

CHAPTER: 600

Inspector General

DEPARTMENT ORDER:

603 – Polygraph Services

OFFICE OF PRIMARY
RESPONSIBILITY:

OIG

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Arizona Department of Corrections Rehabilitation and Reentry



Department Order Manual

A handwritten signature in black ink, appearing to read "Ryan Thornell".

Ryan Thornell, Director

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PURPOSE

This Department Order establishes the standards and procedures for polygraph examinations of Department employees and inmates. **Polygraph examinations shall be used** to confirm/support information gained by other investigative techniques and/or develop or confirm new investigative leads within **Internal Affairs** and criminal investigations. Polygraph examinations shall not be used to determine if an investigation/preliminary investigation are necessary or in place of traditional investigative methods capable of providing solid information or legally admissible evidence.

The Polygraph Examiners referenced in this Department Order are the agents, representatives, employees, or sub-contractors of the Polygraph Examination Contractor. Polygraph Examination services shall be in accordance with the Department's contract with the Polygraph Examination Contractor.

APPLICABILITY

This Department Order is not applicable to polygraph examinations for pre-employment purposes as outlined in Department Order #602, Background Investigations, or polygraph examinations of Debriefed Security Threat Group (STG) inmates as outlined in Department Order #806, Security Threat Groups (STGs) and Department Order #704, Inmate Regulations.

RESPONSIBILITY

The Inspector General or Deputy Director shall:

- Approve all employee polygraph examinations for **Internal Affairs** and criminal investigation purposes.
- Ensure the provisions of this Department Order are enforced.

The Inspector General or designee shall approve inmate polygraph examinations for **Internal Affairs** and criminal investigation purposes.

PROCEDURES

1.0 POLYGRAPH EXAMINATION GUIDELINES (EXCLUDING INTERVIEWS)

1.1 Employees and Inmates (examinees)

1.1.1 Employees may be required to submit to a polygraph examination if they make a statement during the investigation that **is not consistent** from other known **factual** information relating to the investigation **where** reconciling that **inconsistency** is necessary to complete the investigation.

1.1.1.1 The Polygraph Examiner shall make an audio and/or video recording of the complete polygraph examination procedure and provide a copy of the recording to the employee within 10 business days.

1.1.2 Employees reporting alleged misconduct of another employee may be subject to a polygraph examination if no other investigative methods can be used to determine the truthfulness of a complaint (i.e., lack of witnesses or independent evidence), which results in an impasse.

- 1.1.3 Inmates reporting alleged staff misconduct may be subject to a polygraph examination to substantiate the allegations upon the approval of the Inspector General or designee.
- 1.1.4 Employees and inmates alleging sexual assault or abuse shall not be required to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.
- 1.1.5 Polygraph Examinations
 - 1.1.5.1 Examinees shall not take notes or tape record any portion of the polygraph examination, which includes questions posed to the concerned examinee before, during, and after the period of time the examinee is actually connected to the polygraph instrument.
 - 1.1.5.2 Legal counsel or other representatives of the examinee shall not be present at any time during the course of a polygraph examination.
- 1.2 Approval, Notification, Scheduling, and Preparation
 - 1.2.1 To obtain approval for a polygraph examination, the investigator or supervisor (requestor) shall:
 - 1.2.1.1 Complete **the** Polygraph Examination Order, Form 603-1, which details the following:
 - 1.2.1.1.1 The employee's name and Employee Identification Number (EIN) or the inmate's name and Arizona Department of Corrections, Rehabilitation and Reentry Identification Number (ADCRR number).
 - 1.2.1.1.2 **Internal Affairs** investigation or criminal investigation case number.
 - 1.2.1.1.3 A brief case summary that specifies the reason(s) for the employee or inmate to have a polygraph examination.
 - 1.2.1.2 For employee polygraph examinations, submit Polygraph Examination Order forms to the Inspector General or the Deputy Director in absence of the Inspector General.
 - 1.2.1.3 For inmate polygraph examinations, submit Polygraph Examination Order forms to the Inspector General.
 - 1.2.2 The Inspector General or Deputy Director shall approve or disapprove the Polygraph Examination Order, Form **603-1**, and return the form to the requestor.
 - 1.2.3 The requestor shall:
 - 1.2.3.1 If the polygraph examination is approved:
 - 1.2.3.1.1 Schedule approved polygraph examinations in consultation with the Polygraph Examiner.

1.2.3.1.2 Indicate the scheduled time, date, and location information for the polygraph examination on the Polygraph Examination Order, Form **603-1**.

1.2.3.1.3 Provide a copy of the Polygraph Examination Order form to the examinee. When possible, notification shall be provided at least 48 hours in advance of the examination.

1.2.3.1.4 Assist the Polygraph Examiner, as needed, to prepare questions narrow in scope and which specifically relate to the allegations of misconduct.

1.2.3.2 Place the original Polygraph Examination Order, Form **603-1**, in the investigative case file.

1.3 **Internal Affairs** Investigations

1.3.1 Polygraph examination results for **Internal Affairs** investigation purposes may only be used in **Internal Affairs** investigation proceedings. No information or findings from an **Internal Affairs** investigation case may be used by the Department in a criminal investigation.

1.3.2 The investigator shall advise examinees who are the subject of an **Internal Affairs** investigation of their Garrity warning prior to initiating the polygraph examination.

1.3.3 Examinees shall:

1.3.3.1 Cooperate with the Polygraph Examiner. It shall be deemed a refusal if the examinee refuses to appear at the initial and/or follow-up examinations, refuses to answer the Polygraph Examiner's questions, or otherwise refuses to cooperate with the Polygraph Examiner.

1.3.3.2 Respond fully and truthfully to questions asked by the Polygraph Examiner.

1.3.4 The results of a polygraph examination in an **Internal Affairs** investigation shall not be the sole basis for disciplinary action.

1.4 Criminal Investigations

1.4.1 Polygraph examinations may be used by the Department in a criminal investigation.

1.4.2 Refusal to submit to a polygraph examination cannot be used against employees in a criminal prosecution.

1.4.3 The investigator shall advise examinees who are the subject of a criminal investigation of their constitutional rights and their right to accept or refuse the polygraph examination in this context without the threat of disciplinary action.

1.5 Records Retention - The Inspector General or designee shall:

1.5.1 Maintain polygraph examination records in a secure area.

- 1.5.2 Maintain polygraph examination records in accordance the General Records Retention Schedule for All Public Bodies Administrative Records Law Enforcement Records, available at <http://www.azlibrary.gov/> and Arizona Revised Statutes (A.R.S.) §38-1101, §38-1104, §38-1108, §38-1134, and §38-1138, based on the respective intention of the polygraph examination.

2.0 POLYGRAPH EXAMINERS

- 2.1 The Inspector General shall ensure Polygraph Examiners:
 - 2.1.1 Conduct lawful, professional, ethical, and courteous polygraph examinations to assist investigators with obtaining information needed for **Internal Affairs** and/or criminal investigations, in accordance with:
 - 2.1.1.1 This Department Order.
 - 2.1.1.2 Department Order #601, Internal Affairs Investigations and Employee Discipline.
 - 2.1.1.3 **Department Order #608, Criminal Investigations**.
 - 2.1.1.4 Statutes, regulations, and professional ethical standards related to the conduct of polygraph examinations.
 - 2.1.2 Inform examinees prior to beginning the polygraph examination process:
 - 2.1.2.1 That polygraph examination results will be shared with the investigator, their supervisor, the Inspector General, **General Counsel**, and **any** attorneys representing the Department, but will otherwise be kept confidential, except as required by statute or court order.
 - 2.1.2.2 Of the basic issues being investigated, the questions to be asked during the examination process including additional technical questions.
 - 2.1.3 Make examination results available to Department, **General Counsel**, and **any** attorneys representing the Department, but otherwise keep the results confidential as outlined in this section.
- 2.2 In preparation for a polygraph examination, the Polygraph Examiner may:
 - 2.2.1 Meet with the investigator.
 - 2.2.2 Review all available case reports prior to the polygraph examination date.
- 2.3 If the Polygraph Examiner determines the polygraph examination cannot be completed at a given session, the investigator shall reschedule the examination until the Polygraph Examiner determines it is complete.
- 2.4 The Polygraph Examiner shall provide the polygraph examination results to the investigator within five business days of examination. Results shall include the following:
 - 2.4.1 Admissions and/or confessions, if applicable.

2.4.2 The Polygraph Examiner's opinion as to whether:

2.4.2.1 The examinee properly submitted to the polygraph examination.

2.4.2.2 Truth or deception was indicated.

DEFINITIONS/GLOSSARY

Refer to the Glossary of Terms **for the following:**

- **Garrity/Garrity Warning**

FORMS LIST

603-1, Polygraph Examination Order

AUTHORITY

A.R.S. §38-1101, Definitions

A.R.S. §38-1104, Internal Investigations; Employee Representative; Exception

A.R.S. §38-1108, Polygraph Examinations, Exception

A.R.S. §38-1134, Internal Investigations; Employee Representative; Polygraph Examination

A.R.S. §38-1138, Polygraph Examinations

29 C.F.R., §5-801, Application of the Employee Polygraph Protection Act of 1988