

COUNTY OF ERIE  
LOCAL LAW NO. 4  
1984

A LOCAL LAW in relation to the registration of  
polygraph examiners

BE IT ENACTED BY THE ERIE COUNTY LEGISLATURE AS  
FOLLOWS:

Section 1. Legislative Findings.

The Legislature finds that the use of polygraph testing for investigation purposes is wide-spread within the County of Erie. It is further found that certain abusive practices in the administration of polygraph examinations have no justifiable purpose, but serve only to intimidate, degrade, and violate the privacy of County residents.

Section 2. Declaration of Purpose.

It is the purpose of this local law to foster the just need for investigation in the County in a manner designed to promote the dignity and well-being of all County residents.

Section 3. Definitions.

As used in this local law:

a. "Polygraph" means any mechanical or electrical device or instrument which purports to determine the truth or falsity of statements made by a person on the basis of fluctuation in the person's heart rate, blood pressure, respiration rate, galvanic skin response or other measurable physiological change or any combination of such fluctuations or changes.

b. "Polygraph examiner" means any person who interviews another person in conjunction with the use of a polygraph, for the purpose of determining the truth or falsity of statements or responses made by the person interviewed.

c. "Polygraph examination" means the questioning or interviewing of a person in conjunction with the use of a polygraph.

d. "Polygraph services" means the provision of polygraph examiners or polygraph examiners and polygraph machines.

Section 4. Registration of Polygraph Examiners and Businesses Offering Polygraph Services.

There is hereby established in the Office of the Erie County Sheriff a Register of Polygraph Examiners Services.

a. The Erie County Sheriff shall maintain such register in such form as shall be found convenient, but it shall include the following information for each registered polygraph examiner:

1. Name
2. Date of birth
3. Place of business
4. Residence address
5. Date of first registration
6. Date of registration renewal
7. Disclosure of any rescission or revocation of a polygraph license of any state or municipality

b. In addition such register shall include the following information for each business in the County, regardless of form of organization, which offers polygraph services to the public:

1. Name of business
2. Business address
3. Form of business organization
4. Date of first registration
5. Date of registration renewal

c. The Sheriff shall charge each polygraph examiner registered in accordance with this local law an annual fee of \$100.00.

d. The Sheriff shall charge each business offering polygraph services registered in accordance with this local law, an annual fee of \$100.00 except that such fee shall not be charged if the business is a sole proprietorship of which the proprietor is a polygraph examiner registered pursuant to this local law, or the business is a partnership in which all partners are polygraph examiners registered pursuant to this local law.

e. The Sheriff shall not register any person as a polygraph examiner unless such person: (1) shall have attained the age of 21 years; (2) be a high school graduate or equivalent; and (3) show evidence of graduation and certification by a polygraph school licensed by the New York State Education Department, or a polygraph school in another state duly licensed under the laws of such state, or membership in the American Polygraph Association.

f. The Sheriff shall not register any person who has been convicted of a felony or who has been convicted of a misdemeanor involving fraud, misrepresentation, or violation of this local law, as verified by criminal histories reported by the Division of Criminal Justice Services of New York State and the Federal Bureau of Investigation.

g. The Sheriff shall register for one year any person as a polygraph examiner if: (1) the applicant has

⊕  
successfully completed the academic portion of an accredited polygraph school within the past twelve months but has not yet graduated from the polygraph school due to non-completion of the post academic field project study necessary for certification and graduation, and (2) the applicant submits a letter from the polygraph school showing that the applicant is actively pursuing school certification and that the applicant's polygraph examinations are monitored by the school or by a polygraph examiner registered pursuant to this local law.

Section 5. Registration Required.

a. No person shall perform a polygraph examination in Erie County unless registered with the Erie County Sheriff pursuant to this local law.

b. Registration is not and shall not be deemed an endorsement by the County of Erie or the Erie County Sheriff. Any person who advertises that he is registered in Erie County shall also include in such advertisement the following statement:

"Registration to do business in the County of Erie does not constitute an endorsement or certification by the County of Erie or the Erie County Sheriff."

Section 6. Conduct of Polygraph Examinations.

No polygraph examination shall be conducted in Erie County except in compliance with the provisions of this section.

a. Each polygraph examination conducted shall be preceded by a pre-examination interview at which:

1. The examinee will be told that he has the right to terminate the polygraph examination at any time;

2. The examinee will be told that he has the right to refuse to answer any question in the polygraph examination;

3. The polygraph examiner will review with the examinee each test question prior to the actual polygraph examination, and the examinee will be afforded an opportunity to refuse any question or to qualify any answer to such question prior to the polygraph examination.

4. At the request of the examinee, the polygraph examiner shall make an audio record of the polygraph examination, including the pretest interview. The polygraph examiner shall keep such record for a period of 45 days from the date of the examination and/or interview, and shall not alter or edit the audio recording in any manner. The audio record will be kept confidential and will not be exposed to public display. The audio record will be made available to the proper authorities upon request, and be

made available for a hearing by the examinee and/or his designated representative.

b. Examination.

1. Each polygraph examination shall be performed only with the express consent of the examinee.

2. Each polygraph examination will be conducted privately in a room that provides confidentiality.

3. No person who is not a registered polygraph examiner shall be present in the examination room during the conduct of the examination, absent the express consent of the examinee. This provision shall not apply to the presence of an interpreter/translator or other assistant to the polygraph examiner or a student enrolled in a polygraph school licensed by the New York State Education Department for the purpose of training.

4. A polygraph examiner shall not administer a polygraph examination for the purpose of eliciting an admission or confession against interest from the examinee until at least two polygraph charts or two repetitions of each question regarding the issues submitted for investigation have been conducted, unless the examinee does not permit the minimum two polygraph charts or two repetitions to be conducted.

5. No polygraph examiner shall render a verbal or written decision or report based on chart analysis

without having administered at least two polygraph charts or two repetitions of each question in which each relevant question is asked on each chart or repetition.

6. All polygraph charts must be signed at the termination of the polygraph examination by the examinee, above the top tracing in the middle of the chart.

7. The time and date shall be entered at the end of each polygraph chart. The beginning of each polygraph chart will reflect the breathing area recorded and the sensitivity setting of the galvanic skin response and cardiograph components. All artifacts will be noted on each chart at the exact location such occurred on the polygraph chart.

8. No polygraph examiner will administer more than twelve polygraph examinations in any one day.

9. All polygraph charts and related papers and documents will be retained for a period of one year for Pre-Employment and Periodic examinations and three years for specific issue examinations.

10. An employer, doing business in Erie County, must comply with the provisions of this law when requiring a polygraph examination of an Erie County resident who is or may be employed in Erie County.



c. Questioning.

No polygraph examiner shall ask any question concerning the religious, political, marital, union or sexual activities of the examinee, nor shall such examiner question the examinee with respect to activities of his family or members of his household, unless such activities are directly the matters under investigation.

d. Equipment.

1. No polygraph instrument shall be used by a polygraph examiner unless it is capable of measuring and permanently recording simultaneously at least the following three physiological phenomena: cardiovascular reaction, breathing and galvanic skin response.

2. Each polygraph instrument used by a polygraph examiner shall be calibrated at least once each month and a record showing the date of calibration, any malfunction, and the signature of the person performing such calibration will be maintained for at least three years.

Section 7. Reports of Results of Polygraph Examinations.

a. No report of results of a polygraph examination shall be made by any person in the County to any other person without the express written consent of the examinee who is the subject of the report.

b. At the request of the examinee, the polygraph examiner shall deliver the same report of results of a polygraph examination as provided to the party requesting such polygraph examination.

Section 8. Penalties.

a. A violation of subdivision a of Section 5 of this local law shall be a Class "B" Misdemeanor upon the first conviction and, upon any subsequent conviction, a Class "A" Misdemeanor.

b. A violation of subdivision b of Section 5 of this local law shall be a Violation.

c. A violation of Section 6 of this local law shall be a Class "B" Misdemeanor upon the first conviction and, upon any subsequent conviction, a Class "A" Misdemeanor.

d. A violation of Section 7 of this local law shall be a Class "B" Misdemeanor upon the first conviction and, upon any subsequent conviction, a Class "A" Misdemeanor.

e. Upon conviction of a violation of this local law, the County Sheriff shall immediately withdraw the registration of such individual or business.

Section 9. Review Procedures.

a. There is hereby established an Erie County Polygraph Review Committee consisting of three members, to wit: the Sheriff of Erie County or his designee (who shall be the Chairman of said Committee), the District Attorney of Erie County or his designee, and the Chairman of the Erie County Board of Ethics or his designee whose duty it shall be to review any and all written complaints made pursuant to the procedure set forth herein to determine whether there has been a violation of this local law.

b. Any polygraph examinee who believes that there has been a violation of this local law in the conduct of a polygraph examination performed on him or her may, within 30 days of the date of said examination file a complaint with the Chairman of the Erie County Polygraph Review Committee, 10 Delaware Avenue, Buffalo, New York 14202, setting forth the facts upon which such allegation is based.

c. The committee shall, within 15 days of receipt of any complaint, convene to conduct a hearing with respect to the allegation set forth in that complaint. The hearing shall be upon notice to the complainant, and the polygraphist who is charged with a violation of this law.

d. The committee shall, upon proper notice to each party, conduct said hearing expeditiously and shall render its judgment accordingly.

e. Upon a finding that there has been a violation of this local law, the committee may recommend to the Erie County Sheriff that the license of said polygraphist shall be immediately suspended or revoked. The committee shall further notify the complainant of its decision and take such other action as it deems appropriate.

f. Any action taken by the Erie County Polygraph Review Committee may be reviewed pursuant to Article 78 of the Civil Practice Law & Rules of the State of New York.

#### Section 10. Separability.

If any clause, sentence, paragraph or section of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or section thereof directly involved in the proceeding in which such adjudication shall have been rendered.

#### Section 11. Effective Date.

This law shall take effect on the ninetieth day after it shall finally have been adopted.