition	AMENDS/SUPERSEDES All Others	
DISTRIBUTION All Personnel	RE-EVALUATION DATE Annual	NO. PAGES 12

A. Purpose

To prescribe guidelines for the authorization, use, purpose, administration, and reporting of the results of polygraph examinations conducted on criminal suspects, city employees, witnesses, and/or informants. Further, to ensure that all polygraph examiners are certified and to prescribe guidelines for the polygraph examination.
(SCLEA 19.8)

B. Policy

The polygraph is to be used selectively as an investigative aid and the results are to be considered within the context of a complete investigation. Although the polygraph technique is considered highly reliable and valuable as an investigative tool, the polygraph results are not to be relied upon to the exclusion of other evidence or knowledge obtained during the course of a complete investigation. The use of the polygraph for screening large numbers of suspects, or as a substitute for logical investigation by conventional means should be prohibited.

Authorization/approval for conducting Examinations

The following guidelines govern authorization for all polygraph examinations.

1. The CID Captain or Lieutenant may authorize polygraph examinations in connection with ongoing departmental cases, except for authorization regarding polygraph examinations of departmental employees and persons who make allegations against departmental employees. Approval must be obtained from the Chief of Police for such examinations.
2. Examinations conducted as a cooperative service to other agencies must receive prior authorization of the Chief of Police or his designee.
3. Examinations conducted on individuals under (14) years of age, must have prior authorization of the Chief of Police or his designee.
4. The Anderson Police Department may conduct examinations of defendants in post-conviction and pre-sentencing situations in furtherance of continuing investigative interests provided such examinations are agreed upon by the defendant's attorney and the Solicitors office.
5. In all cases, the investigative/authorizing officer shall be identified on the Polygraph Examination Report.
6. Only South Carolina licensed polygraph examiners will be used to conduct polygraph examinations. Intern Polygraph Examiners under the direction of a South Carolina licensed polygraph examiner of the Anderson Police Department may conduct polygraph examinations.
7. The decision as to whether or not to employ a polygraph will be made with the examiner unless otherwise directed by the Chief of Police.
8. No Anderson Police Department Polygraph Examiner shall conduct more than (2) specific criminal polygraph examinations per day unless the Examiner or the Chief of Police feel that additional examinations could be administered by the examiner.
9. The polygraph examiner will not assume any custodial responsibility for an individual who is at the Anderson Police Department for the purpose of a polygraph examination.

Factors to be considered when evaluating the advisability of Polygraph

Examinations

1. The polygraph examiner will be satisfied that the investigating officer, requesting the polygraph examination, has made a satisfactory effort to exhaust all other investigative leads prior to requesting the exam. An exception will be made when there are no leads to follow without an examination.
2. Ensure there is reasonable cause to believe that the person to be examined has knowledge or was involved in the matter under inquiry or if the person is withholding information relevant to the inquiry or investigation.
4. Individuals with known serious heart ailments, epilepsy, and diabetes will not be tested without having a medical waiver completed by a physician.

Responsibilities of the Investigating Officer

1. The investigating officer shall ensure the examinee is not armed.
2. The investigating officer should ensure that full custody and control of the subject can be assured.
3. The investigating officer who is thoroughly familiar with the case will be available to assist the polygraph examiner as required during the examination. The investigating officer should also be available to take any statement or confession which the examinee may elect to give after the examination is concluded.
4. The investigating officer will be responsible for providing the examiner with all pertinent information concerning the case and for reviewing, clarifying or elaborating on information as the examiner may deem necessary. This includes, but may not be limited to:
 - a. Copies of offense reports and investigative reports.
 - b. Evidence available and withheld from the subject.
 - c. Background information on the subject to be examined, to include criminal record and possible motivation.
 - d. Any statements made by the subject, complaints and witnesses.
5. The investigating officer must first ascertain that the examiner concurs in the need for, and authorizes the use of, the polygraph examination. Indiscriminate solicitation of an individual to submit to a polygraph examination is not an efficient or effective investigative procedure.

6. Any known results of prior polygraph examinations should be made known to the examiner.
7. After a polygraph examination has been authorized, the investigating officer should re-contact the examinee and ascertain if he/she will agree to submit to the polygraph examination. If the examinee is agreeable to the test, the investigating officer will contact the polygraph examiner to arrange for a suitable time for the examination.
8. The examinee will not be subject to any interrogation immediately prior to the polygraph examination.
9. The investigating officer will be responsible for making arrangements for any examinee who is hearing impaired or does not speak English.
10. The investigating officer shall not attempt to explain procedures that will be used in during examination but shall advise the examinee that these will be explained fully by the examiner.

Mental and Physical Fitness of Examinee

1. Examinee's who are not of sound physical or mental condition will not be afforded a polygraph examination.
2. Examinee's should have adequate food and rest before the polygraph examination.
3. Individuals with known serious heart ailments, epilepsy, and diabetes, will not be tested without having a medical waiver completed by a licensed physician.
4. Pregnant individuals will not be tested on any specific issue polygraph examination. On pre-employment examinations, pregnant individuals will not be tested unless otherwise directed by the Chief of Police.
5. Polygraph examinations will not be conducted, if in the opinion of the examiner, any of the following would affect the individual's ability to respond or otherwise cause the individual to be an unfit candidate for polygraph examination:
 - a. it is apparent the examinee is mentally or physically fatigued.
 - b. The examinee is unduly emotionally upset or intoxicated.
 - c. At the time of exam, the examinee is known to have a mental disorder which causes the examinee to lose contact with reality or which could reasonably result in the examinee becoming violent.

- d. At the time of exam, the examinee is experiencing physical discomforts of significant magnitude or appears to possess disabilities or defects which in themselves might cause abnormal physiological responses.
- e. If the examiner has any doubt concerning the ability of any examinee to safely undergo an examination, a statement from the examinee's physician must be obtained before proceeding with the test.

The following areas are not to be probed during the course of a polygraph examination unless directly relevant to the investigation or inquiry:

1. Religious beliefs or affiliations.
2. Beliefs and opinions regarding social matters.
3. Political beliefs and organizational affiliations of a non-subversive nature.

Legal Representation of the Examinee

In criminal matters, if requested, the examiner should provide examinee's attorney a briefing on polygraph procedures. Consistent with other case interests, the attorney may monitor the examination if the facility has that capability. The examinee's attorney shall not be in the same room where the examination is being conducted.

Pretest Interview Procedure

1. The examinee will be advised:
 - a. Of his/her rights in accordance with the "Self Incrimination Clause" (Rights Waiver Form) of the Fifth Amendment to the Constitution and will be advised that an attorney may be obtained and consulted.
 - b. The examiner may, at his/her discretion, have the examinee initial each sentence in the Rights Waiver Form.
 - c. No polygraph examination will be conducted unless the examinee understands and signs the Rights Waiver Form unless there are conditions which prohibit the examinee's signature, such as immunity.
2. The examination will be conducted only with the examinee's prior consent.
3. The examinee will be informed of the procedures that will be followed during the polygraph examination and all of the questions to be asked during the examination.
4. The examinee will be informed whether the area in which the examination is to be conducted contains two-way mirrors or an observation device and whether the conversation

during the examination will be monitored in whole or in part by any means.

5. The examiner may use a pre-test worksheet if desired.
6. An appropriate Consent or Agreement form will be executed. Should the examinee agree to be examined but refuse to sign the Consent or Agreement forms, the examinee's refusal should be noted on a form by the examiner and witnessed by one other person. The following forms will be used for this purpose:
 - a. Polygraph Statement of Consent. This form is to be signed immediately prior to each examination.
 - b. Polygraph Pre-Employment Waiver Form
7. The examiner will discuss the examinee's background with the examinee and obtain information to complete the necessary forms and properly formulate the questions.
8. The examiner will discuss the pertinent information under investigation with the examinee.
9. The examiner will then review the test questions with the examinee and administer the polygraph examination. Following the examination, the examiner may, at their discretion, have the examinee sign the charts.
10. The examiner will conduct the polygraph examination and then evaluate the psycho-physiological responses of the examinee. The examiner will formulate an opinion as to the truthfulness or attempted deception indicated based on generally accepted chart analysis techniques which are based on:
 - a. Generally accepted numerical chart analysis techniques, or
 - b. Generally accepted computerized, algorithmic chart analysis techniques.
11. The examiner will then determine whether to proceed with the Post Test Interview or to consult with the investigating officer to discuss case strategy.
12. If so determined, the examiner will then conduct a post-test interview in order to obtain admissions relating to the offense under investigation. The examiner will report the results of this interview to the investigating officer, and will afford him/her the opportunity to obtain formal statements from the examinee.
13. The examiner, at their discretion, may withhold the results of the test from the examinee if releasing the result would compromise an on-going investigation. If however, there is no good cause to withhold the results, the examinee is entitled to know the results within a reasonable period of time.

Reporting results of the polygraph examination

1. Upon completion of the polygraph examination, the examiner will prepare the Preliminary Polygraph Report. This form is to be completed and furnished to the investigating officer within a reasonable amount of time. The examiner will obtain the investigating officers signature on the completed report. If the investigating officer is not present to sign the report, the examiner will note such, sign, and date the report. In the event that an examinee is not tested, the examiner will note the reasons in the polygraph report.
2. The examiner will prepare a file jacket, which will be placed in the following order: case note cover sheet, case folder table of contents, polygraph scheduling form, pre-polygraph information sheet, test question list, polygraph report, rights waiver, pre-test interview worksheet, consent to interview polygraph form, numerical analysis form, polygraph charts, and other documents related to the examination.

Polygraph examinations of victims

1. Polygraph examinations of victim's of crimes (including Criminal Sexual Conduct) must be approved by the Chief of Police.
2. The polygraph examination may be administered to victims who agree or volunteer to take the examination per SC code of laws section 16-3-750.
3. Written notification must be given in advance informing the victim(s) that:
 - a. The results are not admissible in court
 - b. Submitting or refusing the polygraph examination will not be essential in initiating or continuing the investigation.
4. All information pertaining to the polygraph examination of victim(s) including the refusal to take the polygraph examination shall appear only in the supplemental report.

Polygraph examinations of employees and applicants

1. Applicants:
 - a. Anderson Police Department applicants who have been made a conditional job offer will be requested to submit to a polygraph examination. The polygraph examination will be used to assist in the resolution of questions relating to the information provided on an application for employment or in interviews relating to the applicant's suitability for employment.
 - b. The Support Services Division will ensure that all Anderson Police Department applicants are advised that they will be requested to submit to a polygraph examination during the processing of their application and subsequent to their

employment to assist in the resolution of issues directly related to their employment or suitability for employment.

- c. Prior to scheduling the polygraph examination, the Support Services Division will first obtain the applicants signature on the applicant waiver form. The Support Services Division will then issue an applicant polygraph screening booklet. All complete forms will be forwarded to the examiner along with other relevant materials.
- c. Failure to submit to a polygraph examination or failure to satisfactorily cooperate during the examination may be considered with other factors in determining whether the applicant shall be hired. The polygraph examination will not be the sole determinant of employment status. (SCLEA 6.12)
- d. The polygraph examination report will be forwarded to the Support Services Division and placed in the examinee's file.

2. Employees:

- a. When approved by the Chief of Police, an employee who is required to submit to an employee interview or is the subject/witness of an Internal Affairs Investigation may also be ordered to submit to a polygraph examination. (SCLEA 11.4.E)
- b. The following requirements must be satisfied if an employee is requested to submit to a polygraph examination:
 - 1. The employee must be advised of the consequences of a refusal to submit to a polygraph examination and that failure to satisfactorily cooperate during a requested polygraph examination will be considered a refusal to submit to an examination.
 - 2. Prior to the examination, the examinee will execute an "Agreement to Interview with Polygraph in Connection with an Administrative Interview Form"
 - 3. The questions asked in the polygraph examination will be narrow and specific in scope, relating only to the performance of his/her duties.
 - 4. When an employee is ordered to submit to a polygraph examination, the examinee will be informed the answers cannot be used against him/her in any subsequent criminal proceedings.

5. The Anderson Police Department may draw an adverse inference from an employee's refusal to submit to such a polygraph examination, and it could be the sole basis for disciplinary action against the employee.

Polygraph examinations of Anderson Police Department Employees Who Are Transferred to from "Sensitive" Assignments

Screening examinations may be conducted on employees as they transfer into and out of assignments designated as "sensitive" by the Chief of Police.

1. Assignments are considered "sensitive" where:
 - a. The potential for damage to the department and public safety by police misconduct is significantly heightened.
 - b. There is a historical record of misconduct associated with such an assignment.
 - c. The public perception of the assignment demands enhanced integrity monitoring.
2. Authorization for examinations will be assumed under personnel orders issued by the Chief of Police transferring personnel to and from "sensitive" assignments.
3. The following assignments are designated "sensitive":
 - a. Narcotics Division (any position)
 - b. Internal Affairs (any position)
 - c. Any assignment designated by the Chief of Police.
4. Employees refusing examination for a transfer to a "sensitive" assignment will be re-assigned in the department. Employees refusing examination for a transfer from a "sensitive" position may face disciplinary action.

Approval and Conduct of Applicant and Employee Polygraph Examinations

1. All polygraph examinations of applicants, employees and those who have made allegations against Anderson Police Department personnel must be approved by the Chief of Police or his designee.
2. The following standards apply for approval of polygraph examinations:
 - a. No employee may be requested or asked to submit to a polygraph examination without adequate demonstration of facts or

circumstances indicating the need for a polygraph examination of that individual.

- b. All reasonable efforts must be made to resolve allegations or questions before requesting an employee to submit to a polygraph examination.
- c. Before any applicant or employee is requested to submit to a polygraph examination, the refusal of which may be used as a factor in determining whether the applicant will be hired, or the employee subjected to disciplinary actions, there must be a substantial objective basis to suspect that the individual may be involved in a situation where by the polygraph would be useful. An exception to the "substantial objective basis" requirement is that the polygraph examination of contract linguist applicants may be conducted on an emergency basis where there is not time to conduct a normal background investigation.
- d. Applicants and employees who are requested to submit to a polygraph examination will be fully advised of their options and the potential consequences of the exercise of those options.

3. Use of results of Polygraph Examinations

- a. Disciplinary action will not be predicated solely upon the results of the polygraph examination, or upon the refusal to submit to a polygraph examination.
- b. The results of the polygraph examination should be considered along with other evidence.
- c. Deliberate or neglect misuse of the results of the Polygraph Examination shall be grounds for administrative action.

Selection of Polygraph Examiners

Selection for the position of Polygraph Examiner will be made by the Chief of Police. The minimum experience /education required to be considered for training is as follows:

- Five (5) years of investigative experience
- or
- A four (4) year college degree

In addition, selected individuals must pass a screening polygraph examination.

Training / Certification of Polygraph Examiners

To be certified to conduct examinations in South Carolina an individual must obtain a valid license issued by the South Carolina Law Enforcement Division (SLED) as prescribed by section 40-53 of the South Carolina Code of Laws (The Polygraph Examiners Act). This law requires applicants first complete a basic polygraph course approved by SLED. Basic courses taught at schools accredited by the American Polygraph Association are accepted by SLED for this requirement. Upon successful completion of an approved basic course of instruction, applicants are required by law to serve an internship as a trainee with a licensed examiner in the state to last no less than six (6) months. The conditions of the internship are set by SLED. In addition, applicants must pass an examination by SLED to determine their competency to obtain a license to practice in South Carolina. (SCLEA 6.11)

Continuing Education / Professional Associations

To actively ensure and publicly demonstrate the department's commitment to excellence all polygraph examiners employed as such by the department will be required to complete at least 12 hours of continuing education in polygraph or related subjects annually. All polygraph examiners employed as such by the Anderson Police Department will also be required to be members in good standing in the American Polygraph Association (APA). Membership in other professional associations involved in the polygraph field is encouraged but not required. Examples of other associations include American Academy of Forensic Sciences (AAFS) and the American Association of Police Polygraphist (AAPP).

The Anderson Police Department will bear the cost of any necessary expense as required by law or mandated by the requirements of this policy to ensure the proper, lawful and professional conduct of examinations by departmental personnel.

Equipment and Record Keeping

The polygraph examiner is responsible for the maintenance, safekeeping and integrity of the polygraph equipment. Polygraph instruments used by the department shall conform to state law, be of commercial manufacture and have no fewer than three functioning recording channels.

Notwithstanding state law or other requirements, the polygraph examiner shall maintain, in a secure storage location, each polygraph report together with polygraph charts and all allied papers for a period of five (5) years and indefinitely in all capital cases. The polygraph examiner shall provide summary activity or statistical reports as may be required by the Chief of Police.

By order of:

Martin D. Brown
Martin D. Brown, Chief of Police

5-12-2011
Date