WEST VIRGINIA CODE: §62-11D-2

§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.

(a) Notwithstanding any provision of this code to the contrary, any person:

(1) Who has been determined to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code; or

(2) Who is required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code and who is ordered by a circuit court or supervising entity to undergo polygraph examination as a condition of probation, parole or supervised release, shall, as a condition of said probation, parole or supervised release, submit to polygraph examinations as prescribed in this section.

(b) Any person required to undergo polygraph examination pursuant to subsection (a) of this section shall, at his or her expense, submit to at least one polygraph examination each year to answer questions relating to his or her compliance with conditions of supervision, including conditions related to treatment. Additional examinations may be required, not to exceed a total of five. The results of any examination are not admissible in evidence and are to be used solely as a risk assessment and treatment tool. Examination results shall be made available to the person under supervision, upon request.

(c) In the event a person required to submit to polygraph examinations as required by the provisions of this section is unable to pay for the polygraph examination or examinations, that person may present an affidavit reflecting the inability to pay for such testing to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such testing, the court shall issue an order reflecting such findings and forward such order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for such testing.

(d) Any polygraph examination conducted pursuant to the provisions of this section shall be conducted by a certified polygraph analyst.

(e) In the conduct of polygraph examinations of a sex offender performed pursuant to the provisions of this section, no certified polygraph analyst may:

(1) Conduct more than two full disclosure or sexual history polygraph examinations in a twenty-four hour period;

(2) Disclose any information gained during any full disclosure or sexual history polygraph examination to any law-enforcement agency or other party, other than the supervising entity, without the supervised person's consent, nor shall any information or disclosure be

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admissible in any court of this state, unless such information disclosed indicates the intention or plan to commit a criminal violation of the laws of this or another state or of the United States in which case such information may be released only to such persons as might be necessary solely to prevent the commission of such crime;

(3) Conduct more than two maintenance tests in a twenty-four hour period;

(4) Conduct more than one full disclosure or sexual history polygraph examination and more than two maintenance tests in a twenty-four hour period; or

(5) Conduct more than five polygraph examinations of the same sex offender in a calendar year.

(f) No polygraph examination performed pursuant to the provisions this section may be conducted by a person who is a sworn peace officer, within the boundaries of that officer's jurisdiction.

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