

LIE DETECTOR TESTS

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QUESTION: Should I have an attorney present during a lie detector test administered by the police? I haven't been charged with any crime, but I think the police are trying to determine whether or not to charge me with child abuse.

ANSWER: The short answer to this question is quite easy: Yes, by all means you should consult with an attorney before submitting to a lie detector test being conducted by the police. To understand this answer, however, I must tell you about what a lie detector test is and what use the police put it to.

The results of a lie detector, also known as a polygraph examination, are not admissible in any court of law in New Hampshire. This issue was long ago resolved as the Supreme Court found that such tests are simply too unreliable and interpretation of the responses too subjective. So why would the police want you to take a lie detector test?

The polygraph is a powerful investigative tool. By its very format, you would be subject to pointed questions about your potential criminal activity. In the hands of a well-trained interrogator, the test becomes a wonderful opportunity to conduct an extensive interrogation.

What actually is a lie detector or polygraph? A polygraph is a scientific device which through measurement and recording of involuntary bodily responses blood pressure, pulse rate, respiration, and skin resistance to electricity seeks to determine whether an individual is telling the truth. The theory is that when a person lies, there are involuntary changes in these functions. As the test is being administered, the machine makes a record of these responses and they are, in turn, interpreted by the polygraph examiner.

The test itself is broken down into three components. First, there is the introductory stage where the examiner explains to the subject in detail what the procedure is going to be and, together, the examiner and the subject determine what the operative or central questions are going to be. The second stage is the actual administration of the test. Here, the examiner asks many questions that establish a baseline and, finally, asks the operative questions. The final stage is where the results of the test are discussed with the subject. The entire test takes several hours to complete.

The examiner can reach one of three conclusions as to each operative question: the subject was truthful, deceitful, or the results are inconclusive. Inconclusive results are not at all uncommon.

Can the results of the lie detector test clear you of the crime? Yes, but there is certainly no guarantee of this. Even responses that are deemed truthful cannot prevent you from being prosecuted. What other evidence there is against you is of vital importance. Just as failure to pass a polygraph test is not admissible in court, neither is passing a lie detector test. Passing a test is only one factor in the decision to prosecute.

The problem with taking a polygraph test without having consulted with counsel is that at each stage of the examination process, the police are given an unfettered opportunity to interrogate you. You will be asked detailed questions about the crime you are suspected of. You will be asked to explain inconclusive or deceptive answers. The questioning may be very sophisticated and calculated to obtain incriminating responses.

By all means, contact an attorney before taking the lie detector test. Whether you committed the crime or not, you should be very cautious about subjecting yourself to the intense questioning that

goes along with a polygraph examination. Your attorney should be able to advise you as to whether or not you should take the lie detector test. If you decide to take the test, your attorney can be there to protect your legal rights.

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