June 9, 2009

The Honorable Jessica A. Little
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

SYLLABUS: 2009-025

R.C. 2907.10(A) does not prohibit a caseworker supervisor for a county department of job and family services from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination before or after commencing an investigation of the alleged sex offense, provided the request or directive is not used as a basis for determining whether to commence or continue the investigation.

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

June 9, 2009

OPINION NO. 2009-025

The Honorable Jessica A. Little
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Little:

You have requested an opinion concerning the application of R.C. 2907.10(A). You explain that a county department of job and family services (CDJFS) is conducting an investigation of an alleged sex offense. A caseworker supervisor for the CDJFS who is involved with the case wishes to have the victim submit to a polygraph examination. In light of these facts, you ask whether R.C. 2907.10(A) prohibits the caseworker supervisor from asking the victim of the alleged sex offense to submit to a polygraph examination.[1]

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[1] Your question concerns a situation in which a caseworker supervisor for a county department of job and family services (CDJFS) wishes to administer a polygraph examination to a victim of an alleged sex offense who is a juvenile. We are aware that "the scientific community and courts do not widely accept the polygraph as a reliable method of ascertaining the truth" and that "[t]oo many variables may distort the outcome of any polygraph examination." Nicholas R. Barnes, *Comment: The Polygraph and Juveniles: Rehabilitation or Overreaction? A Case Against the Current Use of Polygraph Examinations on Juvenile Offenders*, 39 U. Tol. L. Rev. 669, 669 (2008); *see United States v. Scheffer*, 523 U.S. 303, 309-12 (1998). Moreover, "[p]olygraph examinations with juveniles … present more variables creating uncertainty than adult examinations." Nicholas R. Barnes, *Comment: The Polygraph and Juveniles: Rehabilitation or Overreaction? A Case Against the Current Use of Polygraph Examinations on Juvenile Offenders*, 39 U. Tol. L. Rev. 669, 670 (2008). It is therefore beyond the scope of this opinion to determine whether it is advisable for a caseworker supervisor for a CDJFS to ask or require a victim of an alleged sex offense who is a juvenile to submit to a polygraph examination. Instead, any policymaking in this regard is best left to the General Assembly and courts. *See generally id.* ("policy makers and judicial authorities should perform

R.C. 2907.10(A)(1) provides that a "public official shall not ask or require a victim of an alleged sex offense[2] to submit to a polygraph examination[3] as a condition for proceeding with the investigation of the alleged sex offense." (Footnotes added.) For purposes of R.C. 2907.10(A)(1), a caseworker supervisor for a CDJFS is a public official. *See* R.C. 117.01(E); R.C. 2907.10(B)(5). R.C. 2907.10(A)(1) thus prohibits a caseworker supervisor for a CDJFS from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination "as a *condition for proceeding* with the investigation of the alleged sex offense." (Emphasis added.)

The terms "condition" and "proceeding" are not defined for purposes of R.C. 2907.10, and, as such, these terms are accorded their common, ordinary meanings. R.C. 1.42. *Merriam-Webster's Collegiate Dictionary* 259 (11th ed. 2005) defines "condition," as a noun, to mean "something essential to the appearance or occurrence of something else : PREREQUISITE." This same dictionary at 990 defines the verb form of "proceed" to mean "to begin and carry on an action, process, or movement" or "to move along a course : ADVANCE."

The use of the terms "condition" and "proceeding" in R.C. 2907.10(A)(1) indicates that the purpose of this provision is to prohibit a caseworker supervisor for a CDJFS from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination as a *prerequisite to commencing or continuing* an investigation of an alleged sex offense. In other words, such a supervisor may not use a request or directive to submit to a polygraph examination as a basis for determining whether to commence or continue an investigation of an alleged sex offense.

Nothing in the language of R.C. 2907.10(A)(1), however, suggests that the purpose of this division is to prohibit such a supervisor from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination before or after commencing an investigation of the alleged sex offense as a means of furthering their conduct of that investigation. We find support for this assertion in the language of R.C. 2907.10(A)(2), which states that, "[t]he refusal of the victim of an alleged sex offense to submit to a polygraph examination *shall not prevent* the investigation of the alleged sex offense, the filing of criminal charges with respect to the alleged sex offense, or the prosecution of the alleged perpetrator of the alleged sex offense." (Emphasis added.) If the legislative intent behind R.C. 2907.10(A)(1) were to prohibit a caseworker

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an extensive study to determine the accuracy of polygraph examinations on juveniles of every age before subjecting juveniles to polygraphs").

[2] For purposes of R.C. 2907.10, "sex offense" means a violation of R.C. 2907.02-.09. R.C. 2907.10(B)(6).

[3] The term "polygraph examination," as used in R.C. 2907.10, means "any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question an individual for the purpose of determining the individual's truthfulness." R.C. 2907.10(B)(2).

supervisor for a CDJFS from ever asking a victim of an alleged sex offense to submit to a polygraph examination, it would not have been necessary for the General Assembly to enact R.C. 2907.10(A)(2) or to engage in any discussion about the possible consequences of a victim's refusal to submit to a polygraph examination. *See generally* R.C. 1.47 (in enacting a statute, it is presumed that "[t]he entire statute is intended to be effective" and a "result feasible of execution is intended"); *State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) ("the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose").

By enacting R.C. 2907.10(A)(2), the General Assembly acknowledged that a victim of an alleged sex offense may refuse a request or directive to submit to a polygraph examination anytime after the allegation of the sex offense is made, which clearly indicates that such a request or directive can properly be made. Moreover, the language of R.C. 2907.10(A)(2) reveals that, when such a refusal occurs, a caseworker supervisor for a CDJFS is not prevented from commencing or continuing an investigation of the alleged sex offense.

Reading divisions (A)(1) and (A)(2) of R.C. 2907.10 together thus discloses that the General Assembly did not intend to prohibit a caseworker supervisor for a CDJFS from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination anytime after the allegation of the sex offense is made. Instead, these divisions are intended to prohibit the use of a request or directive to submit to a polygraph examination as a basis for determining whether to commence or continue an investigation of an alleged sex offense and provide authorization for the commencement or continuation of an investigation of an alleged sex offense when the victim of the alleged sex offense refuses to submit to a polygraph examination. Accordingly, R.C. 2907.10(A) does not prohibit a caseworker supervisor for a CDJFS from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination before or after commencing an investigation of the alleged sex offense as a means of furthering the conduct of that investigation, provided the request or directive is not used as a basis for determining whether to commence or continue the investigation.

In summary, it is my opinion, and you are hereby advised that R.C. 2907.10(A) does not prohibit a caseworker supervisor for a county department of job and family services from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination before or after commencing an investigation of the alleged sex offense, provided the request or directive is not used as a basis for determining whether to commence or continue the investigation.

Respectfully,

RICHARD CORDRAY
Ohio Attorney General