



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 42.5

### TITLE: COMPUTER VOICE STRESS ANALYZER (CVSA), POLYGRAPH TESTING AND PSYCHOLOGICAL STRESS EVALUATOR (PSE)

**EFFECTIVE: 04/15/2018**

**REVISED: Replaces Policy 840**

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#### PURPOSE

The purpose of this Chapter is to regulate the administration of the Computer Voice Stress Analyzer (CVSA), the Psychological Stress Evaluator (PSE), and Polygraph examinations in connection with pre-employment, criminal, and internal investigations conducted by the New Orleans Police Department. Additionally, this Chapter provides investigative officers with a general knowledge of procedures and use of the equipment.

#### DEFINITIONS

**Certified Stress Analyst and Psychological Stress Evaluator**—Any person who is state certified to be able to detect deception or verify truth of statements through the use of emotional stress detectors or instrumentation.

**Emotional Stress Detector**—An instrument or apparatus for permanently and visually recording the physiological reactions of stress in an individual.

**Emotional Stress Instrumentation**—The minimum required instrumentation which may be used by a stress analyst.

**Polygraphist**—Any person who is state certified to be able to detect deception or verify truth of statements through the use of polygraph equipment.

**Polygraph machine**—An instrument that records certain physiological changes in a person undergoing questioning in an effort to establish truth or deception.

**Overt Interviews**—Live interviews by the CVSA examiner with a suspect, victim, witness or complainant. These interviews are conducted with prior knowledge and permission that certain questions will be recorded live and captured by the CVSA or PSE for analysis. Additionally, all or portions of the interviews will be recorded on audio and/or video tape.

**Covert Interviews**—Audio tape analysis by the CVSA or PSE examiner where investigators have obtained voluntary tape interviews from a suspect, victim, witness, or complainant. The interviews are designed to capture a yes or no response to pre-formatted questions. This taped interview will then be analyzed by the CVSA or PSE.

**Audio Tape Analysis**—CVSA or PSE examiner's analysis of the recorded responses of taped interviews wherein the individual has responded with yes or no answers to a pre-formatted questionnaire.

### **GENERAL INFORMATION**

1. Upon order of the Superintendent of Police, any Department member shall be required to submit to a CVSA, PSE and/or Polygraph examination to clarify any matter concerning an internal administrative investigation.
2. Other than when a member is ordered to submit to testing, voluntary written consent shall be obtained from all individuals prior to testing, except as otherwise provided for in this Chapter.
3. Any member refusing an order to submit to a CVSA, PSE, and/or Polygraph examination in an administrative investigation will be subject to disciplinary action.
4. Polygraph, PSE and CVSA testing shall not be used as a single determinant for gaining employment or final determinant factor in investigations. The tests shall not be used to circumvent good investigative procedures.
5. The CVSA and PSE are used for truth verification. Therefore, these tests should be viewed as a means to protect the integrity of the interviewee.
6. Polygraph examinations are conducted as an aid to criminal, internal, and applicant investigations conducted by this department. Polygraph examinations shall be used in conjunction with established investigative techniques.

### **USE OF CVSA, PSE AND POLYGRAPH EXAMINATIONS FOR EMPLOYMENT PURPOSES**

7. CVSA, PSE and/or Polygraph examinations shall be used in the selection process for pre-employment. Applicants will be provided with a list of areas from which CVSA, PSE, and Polygraph questions shall be drawn at the time of their formal application.
8. The polygraph examiner shall review all relevant applicant screening reports and applicant personal history summaries before conducting the examination.
9. CVSA, PSE and/or Polygraph tests will be administered to both commissioned and civilian applicants for the following purposes:
  - (a) Verify accuracy and completeness of the information on the application;
  - (b) Resolve questions or conflicts arising during background investigation;
  - (c) Document history of criminal or other disqualifying behavior; and
  - (d) Deter those seeking to penetrate law enforcement departments for improper purposes.
10. Questions to be asked will be provided to the applicant at the test location just prior to testing so applicants can have sufficient time to review and ask the examiner clarification questions.
11. CVSA, PSE and Polygraph tests shall not be the single determinant of employment. Admissions made before, during, or after the examination may be used to determine suitability for employment.
12. Investigators should attempt to conduct additional investigation when possible deception

is indicated in the examination.

### **USE OF CVSA, PSE AND POLYGRAPH EXAMINATIONS FOR CRIMINAL INVESTIGATIVE PURPOSES**

13. CVSA, PSE and Polygraph examinations may be utilized in conjunction with investigative leads and interviews of suspects, victims, and witnesses.
14. When practical, both the victim and the accuser should be tested in order to add validity to the examination results.
15. CVSA, PSE, or Polygraph examinations may only be conducted on a complainant, victim, or witness:
  - (a) After he/she has given a complete and formal interview statement.
  - (b) When there is little physical evidence or there are disinterested witnesses, and
  - (c) Only as a method of verifying the person's statement.
16. The use of CVSA, PSE, or Polygraph examinations for investigative purposes shall be strictly voluntary on the part of the complainant, victim, or witness.
17. The results are not to be used for arrest or legal action but are designed for developing leads, validity, and obtaining case direction.
18. Whenever practical during the use of CVSA/PSE, audio tape analysis should be followed up with a live interview and examination.
19. An examiner shall not conduct an examination upon a subject if it is believed, for any reason that an unbiased examination cannot be given.
20. The examiner shall read Miranda rights to the subject and explain the voluntary nature of the test.
21. The examiner shall obtain a signed consent prior to administering the examination.
22. Examinations shall cease immediately if requested by the person being tested.
23. Prior to any examination, the examiner shall explain the procedure to the person being tested and provide sufficient time for the individual to prepare.

### **USE OF CVSA, PSE AND POLYGRAPH EXAMINATIONS FOR ADMINISTRATIVE INVESTIGATIVE PURPOSES**

24. In internal disciplinary investigations, a CVSA exam may be administered to a member, complainant, or witness only after approval for such an exam has been obtained from the Superintendent of Police.
25. Approval must be obtained in writing from the Superintendent of Police prior to the administering of a CVSA exam to any department member.

### **WHO MAY BE TESTED**

26. Any person who can distinguish right from wrong may be tested. Generally, children who recognize right from wrong are testable. However, children will only be tested at the examiner's discretion and with the written consent of a parent or legal guardian after an advisement of all rights. (See: **Chapter 1.9.1 – Miranda** regarding the additional rights of

a juvenile).

### **WHO MAY NOT BE TESTED**

27. Children under six years of age will not be tested.
28. Individuals under the age of 18 must have the consent of a parent or legal guardian prior to testing. The consent must be in writing and in the possession of the examiner prior to the examination. (See: **Chapter 1.9.1 – Miranda**).
29. Except for administrative investigations of members who have been ordered, any person who has been forced or coerced into taking the examination (except as provided for in this regulation) will not be tested.
30. Any suspect who has been charged with a crime shall not be tested unless there is an agreement and stipulation signed by the person to be examined, his/her defense attorney and the prosecutor.
31. CVSA, PSE or Polygraph examinations shall not be conducted on anyone who is not sufficiently relaxed. A cooling off period will be required for anyone following an interrogation or intense interview or who is extremely angry, upset or distraught.
32. Anyone who is severely mentally handicapped or impaired by alcohol or drugs will not be tested.

### **RESPONSIBILITIES OF CVSA, PSA AND POLYGRAPH EXAMINERS**

33. The CVSA, PSE or Polygraph examiner shall review the available information pertaining to the case in question prior to administering an examination.
34. The CVSA, PSE or Polygraph examiner shall have the approval of his/her supervisor prior to conducting a tape analysis unless it is accompanied by a voluntarily signed consent.
35. Any covert use of the CVSA or PSE must be authorized by the examiner's Division/Section Commander.
36. Individuals shall not be examined at the request of another agency without prior written approval of the Superintendent of Police.
37. Requests for examinations directed to the Public Integrity Bureau will be approved by the Deputy Chief of the Public Integrity Bureau and the Superintendent of Police.
38. All CVSA PSE and Polygraph operators will submit a monthly log of all requested examinations and tests administered to his/her respective Division/Section Commanders.
39. The CVSA or PSE examiner will obtain a second opinion from another certified examiner on all cases.
40. The CVSA, PSE or Polygraph examiner shall not conduct examinations that may compromise the examiner's integrity (e.g., tests on close friends, relatives, and persons the examiner has a relationship with).
41. CVSA, PSE or Polygraph examiners are not obligated to:

- (a) Accept an order from a superior or governing authority that would cause him/her to violate professional standards (standards taught by the certified examiner's course);
  - (b) Obey illegal orders; and
  - (c) Conduct an examination on a subject that is not suitable for testing.
42. The examiner is the final authority on testing matters.
43. Examiners refusing to obey orders relative to PSE, CSVSA or Polygraph professional standards shall document same through an NOPD form 105 (interoffice correspondence) through their chain of command to the Superintendent of Police.
44. In the event the examiner declines to administer an examination and the decision/reason is questioned, a second opinion from another CSVSA or PSE examiner will be obtained.
45. The polygraph examiner shall independently interpret the chart tracings and render an opinion on findings such as, but not limited to: **No Deception, Deception Indicated or Inconclusive.**

#### **RESPONSIBILITIES OF OFFICER / INVESTIGATOR REQUESTING A CSVSA, PSE OR POLYGRAPH EXAMINATION**

46. The investigator should adequately complete an investigation or consult with the examiner during the investigation prior to an examination being scheduled.
47. The investigator will be responsible for notifying the subject of the date and time of the scheduled appointment and ensure the subject has transportation to the location of the examination.
48. The investigator will remain available at the test location until completion of the examination unless otherwise agreed to by the examiner and investigator.
49. The investigator will notify the CSVSA, PSE, or Polygraph examiner immediately if the subject cancels an examination appointment.
50. A CSVSA, PSE or Polygraph test should be utilized during investigations in which truthfulness is an issue.

#### **CSVSA, PSE AND POLYGRAPH EXAMINATION RECORDS**

51. CSVSA, PSE and Polygraph records will include, depending on the circumstances, a waiver of rights form, a voluntary submission form, a subject information sheet, any CSVSA or PSE graphs, any polygraph charts and statements of results. Video records of examinations and interviews shall be noted on all required reports.
52. CSVSA, PSE and Polygraph records will be maintained for that period of time as specified by the Department's record retention schedule and/or until any litigation is concluded. CSVSA, PSE and Polygraph records will be maintained in a secure area within their respective originating unit accessible only to the examiner.

#### **PUBLIC INTEGRITY BUREAU**

53. CSVSA, PSE and Polygraph examinations **shall not** be administered during criminal investigations involving employees of the New Orleans Police Department without a signed **NOPD Form 153 – Rights of an Arrestee or Suspect** indicating the individual

has waived his/her rights. Additionally, a **Voluntary Submission Form** must be signed by the individual indicating he/she is freely submitting to the CVSA, PSE and/or Polygraph test.

54. Public complainants and witnesses (not NOPD members) may be tested by use of the CVSA, PSE and/or Polygraph tests if a question of truthfulness arises during the investigation of their complaint or allegation.
55. These interviews shall only be conducted after a **Voluntary Test Waiver form** has been signed.
56. In the case of a CVSA or PSE covert interview (audio tape analysis), the operator shall receive prior, written authorization from the Superintendent of Police should the individual be a member of the Department.

### **CVSA/POLYGRAPH EXAMINERS**

57. Members certified as CVSA, PSE or Polygraph examiners, whose certification and training has been supplied or paid for by the City of New Orleans and whose normal duties and responsibilities do not normally cover CVSA, PSE or Polygraph testing, may be called upon to administer examinations as the need arises.
58. Members certified as CVSA, PSE or Polygraph examiners must keep their certifications up to date or refrain from any testing until all requirements for certification are current.
59. Members whose certification and training has been supplied or paid for by the City of New Orleans must obtain written permission for any testing done outside of his/her NOPD duties (including police secondary employment).
60. Members certified as CVSA, PSE or Polygraph examiners must receive training on legal requirements of interrogation techniques and updates and changes to the law, if any, with respect to the use of these devices in criminal investigations. This may be accomplished through annual in-service training and/or periodic re-certification on the devices used.