

**Research Overview:  
Post Conviction Sex Offender  
Polygraph Testing  
September 2004**



**New Mexico Sex Offender Management Board**

## **Research Overview: Post Conviction Sex Offender Polygraph Testing**

Prepared for:  
The Sex Offender Management Board  
and  
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**NOTE:**

This paper provides research information for members of the New Mexico Sentencing Commission.  
It is not a statement of the Commission's views or opinions.

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## Executive Summary

- The Containment Model is a key criminal justice strategy used in a number of jurisdictions for managing convicted sex offenders who return to the community. The model involves a comprehensive program of assessment, supervision, intervention and treatment. An essential part of the supervision component in the Containment Model involves the use of post-conviction polygraph examination.
- Post Conviction Sex Offender Polygraph Testing (PCSOT) is used in a number of ways to motivate offenders to be truthful about their histories of sexual deviancy and to take responsibility for their offenses, which are key steps in enabling treatment of sex offenders to be effective.
- The proper training of individuals who administer polygraph tests to sex offenders is important in successfully using PCSOTs to manage offenders. Many states have adopted stringent requirements, usually in the form of educational courses specific to sex offender testing, that polygraph examiners must meet in order to become qualified to administer clinical polygraph tests to sex offenders.
- The American Polygraph Association has established a set of Post Conviction Polygraph Standards for Sex Offender Training and Testing, and has developed a 40-hour course for examiners who want to learn how to conduct PCSOTs.
- In order to maintain standardized testing programs, several jurisdictions have established guidelines that outline how sex offender polygraph testing techniques and procedures must be implemented.
- Many jurisdictions require sex offenders to pay for their own PCSOTs, and in some cases, a sliding scale is used to determine the fees sex offenders must pay based on their job status and income.
- Providing immunity from additional prosecution for historical sex offenses revealed through polygraph testing is a critical component in the testing of sex offenders. The limited immunity allows sex offenders to be open and honest about their past, which assists the treatment team in developing an offender-specific treatment plan and favorably impacts an offender's ability to succeed in treatment.
- While limited research shows that the use of polygraph testing for treating and managing juvenile sex offenders may be useful, little is known about how a younger offender's physical and emotional status, age and intelligence and the examiner's level of training and competency affects the polygraph testing outcome.



## Overview

The *Containment Model* has emerged as the primary method for monitoring and managing convicted sex offenders who are placed on probation or are ultimately released back into the community after serving time in prison. The *Containment Model's* primary goal is to increase public safety through a collaborative, multidisciplinary strategy that provides active supervision of sex offenders in the community (see Addenda I for an outline of the *Containment Model* components and Addenda II for *The Containment Approach by Kim English*) (1). The model incorporates assessment, monitoring, supervision, intervention and treatment into a comprehensive program designed to make it difficult for convicted sex offenders to re-offend and to help them learn how to control their own behavior (1, 2).

Polygraph examinations are being used by many jurisdictions as a tool in the monitoring of sex offenders as outlined in the *Containment Model*. Research indicates that sex offenses are often under-reported and that most sex offenders have multiple paraphilias. Obtaining information about a sex offender's entire sexual history and convincing him to accept responsibility for the extent of his sexual deviancy is important to the success of supervising the offender in the community and to the overall effectiveness of treatment (3).

The polygraph instrument precisely records physiological measurements that are interpreted in accordance with specific protocols by professional polygraphists with specialized training. These interpretations are used to form professional opinions about whether an examinee was attempting deception while answering specific relevant questions during the examination (2). It is believed that Post Conviction Sex Offender Polygraph Testing (PCSOT) motivates offenders to be truthful about their past sexual behaviors, possible recent relapses and high-risk conduct. There are several different types of polygraph exams that have different purposes in gaining knowledge about an offender.

### 1. Instant Offense Disclosure Test

This polygraph test is related to the offense of conviction, in conjunction with the official version. It is essential because an offender cannot progress in treatment if he is dishonest about his offense. Some offenders will plead guilty or no contest and receive a deferred adjudication or regular probation for their offense. Other offenders will be found guilty by a court, sentenced to prison, and then receive parole. In either case, sex offender probationers or parolees are often in denial of all or part of the offense for which they plead. The polygraph is used to help break the denial in those offenders; most treatment providers agree that treatment cannot be successful until an offender breaks denial.

### 2. Sexual History Disclosure Test

This polygraph test addresses deviant and criminal sexual behaviors that were part of the offender's past, prior to the date of conviction. It is usually conducted after the offender has come out of denial and is willing to accept responsibility for his offense. Gathering information about an offender's sexual history assists the treatment provider in creating or modifying an offender's treatment plan and assists with the assessment of risk regarding the offender.

### 3. Maintenance Test

The maintenance polygraph test covers supervision and treatment compliance from the period of conviction to the present. Offenders are subject to various rules mandated by supervision conditions and treatment contracts, and use of the polygraph assists in determining compliance with these conditions and contracts.

### 4. Monitoring Test

Otherwise known as a community safety polygraph, this polygraph test is designed to determine whether the offender has committed a new sexual offense during the period of supervision (4).

## **Polygraph Program Implementation – Specific Issues**

### Polygraph Examiner Qualification/Certification

The proper training and certification of individuals who administer PCSOT exams is of key importance in successfully using polygraph tests to manage sex offenders. As a group, sex offenders are highly deceptive regarding their offenses. Deception and failure to take responsibility for their actions can be a significant factor affecting the successful monitoring and treatment of sex offenders. Twenty-eight states, including New Mexico, have state polygraph licensing boards that regulate the general licensing of polygraph examiners (see Addenda I for New Mexico polygraph licensing requirements). Many states have also implemented specific, additional, requirements that polygraph examiners must meet in order to be considered qualified to administer clinical polygraph tests to sex offenders.

The additional certification requirements often include the completion of a minimum number of hours of specialized sex offender polygraph examination training related to the behavior and motivation of sex offenders, sex offender assessment, evaluation and monitoring. In Texas, the Joint Polygraph Committee on Offender Testing (JPCOT) developed guidelines for PCSOT examiners who administer polygraph tests to sex offenders which include 40 hours of specialized sex offender training that consists of:

- 24 hours of training on interview procedures and formats, reporting formats, standardized polygraph procedures, professional ethics, and understanding the use of polygraph results in treatment, supervision and case management; and
- 16 hours of training focused on the behavior of sex offenders and the trauma factors associated with victims/survivors of sexual assault (see Addendum for a full copy of the JPCOT guidelines document).

Illinois has specific requirements for PCSOT examiners. Each examiner must have:

- a college degree and must have graduated from a polygraph school accredited by the American Polygraph Association (APA);
- completed 40 hours of specialized clinical sex offender training for polygraphers approved by the APA; and
- conducted at least 150 criminal specific issue examinations, consisting of a minimum of 50 sex offender polygraph examinations, including specific issue, disclosure, and maintenance examinations.

In addition to these initial requirements, PCSOT examiners in Illinois must also complete 40 hours of relevant continuing education every two years and conduct a minimum of 75 clinical

polygraph examinations every three years in order to remain on the state's Approved Provider list (see Addenda I for a copy of the Illinois Qualifications of Polygraph Examiners).

Several polygraph professional associations and organizations have developed specific qualification criteria related to administering clinical PCSOTs. The American Polygraph Association (APA) has included *Post Conviction Polygraph Standards for Sex Offender Training and Testing* as part of its overall bylaws and standards of practice (see Addenda I for a complete copy). The APA has also developed a 40-hour course for examiners wanting to learn how to conduct PCSOTs. The APA worked with industry experts and professionals including Anna Salter, Kim English, Rick Holden and Rob Lindell to develop training that educates polygraph examiners about sex offender behavior and motivation, treatment and therapy programs and the types of tests that are appropriate for the different stages of sex offender management.

Some jurisdictions have specified that polygraph examiners meet the APA guidelines, such as Lane County (Oregon), which states in its *2003 Sex Offender Management Plan*, "polygraphists who provide sex offender polygraphs are members of the American Polygraph Association and meet the APA standards for Post-Conviction Sex Offender Testing."

The Florida Polygraph Association has also established a set of *Post Conviction Sex Offender Testing Guidelines* for polygraph testing in the comprehensive management and treatment of post conviction sex offenders for the purpose of complying with Florida State Statutes 948.03 and to enhance public safety (see Addenda I for a complete copy of the FPA guidelines).

#### Polygraph Examination Program Guidelines

In conjunction with developing specific qualifications for sex offender polygraph examiners, many jurisdictions have developed guidelines for testing techniques and procedures in order to maintain standardized testing programs. The Texas Joint Polygraph Committee on Offender Testing has outlined examination recording guidelines, polygraph instrument calibration, recommended frequencies for clinical polygraph examinations and the types and number of examination questions (see Addenda I for a copy of the JPCOT guidelines document).

The Illinois *Sex Offender Management Board Standards for the Use of Polygraph* outlines the responsibilities of the polygraph examiner, the types of exams, the examination questions, the reporting of examination results, type of polygraph equipment to be used and how to address sex offenders who are not fluent in English (see Addenda I for a copy of the standards document).

The California Coalition on Sex Offending (CCOSO) has issued a position paper that outlines the guidelines for properly administered post conviction sex offender polygraph exams. The guidelines include:

- Test Accuracy and Treatment Provider Responsibilities
- Examination and Examiner Guidelines (refers to California Association of Polygraph Examiners that the CCOSO collaborated with to develop guidelines defining examiner competence and ethical examiner practices)
- Confidentiality – Violations During Treatment
- Confidentiality – Deviant History

- Recommendations to enhance test accuracy, balance offender confidentiality with community safety, and protect program integrity (see Addenda I for a copy of the CCOSO position paper).

### Polygraph Examination Fees

A key aspect of sex offenders taking responsibility for their actions is to require that they pay for their ongoing monitoring polygraph exams. Different jurisdictions handle the payment of PCSOT fees by offenders in a variety of ways, and usually take into account an offender's ability to pay (i.e. charging fees on a sliding scale based on the offender's income).

The Westchester County (New York) Comprehensive Intervention Program (CIP) administers regularly scheduled maintenance polygraph exams to offenders in the program at no cost as long as the offender continues to pass the polygraph exams and remains in treatment. The exams are given by an in-house probation officer who has been specifically trained and certified for PCSOT. However, offenders that fail a regular maintenance exam are required to take and pay for another exam administered by the program's clinical supervisor. The fees for the re-test are determined by the offender's income. A goal of the program is to make failing a test (i.e. not being truthful) to be "a pain in the offender's pocketbook (5)."

Wisconsin has established a schedule of fees to partially offset the costs of the Sex Offender Notification and Registration polygraph program for offenders required to take a polygraph test. The cost of the test can vary depending on the type of test used, and offenders are also required to pay a \$5 administrative fee with each test (see Addenda I for a copy of DOC 332.18 of the *Wisconsin Administrative Code* which covers the lie detector fee).

In Clackamas County (Oregon), sex offenders are required to pay for polygraph exams that are required as part of their treatment. According to Kim Fulton, Supervisor of the Clackamas County (Oregon) Community Corrections program:

*"Every county varies, but for the most part we require the offender to pay for their test. However, if an offender is unable to pay for their polygraph, most counties have some sort of subsidy fund for those situations. Polygraph tests are usually about \$150 for a maintenance and \$250 for a full-disclosure, give or take \$50."*

The Illinois Sex Offender Management Board Act mandates that a sex offender pay for any evaluation, treatment and monitoring programs (including polygraph testing) that are required of the offender based on his ability to pay. The SOMB Act also creates an SOMB Fund used to reimburse the agency providing supervision, the Department of Corrections or the Department of Human Services in the event that an offender cannot pay the full amount of the fees required (see Addendum for Sec. 19 Sex Offender Management Board Fund of the Illinois *Sex Offender Management Board Act*).

### Polygraph Examinations and the Issue of Immunity/Confidentiality

The usefulness of PCSOT as a clinical tool derives from its ability to elicit historical information, allowing psychosexual behavioral patterns to be more fully revealed, better understood and more effectively managed and changed. However, offender disclosures of potentially incriminating information to mandated reporters, without some limited use immunity,

could lead to further prosecution. Consequently, ending the very treatment the information was intended to enhance.

Excepting the obligation to protect potential victims at current risk, there is an ethical issue related to using a clinical polygraph examination to extract incriminating historical information while protecting offenders from the legal consequences of their honest self-report concerning pre-treatment behaviors. Some jurisdictions encourage PCSOT use and avoid constitutional challenges by providing limited legal immunity to examinees. Such immunity may enhance test utility in that it calls for nothing to be withheld. Although not without controversy, some opponents of this method also point out that its use allows authorities to locate previously unreported victims and contact them for purposes of offering counseling and supportive services.

Another method of safeguarding offenders from potential consequences of honest historical self-report is to collect only information that does not identify particular victims (e.g. victim #1, #2, etc.). Some programs prefer this method even when immunity is available, since some offenders may not completely trust immunity grants and might be more likely to conceal potentially incriminating information, even when promised limited immunity. Some advocates for the victim anonymity method also assert that immunity that generates victim outreach may re-victimize former victims by unwanted invasion of their privacy. Advocates of the victim anonymity method point out that immunity grants combined with victim outreach are unfair to former victims who would have initiated prosecutable reports at a later time (2).

According to a National Institute of Justice research brief on the use of PCSOT, some jurisdictions, like Colorado, do not offer limited immunity, but prosecutors make thoughtful decisions about further prosecution on a case-by-case basis. Decision makers in one jurisdiction visited in the field concluded that to prosecute all reported offenses would infringe on Fifth Amendment rights and thus prohibit therapeutic use of polygraph. Another study site grants limited immunity for similar past offenses if the offender meets several containment conditions, including actively participating in an approved treatment program, pleading guilty, and gaining employment that meets the approval of the probation or parole officer (6).

Following are comments regarding PCSOT and immunity issues from several interviews with probation and parole officers from different jurisdictions around the country that currently use PCSOT:

“Some county DA's have agreed not to prosecute additional crimes admitted during the scope of a full-disclosure test. My county has not made that blanket agreement. However, because we know that the large majority of sex offenders have additional victims, the polygraphers usually ask about someone's history in a way that is vague enough to avoid prosecution (i.e. listing the victim's name and age, but not last name).”

– **Kim Fulton, Supervisor, Clackamas County (Oregon) Community Corrections**

“Immunity is given to offenders who are participating in the polygraph testing for offenses that happened in the past and that are revealed in the sexual history and monitoring testing. Offenders are told to disclose all of their offense history but to not say the names of the victims. The program really works to build trust and understanding with the offenders so that they will stay in treatment and have a positive experience, and so immunity about past offenses is a key factor in this. The polygraph test as a treatment tool only works if the offenders believe they can be truthful without fear of being prosecuted again for things in their past.”

– **Barbara Delmerico, Westchester County (New York) Polygraph Officer**

“I wouldn’t be doing this if we didn’t have the polygraph. So much information is gained through polygraph sex history tests, and having immunity in place really allows that to happen and to keep people in treatment. The worst case scenario we are trying to guard against is to have some case law established that would prevent us from doing this.”

-- **Stephen Works, Josephine County (Oregon) Adult Community Justice Parole/Probation Officer**

### Polygraph Examinations and Juvenile Sex Offenders

Criminal justice statistics indicate that juveniles commit a significant number of sexual offenses, though research on the differences between juvenile and adult sex offenders is still emerging. Likewise, no studies have clearly identified the treatment and supervision strategies and programs that are most appropriate for juvenile sex offenders (7).

The use of polygraph testing with juvenile sex offenders is an area that is still being explored. Polygraph testing is used more often with adult rather than juvenile sex offenders, and currently there are few research results on the effectiveness of polygraph testing for juvenile treatment and monitoring. One small study in Idaho (with only six adolescent males) found that when polygraph testing was implemented as part of their treatment program, the average number of victims reported rose to five times as many as had been reported in pre-polygraph sexual histories, and the percentage of those boys who claimed they had been sexually abused as a child fell from 83 to 17 percent. This finding indicated that high-risk juvenile sex offenders may be just as inclined as adult offenders to falsely revise their sexual histories (8). However, some research has indicated that results potentially can be affected by a number of influences, including the offender’s age, intelligence, and physical and emotional status, and the examiner’s level of training and competency. Most practitioners using the polygraph indicate that the age threshold for use with juveniles is approximately 14 years old (7).

Texas law requires use of the polygraph on certain sexually abusive youth. In 1997, legislation was enacted that prescribed release conditions, including counseling and treatment for adolescents convicted of certain sex offenses. Under this law, youth can be required, as a condition of release from the Texas Youth Commission, to attend psychological counseling sessions and to submit to polygraph examinations in order to evaluate treatment progress (8).

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## **Addenda I**



### **Containment Model**

Containment model programs include a number of components aimed at constructing a web of supervision and support for sex offender management such as:

- Victim orientation and protection for public safety;
- Cross-agency collaboration among all of the public agencies that will contribute to sex offender supervision;
- Case management techniques that recognize the complete criminal history and modes of offending by a sexual offender;
- Public and political policies that support sex offender management and supervision; and

Quality control components that constantly measure the services that are being provided and gather data on the programs and the offenders

### **State of New Mexico Polygraph License Requirements**

The Requirements are (61-27A-6):

1. is at least eighteen years of age;
2. possesses a high school diploma or its equivalent;
3. has not been convicted of a felony or misdemeanor involving moral turpitude; and
4. has graduated from a polygraph examiners course approved by the department; and
5. has completed a probationary operational competency period and passed an examination of ability to practice polygraphy; or
6. has submitted proof of holding, for a minimum of two years immediately prior to the date of application, a current license to practice polygraphy in another jurisdiction whose standards equal or surpass those of New Mexico.

**Texas Joint Polygraph Committee on Offender Testing Guidelines**

**RECOMMENDED GUIDELINES FOR CLINICAL POLYGRAPH EXAMINATIONS  
OF SEX OFFENDERS**

**THE JOINT POLYGRAPH COMMITTEE ON OFFENDER TESTING  
(JPCOT)**

**APPROVED BY THE JPCOT  
FEBRUARY 2, 1998**

**RECOMMENDED GUIDELINES FOR CLINICAL POLYGRAPH EXAMINATIONS  
OF SEX OFFENDERS  
FEBRUARY, 1998**

**PREFACE**

In recent years, polygraph examinations have become an integral part of many assessment/monitoring programs utilized by Registered Sex Offender Treatment Providers (RSOTP's), probation and parole officers (PO's), and court officials. According to the 1994 Council on Sex Offender Treatment (CSOT) survey, 41% of RSOTP's in Texas currently use the polygraph as a treatment component. Today, it is estimated that 49% or more of the counties in Texas utilize the Clinical polygraph (Margaret Griffin, Hunt County CSCD, Texas Survey, 1996). Being aware of the increasing use of Clinical polygraph examinations with sex offenders, on September 9, 1994, the CSOT formed the Clinical Polygraph Committee to work jointly with a representative group of Texas Polygraph Examiners to propose recommended guidelines.

Through a series of meetings and conference calls, these Guidelines were developed. They were initially endorsed by the CSOT on January 27, 1995, and by the Texas Polygraph Examiners Board (TPEB) on April 13, 1995. One revision was completed in July 1996 by the JPCOT. A second revision, with the addition of Appendix A and B, was completed in October 1997. This publication was adopted at a meeting of the JPCOT in Dallas, Texas on February 2, 1998 and includes all recommendations and suggestions made through that date. These Guidelines are a product of the JPCOT.

The Joint Polygraph Committee on Offender Testing (hereafter The Joint Committee or JPCOT) prepared these Standards. This Joint Committee's membership includes representation from: the Council on Sex Offender Treatment (CSOT), the Interagency Advisory Council (IAC) of the CSOT, the Texas Polygraph Examiners Board (TPEB), the Texas Association of Polygraph Examiners (TAPE), the Texas Association of Law Enforcement, A-1 Polygraph Investigators (TALEPI), and the Texas Association for Sex Offender Treatment (TASOT).

The members of the JPCOT feel that it is important to recognize that with any powerful treatment tool there exists a potential for misuse. A critical point of understanding concerning the Clinical polygraph is that it is a diagnostic tool. The polygraph examination's utility, i.e., its ability to obtain information, is a separate issue from forming diagnostic opinions that are scientifically valid, reliable, and defensible. By emphasizing the use of methods with established validity and reliability, the Guidelines seek to protect examinees, RSOTPs, supervision specialists, and polygraph examiners. The JPCOT recommends that the Guidelines be followed by any polygraph examiner conducting Clinical polygraph examinations of sex offenders for RSOTPs, supervision specialists, or under order of the Courts. The JPCOT believes these Guidelines allow competent examiners to maximize utility without sacrificing procedures necessary for accuracy.

The term "Guidelines" hereafter shall be interpreted to mean the most recent published "Minimum Guidelines for Clinical Polygraph Examinations of Sex Offenders" that have been approved by vote of the JPCOT.

## **MINIMUM GUIDELINES FOR CLINICAL POLYGRAPH EXAMINATIONS OF SEX OFFENDERS**

### **SECTION A: JPCOT MISSION AND OBJECTIVE**

The mission of the JPCOT is:

To establish Guidelines for polygraph testing in the comprehensive management and treatment of post-conviction sex offenders for the purpose of enhancing public safety. To accomplish this mission, it is the objective of the JPCOT to:

1. Provide guidelines for training polygraph examiners who engage in Clinical polygraph testing; and,
2. Encourage and develop ideas and research issues in the area of Clinical polygraph testing; and,
3. Serve as a professional contact for polygraph examiners and other professionals involved with post-conviction sexual offenders.

### **Disclaimer:**

The JPCOT does not hold itself to be a certifying entity, nor does it guarantee that any person who engages in Clinical polygraph testing is following the most recent JPCOT Guidelines.

### **SECTION B: DEFINITION**

Clinical Polygraph Examination (CPE) means the employment of any instrumentation complying with the required minimum standards of the Texas Polygraph Examiner's Act and used for the purpose of detecting deception or verifying truth of statements of any person under supervision and/or treatment for the commission of sex offenses. The Clinical polygraph examination is specifically intended to assist in the treatment and supervision of sex offenders. "Sex offender" has the meaning assigned by Section 1 (4) (A), (B), or (C). Chapter 462, Acts of the 73rd Legislature Regular Session 1993 [Article 4413(51) V.T.C.S.]

### **SECTION C: POLYGRAPH EXAMINER QUALIFICATIONS**

1. Polygraph examiners must hold a current, original Texas Polygraph Examiners License in accordance with the Texas Polygraph Examiners Act [Article 4413(29cc), Section 8].
2. Polygraph examiners shall successfully complete a minimum of forty (40) hours of specialized sex offender polygraph examination training recognized as consistent with JPCOT Guidelines. This Qualification Training shall focus on sex offender assessment, evaluation, and monitoring, in the following manner:
  - A. Twenty-four (24) hours of polygraph training to consist of:
    1. Pre-test interview procedures and formats.
    2. Validity and reliability of examination formats.
    3. Post-test interview procedures and formats.
    4. Reporting format (to whom, disclosure content, forms, etc.).
    5. Standardized polygraph procedures that are recognized by the JPCOT.
    6. Administering examinations consistent with the JPCOT Guidelines.
    7. Professional standards and conduct (ethics).
    8. Expert witness qualifications and courtroom testimony.
    9. Use of polygraph results in the treatment, supervision, and case management processes.
    10. Others as recognized by the JPCOT.
  - B. Sixteen (16) hours of specialized training associated with the:
    1. Behavior and motivation of sex offenders. (12 Hours)
    2. Trauma factors associated with victims/survivors of sexual assault. (4 Hours)
    3. For the training to be recognized by JPCOT, the training must have been taken by the applicant and completed not more than 18 calendar months prior to the application submission date.
    4. The JPCOT may recognize, prepare, or implement continuing education programs for polygraph examiners.

### **SECTION D: CONTINUING EDUCATION**

1. Continuing education credits shall be recognized by the JPCOT only if the training is consistent with the Guidelines; and, shall be relevant to sex offender assessment, evaluation, and monitoring to include victims and survivors.
2. All polygraph examiners shall, as a minimum, successfully complete twenty (20) hours of specialized sex offender polygraph examination training recognized as consistent with JPCOT Guidelines every two (2) years after attaining their initial forty (40) hours of Qualification Training. This continuing education training shall focus on sex offender assessment, evaluation, and monitoring in the following manner:
  - A. Twelve (12) hours of polygraph training recognized by the JPCOT (see Section C, 2A).
  - B. Eight (8) hours of specialized training recognized by the JPCOT (see Section C, 2B).

### **SECTION E: POLYGRAPH EXAMINATION RECORDING GUIDELINES**

1. All Clinical polygraph examinations will be appropriately recorded for diagnostic and documentation purposes.

2. Recording channels/components required for these polygraph examinations will be:
  - A. Respiration patterns made by pneumograph component(s). At least one respiration component will record the thoracic (upper chest) respiration and/or abdominal (lower stomach) respiration pattern.
  - B. One of the chart components will record the Skin Conductance/Resistance, which reflects relative changes and the conductivity/resistance of very small amounts of current by the epidermal tissue. This component is also commonly referred to as the Galvanic Skin Response (GSR).
  - C. The cardiograph component(s) will be utilized to record relative changes in the pulse rate, pulse amplitude, and blood pressure, and other appropriately defined cardiovascular recordings.
  
3. To effectively evaluate the polygraph tracings collected during any polygraph examination, it is understood by all professional examiners that easily readable trace recordings must be obtained. Tracings that are either too large, too small, or that have extraneous responses to outside stimuli are difficult, if not impossible to validly evaluate. In order to allow the examiner to render a valid and reliable opinion based on the recorded information contained within the polygraph charts, it is recommended that all pneumograph and cardiograph tracings recorded during the polygraph examination be of sufficient amplitude to be easily read and evaluated by the initial examiner, by a reviewing examiner, and for any quality control review purpose.
  
4. Pneumograph and cardiograph tracings should be not less than one-half inch in amplitude. Chart tracings consistently less than one-half inch in amplitude in the pneumograph and/or cardiograph tracings, without sufficient documented explanation of physiological cause, will be considered insufficient for analysis purposes. Every effort should be made by the examiner to increase baseline amplitude recordings that are less than recommended minimums. Charts that are evaluated and determined to be inadequate may result in a recommendation that the test subject be reexamined.

#### **SECTION F: POLYGRAPH INSTRUMENT CALIBRATION**

1. Polygraph instruments utilized for the recording of changes in physiological responses as produced by the human body during a polygraph examination, at a minimum, will be calibrated according to the manufacturer's guidelines as provided in the instruction and operation manuals. Calibration of polygraph instruments will be performed to ensure that every examinee is afforded a polygraph examination utilizing an instrument that is demonstrated to be functioning according to the manufacturer's required specifications at the time that polygraph examination was conducted. In addition, calibration charts are required to document instrument operation for quality control review, for purposes of research and data gathering, for purposes of courtroom defense and documentation, and for purposes of peer review.
  
2. Calibration charts:
  - A. A hard copy (printout) calibration chart will be generated by analog polygraph instruments. Calibration of computerized (digital) instruments should be done in accordance with the manufacturer's recommendations.
  - B. All calibration charts should be filed along with all other pertinent papers as defined by the regulations of the Polygraph Examiners Board.

C. Calibration charts for analog instruments will be filled out with the following data:

1. Instrument make, model, and serial number;
2. Date, location and time of instrument calibration;
3. Identity of examiner performing the instrument calibration;
4. Identification of each component, mechanical or electronic pneumograph, GSR, mechanical or electronic cardiograph, etc.
5. Applied sensitivity units and sensitivity checks;
6. Applied mm of air pressure;
7. Kymograph checks;
8. Pneumograph leak checks;
9. Cardiograph leak checks, to include start and end times.

3. Standardized Chart Markings, recognized and utilized within the polygraph profession, should be employed to annotate all calibration and examination charts. Standardized chart markings should be those which are professionally recognized, and they may be obtained by contacting AAPP, APA, TAPE, or TALEPI.

4. Calibration Requirements -- Polygraph instruments utilized will be calibrated on a regular basis to ensure the instrument is functioning properly. The examiner shall maintain true and accurate records of such calibrations. The records of these calibrations shall be maintained by the examiner for no less than two (2) years.

#### **SECTION G: RECOMMENDED FREQUENCY OF CLINICAL POLYGRAPH EXAMINATIONS**

The following guidelines for Clinical polygraph examination frequency are recommended to maximize the validity and reliability of the testing:

1. To safeguard against examinee habituation and familiarization between the examiner and subject, it is recommended that the polygraph examiner not conduct more than three (3) separate CPE's of the same type (i.e. maintenance tests) per year on any post-conviction sex offender. A re-examination over previously examined issues where no opinion was formed would not be considered a separate session, but may be defined as a "re-test". For example, more than three (3) separate maintenance examinations per year on the same offender should not be conducted by the same examiner. More than three (3) CPE's of the offender by the same examiner would be considered allowable if they dealt with separate issues; (i.e. one Disclosure Test over the Instant Offense; one Sexual History Disclosure Test; and, two Maintenance Examinations).
2. In order to allow sufficient time for the pre-test, in-test, and post-test procedures, the JPCOT recommends that a polygraph examination take a minimum of 90 minutes. In most cases, it should be anticipated that the examination session will take considerably longer.

#### **SECTION H: CLINICAL POLYGRAPH TESTING TECHNIQUES & PROCEDURES**

Clinical polygraph examination techniques will be limited to those techniques that are recognized by JPCOT and published within the industry (see appendix A) as standardized examination procedures. To be a recognized examination format, the examination procedure must include appropriately designed relevant questions, appropriately designed control questions for diagnostic purposes, and appropriately designed irrelevant questions as applicable to that

defined and standardized procedure. A standardized examination technique or procedure recognized by the JPCOT is defined as:

1.
  - a. A technique or procedure which has achieved a published, scientific database sufficient to support and demonstrate validity and reliability from the application and use of that specific polygraph technique; and,
  - b. A technique or procedure that is evaluated according to the published methods for that specific procedure, and that provides for numerical scoring and quantification of the chart data, where applicable; and,
  - c. A technique or procedure that has not been modified without the support of sufficient published validity and reliability studies (see 1a above) for that particular modification; and,
  - d. A technique or procedure that has been taught within the past two (2) years as part of the formal course work at a basic polygraph school accredited by the American Polygraph Association (APA).
  
2.
  - a. All examinations must include the use of control (comparison, see Appendix A, page 27) questions for diagnostic purposes in forming professional opinions of No Deception Indicated (NDI), Deception Indicated (DI), or Inconclusive (INC). Utilizing these examination techniques, as defined above, ensures maximum validity and reliability of diagnostic opinions, and ensures that opinions rendered are professionally defensible in court or when challenged.
  - b. Recommended procedures include: Standardized and published Zone Comparison Techniques (ZCT), standardized and published Control Question Techniques (CQT); and may allow other standardized and published procedures that meet the guidelines and requirements described above.
  - c. For a polygraph examination to be appropriately evaluated as "NDI", the polygraph subject must have exhibited appropriate reaction criteria to the control question(s). Therefore, during post-test procedure, the polygraph examiner should advise the examinee that there were reactions to the control question(s).
  - d. An examiner may not submit a professional opinion that the examinee was Truthful (Non-Deceptive) to the entire examination or to any single relevant question asked during the examination, if the examinee's answer to any relevant question in the test question sequence is determined to be Deceptive. In keeping with professional reporting standards, for an examinee to be reported Truthful (Non-Deceptive) by the examiner, a plus (+) score in each spot must occur. Other applicable grading rules shall also apply. All polygraph charts should be numerically scored, where applicable, despite being computer generated.
  
3. STIMULATION/ACQUAINTANCE TEST:
  - a. The JPCOT recommends that a Stimulation/Acquaintance Test be employed, as necessary, during each polygraph examination session. The Stimulation/Acquaintance Test is used to demonstrate that the psychological set of the examinee and the examinee's reaction capabilities are established for diagnostic purposes. This test is a recognized test process utilized as part of a professional examination procedure and is normally made a part of the Clinical polygraph examination of any sex offender.



- b. Blind or known Stimulation/Acquaintance Procedures, as published (see appendix B, for example) may be used for the Stimulation/Acquaintance Test. Many versions of this test exist. Any Stimulation/Acquaintance test taught in an APA approved school within the past two (2) years would be recognized by the JPCOT.
- c. CVOS - Calibration Verification of Sensitivity: This technique may be used with analog and computer (digital) instruments.

#### 4. NUMBER OF RELEVANT QUESTIONS:

All standardized and professionally recognized published examination formats and procedures define the number of relevant questions (pertaining to the issue under investigation) that may be utilized. To be recognized by the JPCOT, those applications should not be modified or altered. No examination procedure recognized by JPCOT allows for more than five (5) relevant questions to be asked during any given polygraph examination.

#### 5. SINGLE-ISSUE EXAMINATIONS AND MIXING ISSUES:

Only single-issue examinations have documented scientific validity and reliability. Single-issue examination criteria for Clinical polygraph examinations, as described in these Guidelines, should be adhered to in order that the CPE results in maximum validity and reliability. Based on all available scientific research, mixing issues (defined herein) during any examination may significantly reduce the examiner's ability to form valid and reliable opinions about the relevant questions. Issues of psychological set, anti-climactic dampening, and other principles forming the foundation of the polygraph science must be adhered to; thus, the need not to mix issues and the requirement for single-issue examinations to maximize diagnostic accuracy. For example, any examination mixing sexual history relevant questions with relevant questions about the instant offense (Disclosure) or about violations of probation/parole (Maintenance/Monitoring) would be mixing issues and would not be considered by the JPCOT to be a valid or an appropriate examination technique. As well, mixing relevant questions about issues that do not constitute violations of probation or parole with relevant questions about issues that do constitute violations of probation or parole in the same examination format (question series) would "mix issues" and should not be done.

#### 6. DEFINITION OF TESTING TIME FRAMES AND OF MIXING ISSUES:

A. Mixing Issues: For the purposes of JPCOT Recognition, Mixing Issues on a Clinical polygraph examination is defined to mean "Crossing the Time Barrier" associated with The Sexual History Disclosure, The Disclosure of the Instant Offense, and The Maintenance/Monitoring Examination. As well, mixing issues is defined to mean including relevant test questions about probation/parole violations with relevant questions that are not violations of probation/parole (i.e. clinical interests only) on the same examination. (see Section H, No. 5)

#### B. Type of CPE's by Time Frames:

1. The Disclosure Test on the Instant Offense refers to the offense(s) for which the examinee is currently under court supervision. The specific offenses and respective outcry complainants are the only appropriate relevant material for this examination.

2. The Disclosure Test Over The Sexual History refers to the time frame of the examinee's lifetime prior to the date of conviction, excluding the offense(s) for which the examinee is under court supervision.
3. The Maintenance/Monitoring Tests refer to the time frame from the date of the conviction to present date.
4. "Crossing the Time Barriers" is interpreted to mean mixing all or any two of the above defined areas of inquiry on the same test question sequence. Crossing the time barrier and mixing other issues as defined herein can significantly affect the results and subsequently the opinion of the examiner and is not recommended.

#### 7. RELEVANT QUESTION CONSTRUCTION:

In order to design an effective polygraph examination and to adhere to standardized and recognized procedures, the relevant questions to be utilized should be constructed to be:

- a. Simple and direct, and as short as possible.
- b. Should not include legal terminology (sexual assault, fondling, rape, incest, etc.). This terminology allows for examinee rationalization and utilization of other defense mechanisms.
- c. The meaning of each question must be clear, not allow for multiple interpretations, and should not be accusatory in nature.
- d. Should never presuppose knowledge on the part of the examiner.
- e. Should not use language that "Crosses the Time Barrier"; i.e. ever.
- f. Should use language easily understood by the examinee.
- g. Must be clearly and easily answerable yes or no.
- h. Should avoid the use of any emotionally laden terminology (i.e. molest).

### **SECTION I: SPECIFIC SEX OFFENDER POLYGRAPH EXAMINATION**

Purposes and Time Frames

#### 1. DISCLOSURE EXAMINATIONS (Two Types):

Type A. Disclosure Examinations for the Instant Offense:

1. This specific issue examination is utilized to determine if the examinee appears Deceptive or Non-Deceptive in his/her denial of guilt (all or part) to the offense(s) for which he/she has been convicted or is under court supervision. Specific information about the instant offense(s) should be known to the examiner before conducting this test.
2. Specific issue allegations under indictment or pending court action are not Clinical polygraph examination subject matter and should not be examined as a Clinical test. Disclosure test procedures are designed for the purpose of assisting therapists and/or supervision officials in evaluating denial about an offense for which the examinee is already under court supervision in order to enhance the effectiveness of treatment and supervision programs only.

Type B. Disclosure Examinations for Verification of Sexual Histories:

These disclosure examinations explore sexual histories including additional victims, therapeutic issues, and sexual deviance prior to the date of conviction. Disclosure examinations over sexual histories specifically exclude the offenses for which the examinee was arrested, convicted and placed under supervision. Admissions are often

obtained during the pre-test phase, as well as the post-test phase of these examinations; therefore, these test procedures may allow for greater variance in relevant question development (multiple issues). Oftentimes, offenders deny illegal sexual behavior and ideation, except for what is known to officials. The issues under examination may pertain to multiple sexual history deviance by the examinee; for example, those issues prior to the date of conviction identified by therapists or others on sexual history questionnaires. Disclosure examinations and admissions about sexual histories are relied upon by therapists, court officers, attorneys, supervision officials, and others on the team in the development of appropriate supervision and treatment goals and programs.

## 2. MAINTENANCE/MONITORING POLYGRAPH EXAMINATIONS:

A. Maintenance/Monitoring polygraph examinations have a different purpose and intent from Disclosure examinations. Maintenance/Monitoring polygraph examinations have been found to be extremely important in the supervision process. "This examination is specifically targeted to deal with issues of violation of probation and/or the commission of additional sexual offenses, yet unidentified, while on probation or parole." (Abrams, *Polygraph Testing of the Pedophile*, 1993). Results of these examinations are meant to assist treatment providers and supervision specialists in developing individual treatment and supervision strategies, and in assessing risk while on probation.

B. 1. The monitoring examination shall be defined as a Clinical polygraph examination constructed to investigate whether or not the offender has committed any illegal sexual act(s) or had contact with a child forbidden by supervision regulations during the period of supervision

2. Maintenance examinations may cover other probation/parole issues or treatment issues (i.e. violations of rules).

C. Maintenance/Monitoring polygraph examinations are particularly useful in reducing the probability of recidivism, but caution should be taken to recognize the necessity of adhering to professional standards and these Guidelines.

3. Selection of the target issue to be investigated during each particular session (Disclosure type or Maintenance/Monitoring type) should be made by the examiner in conjunction with the RSOTP and/or the supervision specialist.

## **SECTION J: COMPLIANCE WITH THE POLYGRAPH EXAMINERS ACT (ARTICLE 4413(29CC)V.T.C.S.)**

All examinations conducted by examiners under these Guidelines must be conducted in full compliance with all rules, regulations, and statutory requirements of the Polygraph Examiners Act, State of Texas. Nothing in these Guidelines is intended to or may replace compliance in any way with the requirements of the Polygraph Examiners Act. In addition, polygraph examiners should obtain in writing at the beginning of each examination session, the examinee's written authorization regarding the release of information, and regarding any and all admissions, statements, and opinions resulting from that examination session.

### **NOTICE TO CONSUMERS**

The Texas Council on Sex Offender Treatment  
Texas Dept. Of Health  
1100 West 49th Street

Austin, TX 78756-3183  
 (512)834-4530 - Fax (512)834-6677  
 E-mail: csot@licc.tdh.state.tx.us  
 Website: <http://www.tdh.state.tx.us/hcqs/plc/csot.htm>

The Texas Polygraph Examiners Board  
 5805 North Lamar Boulevard  
 P.O. Box 4087  
 Austin, TX 78773  
 (512)424-2058 - Fax (512)483-5739

This Board and the Council have jointly endorsed the "Recommended Guidelines for Clinical Polygraph Examination of Sex Offenders". These voluntary Guidelines were endorsed by both State Agencies for the purpose of educating courts, supervision personnel, treatment providers and others regarding the administration of Clinical polygraph examinations utilized in the treatment and monitoring of sex offenders. Much of this document involves professional industry standards and does not necessarily carry the weight of current Texas law.

The Texas Polygraph Examiners Board is the licensing and regulatory authority for the Texas Polygraph Profession. This Board has a statutory mandate to investigate consumer complaints and initiate disciplinary action against licensees for violations of the Texas Polygraph Examiners Act [Article 4413(29cc)V.T.C.S.] and the Board's Rules and Regulations. Any complaints regarding Clinical polygraph examinations that are not applicable to the Act or the Board's Rules and Regulations should be referred to the JPCOT or to an appropriate State and/or other Association of polygraph examiners. The CSOT is the regulatory authority for RSOTP's in Texas and works closely with the TPEB.

#### **APPENDIX A**

The JPCOT Guidelines have recommended that "Clinical polygraph examination" procedures will be limited to those professionally utilized techniques that are recognized by JPCOT. Standardized procedures are critical for diagnostic accuracy and required by JPCOT because, if everything is done properly in conducting the interview, structuring the questions, and utilizing the proper test format, diagnostic opinions rendered from the use of that procedure can be defended as both valid and reliable. Standardized procedures have been "validated" and defined as reliable from publications in professional and scientific journals. The JPCOT has defined four (4) standards to recognize an examination technique as standardized. (see Section H)

Included in this appendix for review, documentation and defensibility of test procedures are cited reference sources documenting validity and reliability studies published in professional and scientific literature; a description of selected validity and reliability studies depicting their reported accuracy (hit) rates (Inconclusive deleted); and, examples of standardized test procedures reported in the scientific literature that are considered to be standardized. These procedures meet the defined standards of the JPCOT.

#### **PUBLISHED VALIDITY AND RELIABILITY STUDIES (SELECTED SURVEY)**

- S. Abrams, "The Validity of the Polygraph Technique with Children", *Journal of Police Sci. & Admin.* 310 (1975)
- N. Ansley, "The Validity and Reliability of Polygraph Decisions in Real Cases", 19 *Polygraph* 169 (1990)
- N. Ansley, "The Validity And Reliability Of Polygraph Testing", 26 *Polygraph*, 215-239 (1997)
- J. Buckley & L. Senese, "The Influence of Race and Gender on Blind Polygraph Chart Analyses", 20 *Polygraph* 247 (1991)
- M. Capps & N. Ansley, "Analysis of Federal Polygraph Charts By Spot and Chart Total", *Polygraph* 21(2), 110-131 (1992)
- M. Capps & N. Ansley, "Analysis of Private Industry Polygraph Charts", *Polygraph* 21(2), 132-142 (1992)
- M. Capps & N. Ansley, "Anomalies: The Contributions of the Cardio, Pneumo, and Electrodermal Measures Towards a Valid Conclusion", *Polygraph* 21(4), 321-340 (1992)
- M. Capps & N. Ansley, "Comparison of Two Scoring Scales", *Polygraph* 21(1), 39-43 (1992)
- R. Edwards, "A Survey: Reliability of Polygraph Examinations Conducted by Virginia Polygraph Examiners", 10 *Polygraph* 229 (1981)
- E. Elaad, "Validity of the Control Question Test in Criminal Cases", Unpublished manuscript, Israel Police Headquarters, Jerusalem, Israel (1985)
- E. Elaad, "Detection of Guilty Knowledge in Real-life Criminal Investigation", *Journal of Applied Psychology* 75(5), 521-529 (1990)
- E. Elaad & E. Schahar, "Polygraph Field Validity", 14 *Polygraph* 217 (1985)
- C. Honts, "Criterion Development and Validity of the Control Question Test in Field Application", *The Journal of General Psychology* 509, 123 (1996)
- C. Honts & L. Driscoll, "A Field Validity Study of Rank Order Scoring System (ROSS) in Multiple Issue Control Question Tests", *Polygraph* 17(1, March) (1988)
- C. Honts & D. Raskin, "A Field Study of the Validity of the Directed Lie Control Question", 16 *Journal of Police Sci. & Admin.* 56 (1988)
- F. Horvath, "The Effects of Selected Variables on Interpretation of Polygraph Records", 62, *Journal of Applied Psychology* 127 (1977)

B. Kleinmuntz, & J. Szucko, "A Field Study of the Fallibility of Polygraphic Lie Detection", 308 Nature 449 (1984)

J. Matte & R. Reuss, "A Field Validation Study of the Quadri-Zone Comparison Technique", 18 Polygraph 187 (1989)

K. Murray, "Movement Recording Chairs: A Necessity?", 18 Polygraph 15 (1989)

C. Patrick & W. Iacono, "Validity and Reliability of the Control Question Polygraph Test: A Scientific Investigation", 24 Psychophysiology 604 (1987)

C. Patrick & W. Iacono, "Validity of the Control Question Polygraph Test: The Problem of Sampling Bias", 76 Journal of Applied Psychology 229 (1991)

J. Podlesny & C. Truslow, "Validity of an Expanded-Issue (Modified General Question) Polygraph Technique in a Simulated Distributed-Crime-Roles Context", Journal of Applied Psychology 788 (1993)

R. Putnam, "Field Accuracy of Polygraph in the Law Enforcement Environment"(1983) printed in 23 Polygraph 260 (1994)

D. Raskin, et. al., "A Study of the Validity of Polygraph Examinations in Criminal Investigations", National Institute of Justice (1988)

R. Ryan, The Accuracy of Respiration, GSR, and Cardiovascular Polygraph Responses Utilizing Numerical Evaluation, Reid College, Chicago, Unpublished Master's thesis (1989)

J. Widacki, Analiza Przeszanek Diagnozowania W. Badanich Poligraficznych\_ (The Analysis of Diagnostic Premises in Polygraph Examinations), Uniwersytetu Slaskiego, Katowice (1982)

### **THE VALIDITY OF POLYGRAPH DIAGNOSTIC OPINIONS UTILIZING STANDARDIZED ZONE COMPARISON TECHNIQUES AND CONTROL QUESTION TECHNIQUES**

Validity refers to accuracy of diagnostic opinions. That is, how accurate is an examiner's professional opinion when it is concluded that an individual being tested is deceptive or non-deceptive to the relevant questions. While there are several types of validity that can be discussed, polygraph examiners are most concerned with issues of \_criterion\_ validity. Criterion validity refers to \_how accurate is this test as a predictive technique\_ (DODPI). These issues are addressed by studies that meet the scientific test for establishing polygraph\_s validity, and can be found in professional and scientific publications.

SOURCE: Ansley, N., "The Validity And Reliability Of Polygraph Testing", POLYGRAPH, Vol. 26, No. 4, 1997, Pages 215-239.

### **VALIDITY STUDIES REFLECTING ON ZONE COMPARISON TECHNIQUES**

Author & Date: Arellano, 1990

NDI Opinions: 18 of 18 for 100% correct

DI Opinions: 22 of 22 for 100% correct  
 Total of Opinions: 40 of 40 for 100% correct  
 Technique Evaluated: Zone Comparison (Backster)

Author & Date: Capps, Knill, and Evans, 1993  
 NDI Opinions: 2 of 2 for 100% correct  
 DI Opinions: 35 of 36 for 97% correct  
 Total of Opinions: 37 of 38 for 97% correct  
 Technique Evaluated: Zone Comparison (DOD)

Author & Date: Elaad and Schahar, 1985  
 NDI Opinions: 95 of 100 for 95% correct  
 DI Opinions: 73 of 74 for 99% correct  
 Total of Opinions: 168 of 174 for 97% correct  
 Technique Evaluated: Zone Comparison (Backster) and CQT (REID)

Author & Date: Mason, 1991  
 NDI Opinions: 1 of 1 for 100% correct  
 DI Opinions: 86 of 86 for 100% correct  
 Total of Opinions: 87 of 87 for 100% correct  
 Technique Evaluated: Zone Comparison (Army)

Author & Date: Matte and Reuss, 1989  
 NDI Opinions: 54 of 54 for 100% correct  
 DI Opinions: 60 of 60 for 100% correct  
 Total of Opinions: 114 of 114 for 100% correct  
 Technique Evaluated: Zone Comparison (Quadri-zone)

Author & Date: Putnam, 1983  
 NDI Opinions: 62 of 65 for 95% correct  
 DI Opinions: 219 of 220 for 99% correct  
 Total of Opinions: 281 of 285 for 99% correct  
 Technique Evaluated: Zone Comparison (Backster) and MGQT

Author & Date: Widacki, 1982  
 NDI Opinions: not available  
 DI Opinions: not available  
 Total of Opinions: 35 of 38 for 92% correct  
 Technique Evaluated: Zone Comparison (Backster)

### **VALIDITY STUDIES REFLECTING ON CONTROL QUESTION TECHNIQUES**

Author & Date: Edwards, 1981  
 NDI Opinions: 356 of 363 for 98% correct  
 DI Opinions: 587 of 596 for 98% correct  
 Total of Opinions: 943 of 959 for 98% correct  
 Technique Evaluated: Various CQT\_s evaluated

Author & Date: Murray, 1989  
 NDI Opinions: 18 of 21 for 86% correct  
 DI Opinions: 102 of 102 for 100% correct  
 Total of Opinions: 120 of 123 for 98% correct  
 Technique Evaluated: CQT (Arther)

Author & Date: Patrick and Iacono, 1987  
 NDI Opinions: 27 of 30 for 90% correct  
 DI Opinions: 51 of 51 for 100% correct  
 Total of Opinions: 78 of 81 for 96% correct  
 Technique Evaluated: CQT

Author & Date: Raskin, Kircher, Honts, and Horowitz, 1988  
 NDI Opinions: 27 of 28 for 96% correct  
 DI Opinions: 54 of 57 for 95% correct  
 Total of Opinions: 81 of 85 for 95% correct  
 Technique Evaluated: CQT

Author & Date: Putnam, 1983  
 NDI Opinions: 62 of 65 for 95% correct  
 DI Opinions: 219 of 220 for 99% correct  
 Total of Opinions: 281 of 285 for 99% correct  
 Technique Evaluated: MGQT (+ Backster Zone)

### **THE RELIABILITY OF POLYGRAPH TEST DIAGNOSTIC OPINIONS**

Reliability refers to the ability to replicate or duplicate diagnostic opinions. Replication can occur by:

1. Test - Retest Reliability -- this refers to the consistency of opinions when an individual is examined and then reexamined by the same or a different examiner.
2. Intra-Rater Reliability -- refers to the consistency of opinions formed when evaluating a series of polygraph charts and at a later date/time reevaluating that same chart (blindly by the same examiner).
3. Inter-Rater Reliability -- this refers to the capability of two or more examiners to evaluate data and to form a similar opinion. Reliability is a necessary part of establishing validity. The examination can be reliable but lack validity (accuracy); i.e. everyone can agree but be incorrect. However, a necessary part for establishing validity is the additional requirement to demonstrate reliability. To meet the scientific test for diagnostic accuracy, therefore, polygraph diagnostic procedures must enjoy both validity and reliability. The following reliability studies confirm the ability to duplicate results or replicate opinions:

SOURCE: Ansley, N., "The Validity And Reliability Of Polygraph Testing", POLYGRAPH, Vol. 26, No. 4, 1997, Pages 215-239.

### **RELIABILITY STUDIES REFLECTING ON ZONE COMPARISON TESTS**

Author & Date: Arellano, 1984  
 NDI Opinions: 18 of 18 for 100% correct



DI Opinions: 22 of 22 for 100% correct  
 Total of Opinions: 40 of 40 for 100% correct  
 Technique Evaluated: Zone Comparison (Backster)

Author & Date: Capps and Ansley, 1992  
 NDI Opinions: 135 of 143 for 95% correct  
 DI Opinions: 226 of 229 for 99% correct  
 Total of Opinions: 361 of 372 for 97% correct  
 Technique Evaluated: Zone Comparison

Author & Date: Franz, 1989  
 NDI Opinions: 33 of 34 for 97% correct  
 DI Opinions: 47 of 47 for 100% correct  
 Total of Opinions: 80 of 81 for 99% correct  
 Technique Evaluated: Zone Comparison

Author & Date: Honts and Raskin, 1988  
 NDI Opinions: 8 of 10 for 80% correct  
 DI Opinions: 11 of 11 for 100% correct  
 Total of Opinions: 19 of 21 for 90% correct  
 Technique Evaluated: Zone Comparison (Utah-Directed Lie)

Author & Date: Matte and Reuss, 1989  
 NDI Opinions: 108 of 108 for 100% correct  
 DI Opinions: 120 of 120 for 100% correct  
 Total of Opinions: 228 of 228 for 100% correct  
 Technique Evaluated: Zone Comparison (Quadri-Zone)

### **RELIABILITY STUDIES REFLECTING ON CONTROL QUESTION TESTS**

Author & Date: Buckley and Senese, 1991  
 NDI Opinions: 143 of 163 for 88% correct  
 DI Opinions: 159 of 172 for 92% correct  
 Total of Opinions: 302 of 335 for 90% correct  
 Technique Evaluated: CQT (Reid)

Author & Date: Elaad, 1985  
 NDI Opinions: 23 of 30 for 77% correct  
 DI Opinions: 23 of 30 for 77% correct  
 Total of Opinions: 46 of 60 for 77% correct  
 Technique Evaluated: CQT

Author & Date: Elaad and Kleiner, 1990  
 NDI Opinions: 30 of 33 for 91% correct  
 DI Opinions: 27 of 33 for 82% correct  
 Total of Opinions: 57 of 66 for 86% correct  
 Technique Evaluated: CQT

Author & Date: Honts and Driscoll, 1988  
 NDI Opinions: not available  
 DI Opinions: not available  
 Total of Opinions: 46 of 52 for 88% correct  
 Technique Evaluated: CQT

Author & Date: Jayne, 1990  
 NDI Opinions: not available  
 DI Opinions: not available  
 Total of Opinions: 92 of 100 for 92% correct  
 Technique Evaluated: CQT

Author & Date: Patrick and Iacono, 1987  
 NDI Opinions: 11 of 20 for 55% correct  
 DI Opinions: 48 of 49 for 98% correct  
 Total of Opinions: 59 of 69 for 86% correct  
 Technique Evaluated: CQT

Author & Date: Raskin, Kircher, Honts, & Horowitz, 1988  
 NDI Opinions: 19 of 22 for 86% correct  
 DI Opinions: 45 of 48 for 94% correct  
 Total of Opinions: 64 of 70 for 91% correct  
 Technique Evaluated: CQT

Author & Date: Ryan, 1989  
 NDI Opinions: not available  
 DI Opinions: not available  
 Total of Opinions: 218 of 255 for 85% correct  
 Technique Evaluated: CQT (Reid)

### **PROCEDURES MEETING THE DEFINED STANDARDS OF THE JPCOT**

The following test formats are standardized and exemplify procedures (polygraph techniques) taught and recognized by JPCOT. It is recommended that these techniques not be utilized until the examiner has been formally trained in their applications and processes. Current literature, especially scientific publications, frequently describe control questions as "comparison questions". These terms may be used interchangeably.

### **MODIFIED GENERAL QUESTION TEST (MGQT)**

(Control Question Test)

1. IRRELEVANT
2. IRRELEVANT
3. RELEVANT (SECONDARY)
4. IRRELEVANT
5. RELEVANT (PRIMARY ISSUE)
6. CONTROL

7. IRRELEVANT
8. RELEVANT (SECONDARY)
9. RELEVANT (SECONDARY)
10. CONTROL

THE PROCEDURE FOR THIS EXAMINATION REQUIRES AT A MINIMUM TWO (2) PRIMARY SERIES AND ONE (1) MIXED SERIES. (REFER TO PROCEDURE PUBLICATIONS) ZONE COMPARISON TEST QUESTION FORMAT

1. IRRELEVANT
2. SACRIFICE RELEVANT
3. SYMPTOMATIC
4. CONTROL QUESTION
5. RELEVANT (PRIMARY)
6. CONTROL (STRONGEST/BROADEST)
7. RELEVANT (PRIMARY)
8. SYMPTOMATIC
9. CONTROL
10. RELEVANT (SECONDARY)

THIS EXAMINATION FORMAT SHOULD INCLUDE AT A MINIMUM TWO (2) PRIMARY SERIES AND AT LEAST ONE (1) MIXED SERIES (ROTATED COMPARISONS).

YOU-PHASE

(Zone Comparison)

1. IRRELEVANT
2. SACRIFICE RELEVANT
3. SYMPTOMATIC
- C4. CONTROL
- R5. RELEVANT
- C6. CONTROL
- R7. RELEVANT
- C8. CONTROL
9. SYMPTOMATIC

THIS EXAMINATION FORMAT SHOULD INCLUDE AT A MINIMUM TWO (2) PRIMARY SERIES AND AT LEAST ONE (1) MIXED SERIES (ROTATED COMPARISONS).

AIR FORCE MGQT SERIES (AFOSI)

(Control Question Test)

Four (4) Question

1. IRRELEVANT
2. SACRIFICE RELEVANT
3. CONTROL
4. RELEVANT
5. CONTROL

6. RELEVANT
7. CONTROL
8. RELEVANT
9. CONTROL
10. RELEVANT

THE PROCEDURE FOR THIS EXAMINATION REQUIRES AT A MINIMUM TWO (2) PRIMARY SERIES AND ONE (1) MIXED SERIES. SOURCE:DODPI

## **APPENDIX B**

(SOURCE: DEPARTMENT OF DEFENSE POLYGRAPH INSTITUTE, 1997)

### **STIMULATION TEST (an example)**

This Appendix (stimulation test example) is included with these Guidelines primarily for nonexaminers to understand their use and purpose. This is one of several acceptable processes and procedures that are utilized by examiners with polygraph testing; and, this is one of several examples of test procedures generally identified as Stimulation or Acquaintance Tests. During the pre-test interview, it is explained to the examinee that the "acquaintance test" has several purposes. These purposes include allowing the examinee an opportunity to get use to the component sensors; allow the examiner to adjust the polygraph instrument to examinee's physiology; and to allow the examinee to become acquainted with the polygraph examination test procedures (how to begin a test; how the test is conducted; the examiner's voice; how to end a test, etc.).

The examinee is then asked to pick a number between "3 and 8" and tell the examiner what the number is (the reason for this numerical sequence is to ensure that there are two "padding numbers" before and after the number picked by the examinee). After verbally expressing their number, the examinee is asked to write their choice in the middle of a sheet of paper provided by the polygraph examiner. The examiner should tell the examinee that the number should be written one to two inches in height (large enough to be seen when placed on the wall in front of the examinee). After the examinee writes their number, the polygraph examiner then adds two to three sequential number before and after the number written (key number) by the examinee (i.e., If examinee writes the number "4" the polygraph examiner would add number 1, 2, and 3 above the 4 and number 5 and 6 after the 4; or the examiner could add the number 2 and 3 above the 4 and 5, 6 and 7 below the 4). The Stim test consists of six numbers. There must be a minimum of two "padding numbers" after the "key number". Using this procedure, the "key number" can be in either the third or fourth position of the testing sequence. The piece of paper on which all of the numbers are written is then affixed to the wall in front of the examinee. Once the paper is affixed to the wall, the data collection procedures and examinee instructions are then provided by the examiner.

As an example, if an examinee picks the number 4, the data collections test sequence could be as follows:

THE TEST IS ABOUT TO BEGIN. PLEASE REMAIN STILL (X).

REGARDING THE NUMBER YOU WROTE (Preparatory Phrase), DID YOU WRITE THE NUMBER (Prefix Phrase) 1?

DID YOU WRITE THE NUMBER 2?

DID YOU WRITE THE NUMBER 3?

DID YOU WRITE THE NUMBER 4?

DID YOU WRITE THE NUMBER 5?

DID YOU WRITE THE NUMBER 6?

THE TEST IS OVER. PLEASE DO NOT MOVE WHILE I TAKE THE INSTRUMENT OUT OF OPERATION (XX)

(Note: The preparatory phrase is asked only ONCE with the first question; however, the prefix phrase is asked with each choice/question).

During the pre-test interview phase, the above questions are reviewed with the examinee in the order they will be presented during the data collection phase, and the examinee is instructed to answer "NO" to each question. It is explained to the examinee that by doing so, they are answering truthfully to five of the questions, but lying to one of the questions (key number). When reviewing the questions, ensure the examinee verbally answers "NO" to each question. Also, ensure the examinee understands that s/he is lying when answering "NO" to the question regarding the number they wrote. During the data collection phase, the acquaintance test is conducted like any other polygraph test. One of the most important aspects of the stimulation test is the post-test interview phase. It is during this phase that the polygraph examiner must "SELL" the Stim test to the examinee. If accomplished properly, this will show the examinee the polygraph procedure works and it should also help to reinforce examinee's psychological set.

**Illinois Qualifications for Polygraph Examiners**

**Illinois Joint Committee on Administrative Rules  
Illinois Administrative Code**

**TITLE 20: CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT  
PART 1900 SEX OFFENDER MANAGEMENT BOARD STANDARDS AND  
GUIDELINES FOR THE EVALUATION, TREATMENT AND MONITORING OF ADULT  
SEX OFFENDERS**

**CHAPTER VII: SEX OFFENDER MANAGEMENT BOARD**

**SECTION 1900.170 QUALIFICATIONS OF POLYGRAPH EXAMINERS**

- a) Polygraph Examiner – Full Operating Level
- 1) The individual shall be licensed under the Detection of Deception Examiner's Act [225 ILCS 430] and possess a baccalaureate degree from an accredited college or university.
  - 2) The individual shall have graduated from a polygraph school accredited by the American Polygraph Association (APA). (Accreditation information is available from APA National Office, P.O. Box 8037, Chattanooga TN 37414-0037, phone 800-APA-8037, or at [www.polygraph.org](http://www.polygraph.org).)
  - 3) The individual shall have completed 40 hours of specialized clinical sex offender training for polygraph examiners which has been approved by APA.
  - 4) The individual shall have conducted at least 150 criminal specific issue examinations, including a minimum of 50 clinical sex offender polygraph examinations, including specific issue, disclosure and maintenance examinations. The total clinical examinations shall include at least 10 disclosure polygraphs and 10 specific sexual issue polygraphs. Twenty of the 50 required clinical examinations shall have been conducted in the previous 12 months.
  - 5) The individual shall provide satisfactory references as requested by the Sex Offender Management Board and shall allow the Board to solicit any additional necessary references to determine compliance with this Part.
  - 6) The individual shall submit to a background check.
  - 7) The individual shall adhere to the code of ethics and bylaws of APA (accreditation, bylaws and ethics information is available from APA National Office, P.O. Box 8037, Chattanooga TN 37414-0037, phone 800-APA-8037, or at [www.polygraph.org](http://www.polygraph.org)) and shall conduct all examinations in a manner that is consistent with those listed ethics and bylaws.
- b) Polygraph Examiner – Associate Level
- 1) The examiner shall be licensed under the Detection of Deception Examiner's Act and possess a baccalaureate degree from an accredited college or university.
  - 2) The examiner shall have graduated from a polygraph school accredited by the American Polygraph Association (APA).
  - 3) The examiner shall have completed 40 hours of specialized clinical sex offender training for polygraph examiners which has been approved by APA.

- 4) The examiner shall have completed at least 30 specific issue examinations (at least 15 shall be real life examinations and the other 15 may be specific issue mock examinations).
  - 5) The associate level examiner shall obtain supervision from an SOMB approved clinical polygraph examiner, at the full operating level, to conduct the necessary clinical polygraphs to achieve the 50 examinations required at the full operating level. The supervision agreement must be in writing and the supervising examiner must review each clinical polygraph conducted to satisfy the 50 clinical polygraph examination requirement.
  - 6) The supervisor of an associate level clinical polygraph examiner shall review samples of videotapes and/or actually observe the examiner during the examinations and provide supervision and consultation on question formulation for clinical polygraph exams, report writing, and other issues related to conducting clinical polygraph exams. Supervisors must review each clinical polygraph report used to meet the 50 clinical polygraph examination requirement and sign off that such review has been completed.
- c) Continued Placement on the Approved Provider List
- 1) The polygraph examiner must demonstrate continued compliance with this Part.
  - 2) Clinical polygraph examiners shall complete a minimum of 40 hours of relevant continuing education every three years to help maintain proficiency in the polygraph field and to remain current on developments in the assessment, treatment and monitoring of sex offenders.
  - 3) The examiner shall have conducted a minimum of 75 clinical polygraph examinations in the three years immediately prior to re-application.
  - 4) It is recommended that the examiner has engaged in periodic peer review by other registered full operating level clinical polygraph examiners, especially in cases where there are conflicting results with another registered examiner.
  - 5) The examiner shall provide any satisfactory references as requested by the Sex Offender Management Board.
  - 6) The examiner shall submit to a current background check.
  - 7) There shall be no evidence that the examiner has been convicted of a felony or has committed any criminal sexual offenses.
  - 8) The examiner shall comply with all requirements outlined in this Part and shall report any practice that is in significant conflict with this Part.
- d) An applicant shall be allowed a one time waiver of the standards regarding the minimum number of criminal and sex offense-specific examinations required for a full operating level polygraph examiner until three years from the effective date of the standards. All applicants who have received the waiver must go through the application process for continued placement as a full operating level polygraph examiner.

## **APA Post Conviction Polygraph Standards for Sex Offender Training and Testing**

### **3.11 Post Conviction Polygraph Standards for Sex Offender Training and Testing(PCSOT)**

3.11.1 The practice of post conviction sex offender testing is a specialized sub-discipline in polygraphy, unique in its application. Practitioners are required to satisfy the provisions set forth in the Standards of Practice for investigative examinations, in addition to those standards below.

#### 3.11.2 Minimum Training.

3.11.2.1 A minimum of 40 hours of specialized instruction through PCSOT certification training approved by the APA, beyond the basic polygraph training course requirements, shall be requisite to those who practice sexual offender testing.

#### 3.11.3 Examiner Restrictions

3.11.3.1 No therapists shall conduct a polygraph examination on an individual that they directly or indirectly treat.

3.11.3.2 A probation or parole officer shall not conduct a polygraph examination on any individual that they directly or indirectly supervise.

#### 3.11.4 Written Examination.

3.11.4.1 A final written examination, approved by the American Polygraph Association (APA) or its designated representative, shall be given subsequent to the approved training. The student must pass this written examination to receive a diploma for the training. The written examination shall be properly controlled and protected to prevent exposure of the test questions or answers to any unauthorized persons.

#### 3.11.5 Maintaining of written examinations.

3.11.5.1 The instructors of the approved course shall maintain a copy of the final written examination. Instructors upon completion of the 40 hour PCSOT course will then administer the examination to those students who qualify for the final examination.

3.11.5.2 Upon completion of the examination the instructor shall submit the tests to the APA National Office for scoring verifications.

#### 3.11.6 Quality Control Requirements.

3.11.6.1 All polygraph examinations of sexual offenders submitted for quality control shall be recorded in their entirety. Though video recording is the preferred medium, audio recording is sufficient to meet this standard.

#### 3.11.7 Testing Facilities.

3.11.7.1 Testing facilities shall support recording equipment, either audiovisual or audio.



### 3.11.8 In-test Specifications.

3.11.8.1 All recorded physiological data shall be retained as part of the examination file as long as required by regulation or law, but for a minimum of one year.

3.11.8.2 Each single-issue examination shall employ a technique and format that has been validated through research.

3.11.8.3 Reasonable departures from validated formats are permissible, to the extent that an independent examiner/reviewer would concur that the employed method was not significantly dissimilar from the format validated in research. Any deviations from validated formats shall be fully explained and justified by the examiner in writing where this test is subjected to an independent quality control.

## **Florida Polygraph Association Post Conviction Sex Offender Testing Guidelines**

### **POST CONVICTION SEX OFFENDER TESTING GUIDELINES**

#### **I. MISSION**

To establish guidelines for polygraph testing in the comprehensive management and treatment of post conviction sex offenders for the purpose of complying with Florida State Statutes 948.03 and to enhance public safety.

#### **II. OBJECTIVES**

A. Improve qualifications of polygraph examiners using advanced polygraph techniques through advanced training and education; and adhering to high standards of professional ethics and conduct.

B. Serve as a professional polygraph contact for other professionals involved with post conviction sex offender testing.

C. Cooperate with other professional organizations in matters of mutual interest.

D. Encourage, develop ideas for and conduct research in the areas of Post Conviction Sex Offender Testing (PCSOT) polygraph testing.

E. Recognition through certification by the Florida Polygraph Association (FPA) of those examiners who have met the training requirements established by the FPA for post conviction sex offender testing.

#### **III. DEFINITIONS**

A. **POLYGRAPH**: An instrument/computer program that is capable of recording visually, permanently and simultaneously, indicators of a person's cardiovascular pattern and changes therein, a person's respiration patterns and changes therein, and a person's electrodermal response and changes therein. Indications of other psychophysiological changes or bodily responses may be recorded in addition but may not serve as a substitute of those defined herein.

B. **POLYGRAPHER**: Any individual polygraph examiner who is a graduate of a polygraph school, active in administering polygraph examinations, and who meets the requirements of a polygraph organization, i.e. American Polygraph Association (APA), American Association of Police Polygraphist (AAPP) and State Polygraph Associations.

C. **APPROVED POLYGRAPH SCHOOL**: One designated by the FPA Board of Directors (Board). Approval will be based on the school being accredited by the APA, AAPP and/or the FPA at the time of completion.

D. **POST CONVICTION SEX OFFENDER TESTING (PCSOT) POLYGRAPH EXAMINATION**: The employment of polygraph equipment used for the purpose of detection of deception or verifying truth of statements of any person under supervision and/or treatment for the commission of any sex offense. This polygraph examination is specifically intended to assist in treatment and supervision of post conviction sex offenders.

E. **POLYGRAPH EXAMINATION**: The examination will include any or all of the sections referred to as a pre-test, collection of charts, test data analysis, and when appropriate, post test interview. Collection of biographical data, instrument explanation, discussion of the issues, chart collection evaluation and posttest cannot be scheduled for less than 90 minutes.

F. POST CONVICTION SEXUAL OFFENDER TRAINING: Specialized training, approved by the Board, for the purpose of specific polygraph testing of post convicted sex offenders. Hereinafter, referred to specialized training.

#### IV. CERTIFICATION

The FPA will certify those examiners who have successfully completed the requirements as set forth in these guidelines. Therefore, those examiners are considered to possess the requisite knowledge to conduct polygraph testing in conjunction with sex offender treatment and monitoring programs. The FPA does not certify the competency of the individual examiner nor does it guarantee that any person who engages in Post Conviction Sex Offender polygraph testing is following currently approved FPA guidelines.

#### V. POLYGRAPH EXAMINER QUALIFICATIONS

A. A graduate of a polygraph school approved by a major polygraph association, i.e. APA, AAPP and recognized by the Board.

B. A member in good standing with the FPA.

C. Members who apply for certification after January 1, 2002, must have a minimum of a Baccalaureate Degree from an accredited college or university.

D. A member shall have a minimum of three (3) years of verified polygraph experience and a minimum of 200 specific polygraph examinations completed.

E. Examiners shall successfully complete a minimum of forty (40) hours of specialized sex offender polygraph examination training approved by the FPA. This training shall focus on sex offender assessment, evaluation, and monitoring as approved by the Board.

F. After the initial forty (40) hours of specialized training has been attained, all members shall successfully complete a minimum of twenty (20) hours of continuing education of specialized training, approved by the FPA, every two (2) years.

G. Who remains active in the polygraph profession by conducting a minimum of fifty (50) polygraph examinations per year to include at least five (5) Post Conviction Sex Offender Tests.

#### VI. INTERNSHIP

A. INTERN: A member who does not meet the experience requirement as listed in Section D. Polygraph examiner qualifications will be eligible to intern under a certified sex offender examiner until such time as they meet the experience requirement.

1. Each intern must complete an Intern Application indicating the name of the intern supervisor.

2. Each intern must comply with all of the provisions of these guidelines and submit all test data, test materials and audio/visual recordings, to their intern supervisor, as requested.

B. INTERN SUPERVISOR: A member who has been certified by the FPA to do sex offender testing under these guidelines may serve as an intern supervisor, provided that they conduct a minimum of 25 Post Conviction Sex Offender examinations per year.

1. The intern supervisor must actively supervise the intern and periodically review and critique the intern's Post Conviction Sex Offender examinations. The intern supervisor shall maintain documentation of the intern's progress.

2. In the event an intern is unable to obtain an intern supervisor, the Board shall appoint one.

3. The intern supervisor shall attest to the successful completion of the internship on the intern's application for certification.

#### VII. POLYGRAPH EXAMINATION RECORDING GUIDELINES

A. All polygraph examinations will be maintained as permanent visual tracings of the polygraph data for diagnostic and documentation purposes.

B. Recording channels/components required for Post Conviction Sex Offender Polygraph Examinations will be:

1. Respiration patterns made by two (2) separate pneumograph components. One respiration component will record the thoracic (upper chest) respiration and other component will record the abdominal (lower stomach) respiration pattern.

2. A channel tracing will record the Electrodermal pattern (also commonly referred to as the Galvanic Skin tracings), which reflects relative changes and the conductivity/resistance of very small amounts of electrical current by the epidermal tissue.

3. A cardiograph channel will be utilized to record changes in the pulse rate, pulse amplitude and changes in the relative blood pressure.

C. To effectively evaluate the polygraph tracings during any polygraph examination, it is understood by all professional examiners that easily readable trace recordings must be obtained. Tracings that are either too large, too small, or that leave extraneous responses to outside stimuli are difficult, if not impossible to evaluate. In order to allow the examiner to render a valid and reliable opinion based on the recorded information contained within the polygraph charts, it is recommended that all pneumograph and cardiograph tracings recorded during the polygraph examination be of sufficient amplitude to be easily read and evaluated by the initial examiner and by a reviewing examiner for any quality control review purpose.

D. All pneumograph and cardiograph tracings should be not less than one half inch in amplitude. Chart tracings consistently less than one half inch in amplitude in the pneumograph and/or the cardiograph tracings, without sufficient documented explanation of physiological cause will be considered insufficient for analysis purposes. Every effort should be made by the examiner to increase the baseline amplitude of recordings that are less than recommended minimums. Charts that are evaluated and determined to be inadequate, may require additional testing of the examinee.

#### VIII. POLYGRAPH INSTRUMENT CALIBRATION

A. All polygraphs, computerized or analog, utilized for the recording of changes in physiological responses produced by the human body during a polygraph examination, at a minimum, will be calibrated according to the manufacturer's guidelines as provided in the instruction and operation manuals.

B. Examiners should insure their instrument(s) are calibrated as required or when the instrument has been moved from one location to another.

#### IX. SPECIALIZED TESTING TECHNIQUES AND PROCEDURES

A. Examination techniques will be limited to the Zone Comparison or comparative question techniques taught at any of the FPA recognized schools within the last two years.

B. **NO TECHNIQUE** shall be used that has been modified without the support of sufficient published validity and reliability studies for that particular modification.

C. All specialized testing procedures will be in compliance with the FPA Standards and Principles of Practice, which include pretest, in-test and post test procedures.

D. In order to allow sufficient time for the pretest, in test and post test procedures, a polygraph examination will be scheduled for a minimum of ninety (90) minutes.

E. No more than four (4) Post Conviction Sex Offender polygraph examinations may be scheduled during any ten (10) hour work day by a FPA certified Post Conviction Sex Offender Test examiner, which shall consist of:

Four (4) maintenance or monitoring examinations OR three (3) sexual history/history full disclosure examinations OR a combination of three (3) maintenance or monitoring and one (1) sexual history examination OR a combination of three (3) maintenance or monitoring and one (1) specific examination.

F. An acquaintance/stimulation test will be conducted prior to relevant testing. This test is often used to demonstrate that the psychological set of the examinee and the examinee's reaction capabilities are established for diagnostic purposes.

G. During the post test interview of a no significant response/no deception indicated (NSR/NDI) examination, the examiner must advise the examinee that there were responses to the comparison questions.

H. An examiner may not submit a professional opinion that the examinee was "NSR" to the entire examination or to any single relevant question asked during the examination if the examinee's answer to any relevant question in the test question sequence is determined to have significant response (SR). In keeping with professional reporting standards, for an examinee to be reported as "NSR" by the examiner, a plus (+) score in each spot must occur. Other applicable scoring rules shall also apply.

K. Polygraphist's who also serve as Therapists and Probation Officers will not conduct Post Conviction Sex Offender examinations on those offenders over which they exercise direct or in-direct supervision or treatment responsibilities.

#### X. QUALITY CONTROL ASSURANCE

A. Each member involved in Post Conviction Sex Offender polygraph examinations must follow the quality control process as listed below, which allows for independent review of polygraph charts and reports.

B. For quality control assurance, examiners must:

1. Produce polygrams of the examinations in their entirety.
2. Numerically hand score all relevant test examination charts (Computerized scoring algorithms may be used, in addition to hand scoring). The scoring procedure must be appropriate for the technique employed.
3. Provide their work product, including all recordings, upon request of the Board, or it's designee.
4. All polygraph examinations of sexual offenders submitted for quality control shall recorded in their entirety. Though video recording is preferred medium, audio recording is sufficient to meet this standard.

#### XI. DISCIPLINARY PROCEDURES

A. Any member certified by the FPA in Post Conviction Sex Offender Testing whose conduct is deemed to be in violation of the FPA Constitution, By-Laws, Code of Ethics, Standards and Principles of Practice and/or these guidelines will be subject to disciplinary action as established in the FPA By-Laws.

B. Any individual expelled for cause from APA, AAPP, FPA or any other professionally recognized national or state polygraph association, or anyone convicted of a felony or anyone discharged from related employment for an unethical, amoral or dishonest cause is not eligible to be certified as a Post Conviction Sex Offender polygraph examiner by the FPA. Similarly, individuals in a polygraph licensing state who have had their polygraph license suspended or revoked for cause is not an eligible candidate.

## XII. TRAINING CERTIFICATION PROCEDURES

A. Those members who wish to obtain certification, in accordance with these guidelines, must submit the appropriate application, with proper documentation, to the Director of the Randall Jones School of Continuing Studies.

B. To maintain certification, the member must comply with the required continuing studies of specialized training, as set forth in these guidelines.

### X. Reference:

APA Post Sex Offender Testing Guidelines

The Joint Polygraph Committee on Offender Testing (JPCOT)

Peer Review: Mr. Robert Lundell Chairman, APA Sub-Committee; Post Conviction Sex Offender Testing (PCSOT) and Mr. Eric Holden

**Illinois Sex Offender Management Board Standards for the Use of Polygraph**

**Illinois Joint Committee on Administrative Rules  
Illinois Administrative Code**

**TITLE 20: CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT  
PART 1900 SEX OFFENDER MANAGEMENT BOARD STANDARDS AND  
GUIDELINES FOR THE EVALUATION, TREATMENT AND MONITORING OF ADULT  
SEX OFFENDERS  
CHAPTER VII: SEX OFFENDER MANAGEMENT BOARD**

**Section 1900.160 Standards for Use of Polygraph**

- a) In cooperation with the supervising officer, the provider shall employ treatment methods that incorporate the results of polygraph examinations, including specific issue polygraphs, disclosure polygraphs, and maintenance polygraphs. Exceptions to the requirement for use of the polygraph may be made only by the containment team or by a prison treatment provider.
- b) The containment team shall determine the frequency of polygraph examinations, and the results shall be reviewed by the team. The results of such polygraphs shall be used to identify treatment issues and for behavioral monitoring.
- c) Responsibilities of the Polygraph Examiner within the Team
  - 1) The polygraph examiner shall participate as a member of the containment team established for each sex offender.
  - 2) The polygraph examiner shall submit written reports to each member of the containment team for each polygraph examination. Reports shall be submitted in a timely manner, no longer than two weeks after testing.
  - 3) Attendance by the polygraph examiner at team meetings shall be on an as-needed basis, at the discretion of the supervising officer.
- d) The supervising officer shall ensure that the polygraph examiner conducting the current examination has full background information, including the Presentence Investigation Report, police reports, mental health evaluations, and reports from all prior polygraphs, including sexual history disclosure and any prior maintenance examinations.
- e) Polygraph examinations shall not be conducted by anyone serving as the supervising officer or therapist.
- f) Opinions of the polygraph examiner shall be based upon all information gathered during the examination process. The computer algorithm shall never be the sole determining factor in reporting the examination results. Numeric scores shall be considered raw data and not disclosed in written examination reports.
- g) The maximum number of relevant test questions in any examination shall not exceed four, however three or fewer relevant questions is ideal.

- h) Prior to the examination the general nature of the procedure can be discussed with the sex offender, but the specific issues to be addressed will be determined by the team. The supervising officer and treatment provider shall defer any questions or information about the mechanics and actual operation of the polygraph to the polygraph examiner. The team shall emphasize the importance of being honest and making full disclosure.
- i) If the sex offender is in full or partial denial of the facts of the instant offense, a specific issue examination is the most appropriate type of initial examination. This type of examination shall be conducted as early as possible in the supervision/treatment process.
- j) Sexual history disclosure polygraphs shall be completed after the sex offender has provided a written sexual history, which has been reviewed in his or her treatment program. The supervising officer or treatment provider shall provide the examiner with a copy of the sex offender's written sexual history and any disclosure questionnaire prior to the examination.
- k) Only the containment team can waive the requirement for a non-deceptive sexual history disclosure polygraph.
- l) Maintenance examinations shall cover a wide variety of offending behavior as well as compliance with treatment and supervision conditions. An ongoing dialogue among team members is crucial to identify issues to be explored. For sex offenders who remain in denial, the frequency of maintenance testing shall be accelerated due to the possibility of increased risk.
- m) Unresolved issues shall be re-examined as soon as possible and sanctions shall be imposed for continued deceptive responses. These re-examinations are not considered to be a substitute for scheduled maintenance examinations.
- n) Post-test admissions to deceptive polygraph responses shall result in further testing to verify if the sex offender has failed to disclose additional offenses.
- o) Disclosure test questions and maintenance test questions shall not be mixed in any single examination.
- p) Single issue polygraph examinations provide the best opportunity for identification of sex offender deception; however, the examiner may utilize multiple issue examinations at his/her discretion and while considering the goals of the team.
- q) If the sex offender is deceptive or inconclusive to one or more issues in a multiple issue examination, a re-examination over all issues shall be considered, once the results have been reviewed with the sex offender by the team.
- r) Sex offenders shall not be tested on fantasy, intentions or thoughts. Questions regarding arousal shall be tied to behaviors: e.g., "Have you masturbated to deviant sexual fantasies?"
- s) Test questions shall not contain emotionally laden, psychological or legal terminology.
- t) Test questions shall be based upon actual behavior, and not on written statements about behavior, i.e., Sexual History Disclosure Questionnaires.
- u) Relevant test questions shall not ask for estimates of offenses/victims for those sex offenders who report large numbers of those behaviors. Questions about victims may be broken down into separate categories for which the sex offender has no disclosures, i.e., male, female, relative, stranger, etc.
- v) Examiners shall communicate with the team any concerns and recommendations for further testing of a sex offender. If the examiner suspects the sex offender has used countermeasures, it



is appropriate for the team to use appropriate sanctions with the sex offender. Likewise, if the supervising officer or treatment provider has any questions about the polygraph results, he or she shall communicate with the examiner.

- w) If conflicting polygraph results are reported between two separate examiners using similar test questions and time frames, a meeting of both examiners with the supervising officer and treatment provider shall be convened as soon as possible. Each examiner shall bring all relevant test materials to the meeting to help explore the possible causes for the differing results. The team members shall work to develop a consensus on the results and the subsequent response to the sex offender. If consensus cannot be reached the team shall consult with a third, independent SOMB approved full operating level examiner to offer an opinion regarding the issue. If the conflict still remains unresolved, a new examination by a third party shall be conducted.
- x) If a sex offender claims significant differences in the results or information disclosed in the examination from that provided in the examiner's report, the examiner shall be contacted to seek clarification and to mitigate offender splitting (i.e., offender placing responsibility or blame on therapists and/or supervising office). If the procedure was recorded, a review of the recording is appropriate.
- y) In preparation for reviewing polygraph reports with the sex offender, the supervising officer and treatment provider shall be familiar with both the current and prior polygraph reports. They shall review the entire current report and identify critical issues to discuss with the sex offender. In meeting with the sex offender, efforts shall be made to have the sex offender repeat and document any relevant statements and to solicit additional information. After reviewing the report with the sex offender, the case shall be staffed by the team and appropriate sanctions shall be imposed for reported deception and any statements of problem behavior. (The use of the polygraph with convicted sex offenders is most effective when relevant sanctions to high risk behaviors or deceptive responses are imposed quickly.)
- z) Treatment providers and supervising officers shall not offer the sex offender explanations or excuses for deceptive responses, other than dishonesty. Team members shall not allow splitting and shall discuss with the team any information the sex offender provides about another team member.
  - aa) If any team member has concerns regarding a sex offender's emotional state, or mental health related symptoms, which may affect the polygraph, the entire team shall staff the case.
  - bb) If the members of the team have concerns about what they consider to be excessive inconclusive results reported by the examiner, a staffing of all members is appropriate to explore how to resolve this problem.
  - cc) If the sex offender is not fluent in English, an interpreter must be used who is fluent in speaking and writing both English and the language used during the examination. The interpreter must not be a relative or a friend of the sex offender, and must have prior approval by the examiner. The interpreter shall serve only to interpret the communication between the subject and the examiner.
  - dd) There may be value in occasionally changing polygraph examiners to avoid familiarization between a particular examiner and the offender.
  - ee) Split Call reporting (where the subject's responses have a mix of deception, no deception and/or inconclusive reporting) is generally not recommended, but is allowed if the examiner believes that the polygraph charts have a sufficient clarity to justify such a call.

- ff) Examiners shall use a computerized polygraph system or a late model (1980's to present) state-of-the-art, four or five channel polygraph instrument that will simultaneously record the physiological phenomena of abdominal and thoracic respiration, galvanic skin response, and the cardiovascular system.
- gg) The examiner must employ a computerized polygraph system and a recognized scoring software (e.g., the Johns Hopkins Applied Physics Laboratory scoring algorithm). Computerized charts must also be independently hand scored by the examiner.
- hh) The duration of each examination (including the pre-test, in-test, and post-test phases) shall be a minimum of 90 minutes. Time begins when the examinee enters the examination room with the examiner and ends when the examinee departs after the conclusion of the polygraph examination.
- ii) Examiners shall use a recognized Control Question Technique (CQT), plus a Peak of Tension test when necessary.
- jj) Examiner shall use the following specific procedures during the administration of each examination:
  - 1) The examinee shall agree in writing or on video tape to a standard waiver/release statement. The language of the statement should be agreed upon prior to the polygraph examination with the therapist, probation/parole officer, community corrections case manager, or prison treatment provider;
  - 2) The examiner shall elicit relevant biographical and medical history information from the examinee prior to administering the actual polygraph examination;
  - 3) The testing process shall be completely explained to the examinee, including an explanation of the instrumentation used and causes of general nervous tension;
  - 4) The examiner shall conduct a thorough pre-test phase, including a detailed discussion of each relevant issue. There shall be an open dialogue with the examinee to confirm his/her version of the issues;
  - 5) The examiner shall review and explain all test questions to the examinee. Examinee must demonstrate that he/she comprehends the meaning of each question;
  - 6) Surprise or trick questions are forbidden during the administration of primary test charts;
  - 7) All test questions must be formulated to allow only Yes or No answers;
  - 8) An optional acquaintance/practice test may be run;
  - 9) A minimum of three primary test charts shall be administered on the primary issue(s);
  - 10) Test results shall be reviewed with the examinee;
  - 11) The examiner must have received all pertinent and available case facts within a time frame sufficient to prepare for the examination.
- kk) Examiners shall use an effective quality control process that allows for periodic independent review of all documentation, polygraph charts, and reports.

- ll) Examiners shall issue a written report. The report must include factual, impartial, and objective accounts of the pertinent information developed during the examination, including statements made by the subject. The information in the report must not be biased or falsified in any way. The examiner's professional conclusion shall be based on the analysis of the polygraph chart readings and the information obtained during the examination process. All polygraph examination written reports must include the following:
- 1) Date of test or evaluation
  - 2) Name of person requesting exam
  - 3) Name of examinee
  - 4) Location of examinee in the criminal justice system (probation, parole, etc.)
  - 5) Reason for examination
  - 6) Date of last clinical examination
  - 7) Examination questions and answers
  - 8) Any additional information deemed relevant by the polygraph examiner, e.g., examinee's demeanor
  - 9) Reason for inability to complete exam, information from examinee outside the exam, etc.
  - 10) Results of pre-test and post-test examination, including answers or other relevant information provided by the examinee.
- mm) In order to design an effective polygraph examination and adhere to standardized and recognized procedures, there shall be no more than four relevant test questions, which shall:
- 1) Be simple, direct and as short as possible
  - 2) Not include legal terminology that allows for examinee rationalization and utilization of other defense mechanisms
  - 3) Not include mental state or motivation terminology
  - 4) Be clear and not allow for multiple interpretations
  - 5) Contain reference to only one issue under investigation
  - 6) Never presuppose knowledge on the part of the examiner
  - 7) Use language easily understood by the examinee
  - 8) Be easily answered Yes or No
  - 9) Avoid the use of any emotion laden terminology (such as rape, molest, murder, etc.) and use language that is behaviorally descriptive.

## **California Coalition on Sexual Offending Position Paper for Clinical Polygraph Examinations in Sex Offender Treatment**

### **Clinical Polygraph Examinations in Sex Offender Treatment**

The polygraph instrument precisely records physiological measurements that are interpreted in accordance with specific protocols by professional polygraphists with specialized training. These interpretations are used to form professional opinions about whether an examinee was attempting deception while answering specific “relevant” questions during the examination. The California Coalition on Sexual Offending (CCOSO) supports post-conviction (clinical) polygraph testing of sex offenders. The CCOSO believes that post conviction sexual offender polygraph testing (PCSOT) motivates clients to be truthful about their past sexual behaviors, possible recent relapses, and high-risk conduct.

### **Benefits**

PCSOT is an effective and important management and treatment tool that can help lower sexual and general criminal recidivism during supervision and treatment [1]. Further, PCSOT dramatically increases disclosure of relevant historical information, allowing for more precise targeting of treatment interventions [2-4]. PCSOT also increases clients’ propensity to engage in honest relationships outside the treatment setting, thereby improving quality of life for examinees and those around them. Demonstrable benefits during supervision and treatment suggest that offenders whose treatment includes PCSOT may be less likely to reoffend after treatment and supervision ends. Therefore, available evidence suggests that PCSOT improves community safety.

### **Test Accuracy and Treatment Provider Responsibilities**

A properly administered single issue polygraph examination can be an effective method for helping knowledgeable professionals distinguish truthfulness from attempted deception during the sex offender management and treatment process [5-10]. The CCOSO also recognizes legitimate concerns over polygraph’s limitations due to issues of standardization, reliability, and validity. However, adhering to standardized examiner training and offender-testing practices [11-13] is believed to reduce error rates. To date, there is no evidence that gender effects test accuracy or utility. Altogether, research and collective experience suggest that PCSOT can meaningfully inform sex offender treatment and that this is particularly true when it is one of a comprehensive battery of management and treatment tools applied in the context of an effectively implemented containment program [14, 15]. Test validity and reliability have not been empirically studied specifically in the PCSOT setting. The CCOSO recognizes that polygraph is a complex procedure, the outcomes of which can be synergistically affected by [16]:

- Examiner experience, characteristics, and practices
- Examinee experiences, characteristics, culture and behavior
- Program culture within which it is integrated
- Idiosyncratic situational factors
- Instrumentation and interpretation procedures
- Base rates of attempted deception in the population being tested
- Pre-examination data collection procedures

Although existing accuracy studies do not include individuals under the age of eighteen or persons with intellectual disabilities, more than a decade of collective experience suggests that it is reasonable to use polygraph as a clinical tool with youth thirteen to eighteen years old and with developmentally disabled individuals. Confidence in charts from such individuals should decline with declining age beginning at eighteen and/or level of intellectual functioning. Determining the appropriateness of polygraph testing with minors and intellectually impaired individuals or using polygraph results to assist with decision making in their cases requires consideration of these limitations. As with any test, professionals who utilize examination results for making case management and treatment decisions should understand and account for all relevant factors and place test results in their proper perspective in each case. Both undervaluing of and over-relying on PCSOT can be detrimental to assessment and treatment; contributes to inappropriate decisions, and places the community at increased risk.

### **Examination and Examiner Guidelines**

The California Association of Polygraph Examiners (CAPE), the [American Polygraph Association](#) (APA) and other professional polygraph organizations have developed guidelines defining examiner competence and ethical examiner practices. The CCOSO collaborates with the CAPE and other professional polygraph organizations to maximize ethical PCSOT best-practices and encourages further study to improve PCSOT utility and accuracy, and to establish differential standards for use with various populations.

### **Confidentiality – Violations During Treatment**

Sex offender management and treatment necessitates limiting traditional patient/psychologist privilege and confidentiality. Clients should be encouraged to self-report misbehavior. This is best accomplished by informing them that “Deception Indicated” polygraph chart interpretations can lead to increased surveillance, restrictions and thorough investigations, making discovery of illicit behavior more likely. However, consequences for illicit behavior may be mitigated if clients self-disclose violations rather than waiting to be discovered.

### **Confidentiality – Deviant History**

PCSOT’s usefulness as a clinical tool derives from its ability to elicit historical information, allowing psychosexual behavioral patterns to be more fully revealed, better understood, and more effectively managed and changed. However, client disclosures of potentially incriminating information to mandated reporters could lead to further prosecution. This may end the very treatment the information was intended to enhance. Excepting the obligation to protect potential victims at current risk, using a clinical polygraph examination to extract incriminating historical information is only ethical when clients are protected from the legal consequences of their honest self-report about pre-treatment behaviors. Some jurisdictions encourage PCSOT use and avoid constitutional challenges by providing limited legal immunity to examinees. Such immunity may enhance test utility in that it calls for nothing to be withheld. Proponents of this method also point out that its use allows authorities to locate previously unreported victims and contact them for purposes of offering counseling and supportive services. Another method of safeguarding clients from potential consequences of honest historical self-report is to collect only information that does not identify particular victims (e.g. victim #1, #2, etc.). Some programs prefer this method even when immunity is available, since some clients may not completely trust immunity grants and might be more likely to attempt concealing potentially incriminating information, even when they are promised limited immunity. Some advocates for the victim anonymity method also assert that immunity that generates victim outreach re-victimizes some former victims by unwanted invasion of their privacy. Finally, advocates of the victim anonymity method point out that immunity grants combined with victim outreach are unfair to former victims who would have initiated prosecutable reports at a later time.

**The CCOSO recommends the following to enhance test accuracy, balance client confidentiality with community safety, and protect program integrity [17].**

1. Treatment providers and polygraph organizations should
  - Establish standardized methods for collecting pre-test information and preparing sex offender examinees for polygraph examinations.
  - Conduct robust studies across age, gender and I.Q. ranges to establish test validity and reliability so that the polygraph can be generalizable across populations when interpreting test findings.
2. Examiners should always mention and briefly explain the limitations of polygraph findings as they apply to specific cases in their reports.
3. PCSOT should be used in a [containment model](#) context.
4. Examiners working on Containment Teams should adhere to [guidelines](#) promulgated by the CAPE and other professional polygraph organizations.
5. All crimes and rule violations committed during treatment should be promptly reported to appropriate officials. Clients should be informed in writing before beginning treatment, that such reports will be made.

6. Clients should not be prosecuted for crimes committed before beginning treatment when such prosecution would rely on disclosures made in the treatment setting. Written limited immunity agreements with prosecutors and/or refraining from collection of victim identities are acceptable methods of protecting clients from such prosecution.

7. Treatment providers and supervision officers should be knowledgeable about the ways in which various factors can affect test results and utility before employing PCSOT in their practices. These factors include but are not necessarily limited to:

- Examiner experience, characteristics, and practices
- Examinee experiences, characteristics, culture and behavior
- Program culture within which it is integrated
- Idiosyncratic situational factors
- Instrumentation and interpretation procedures
- Base rates of attempted deception in the population being tested
- Pre-examination data collection procedures

8. Polygraphy should not be the only form of monitoring used by a containment team. Other methods such as electronic surveillance, collateral contacts, face-to-face meetings with the individual, chemical testing and unannounced field visits should be regularly employed.

9. Polygraph charts should never be the sole basis for making significant case decisions.

10. Particular caution is warranted with clients who:

- a. Are between the age of thirteen and eighteen
- b. Manifest impaired reality testing
- c. Take medications or have health conditions known to effect the physiological responses on which polygraphy relies
- d. Appear unable to produce "Deception Not Indicated" charts even when independent information makes it highly unlikely they are being deceptive
- e. Have cognitive/intellectual functioning deficits.

11. Polygraph, correctional, and psychotherapy professionals should actively cooperate and encourage joint research and other ventures to enhance PCSOT standardization, validity and reliability. This would in turn, enhance accuracy, utility and ethical practice.

12. CCOSO members using any testing procedures, including polygraph examinations should avoid under-reliance or over-reliance on test results by noting appropriate strengths and limitations of those tests when reporting outcomes or in court testimony.

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**Wisconsin Administrative Code DOC 332.18**

**Wisconsin Administrative Code – Corrections, Chapter 332, Sex Offender Notification and Community Notification Requirements**

**DOC 332.18 Lie detector fee.** The department shall establish a schedule of fees to partially offset the costs of the lie detector program for offenders who are sex offenders and who are required to take a lie detector test. The costs of the tests may vary depending on the type of test used. An offender shall also pay a \$5 administrative fee with each payment. The department shall do all of the following in establishing a fee schedule for lie detector testing and in collecting lie detector fees:

DOC 332.18(1)

**(1) BASIS OF FEE.** Base the lie detector fee payment schedule upon the offender's ability to pay with the goal of receiving payment for the costs of administering the test and a \$5 administrative fee with each payment.

DOC 332.18(2)

**(2) TIMING OF PAYMENTS.** Permit payment of the fee to be paid in any of the following ways:

DOC 332.18(2)(a)

(a) Full payment of the fee within 30 days of the date the offender takes the lie detector test.

DOC 332.18(2)(b)

(b) Quarterly payment of the fee to be paid in full within one year of the date the offender takes the lie detector test.

DOC 332.18(2)(c)

(c) Monthly installment payments of the fee to continue until the fee is paid in full.

DOC 332.18(3)

**(3) DEFERRAL OF PAYMENTS.**

DOC 332.18(3)(a)

(a) Except if the offender has the present ability to pay the fee, permit deferral of payment if the offender meets one or more of the following conditions, until a time when the conditions no longer exist:

DOC 332.18(3)(a)1.

1. Has used all reasonable and appropriate means to obtain employment as determined by the offender's probation and parole agent, but has been unable to obtain employment which provides the offender sufficient income to pay the lie detector fee.

DOC 332.18(3)(a)2.

2. Is a student enrolled in a full-time course of instruction. In this subdivision, "full-time course of instruction" means enrolled in an accredited course of instruction and registered for more than 9 credits in post secondary education or full-time high school or full-time junior high school, and "school" means a public school under s. 115.01 (1), Stats., a charter school as defined in s. 115.001 (1), Stats., or a private school as defined in s. 115.001 (3r), Stats. The offender shall provide a release of information to verify enrollment and registration of credits. If the offender fails to provide the release of information, no deferral may be given. The educational institution shall certify to the department that the offender is enrolled and attending a full-time course work at the educational institution.

DOC 332.18(3)(a)3.

3. Is undergoing psychological, chemical or medical treatment consistent with the supervision plan approved by the department and is unable to be employed. The treatment provider shall certify the status to the department.



DOC 332.18(3)(a)4.

4. Has a statement from a licensed physician excusing the offender from work for medical reasons and the offender is unable to be employed because of the medical reasons.

DOC 332.18(3)(b)

(b) The agent shall make a determination concerning an offender's deferral of payment of the lie detector fee within 10 working days of determining that an offender is required to participate in the lie detector examination process or within 10 working days of a change in the offender's financial or employment status as reported in accordance with s. DOC 328.04 (3) (f).

DOC 332.18(3)(c)

(c) The agent's supervisor shall review all decisions made by the offender's probation and parole agent to defer payment of the lie detector fee.

DOC 332.18(4)

**(4) COLLECTION.** Develop procedures for the collection of lie detector fees. The offender who is a sex offender shall pay the lie detector fees to the department according to the procedures established by the department.

DOC 332.18(5)

**(5) COPIES OF FEE SCHEDULE AND PAYMENT PROCEDURES.** Provide the offender who is a sex offender with copies of the lie detector fee schedule, administrative fee requirement, and lie detector fee payment procedures.

DOC 332.18(6)

**(6) RECORD OF PAYMENTS.** Record all lie detector fees paid by the offender, and on request of the offender, provide the offender with a copy of the record of payments to verify receipt of the payments.

DOC 332.18(7)

**(7) NOTICE TO OFFENDER WHEN PAYMENT IS NOT RECEIVED.** Advise the offender in writing if payment of the lie detector fee has not been made in accordance with the payment schedule.

DOC 332.18(8)

**(8) POSSIBLE ACTIONS IF FEE IS NOT PAID.** Take action under s. DOC 332.17 (6) (a), if an offender who is a sex offender fails to pay a lie detector fee. The department may use any of the following actions in any order when an offender who is a sex offender fails to pay the lie detector fee:

DOC 332.18(8)(a)

(a) Counseling.

DOC 332.18(8)(b)

(b) Wage assignment.

DOC 332.18(8)(c)

(c) Review of supervision level to determine if more restrictive sanctions are needed, including an increase in the level of supervision, electronic monitoring or detention in a jail, correctional facility or house of correction.

DOC 332.18(8)(d)

(d) Issue a recommendation for revocation of parole or probation under the provisions of ch. DOC 331 for the offender's willful failure to pay the lie detector fee after the agent has taken action under sub. (1) and has determined that the offender has the ability to pay the lie detector fee.

DOC 332.18(8)(e)

(e) Any other appropriate means of obtaining the lie detector fee.

## **Illinois Sex Offender Management Board Act Sec. 19**

### **Illinois Compiled Statutes Executive Branch 20 IL 4026 – Sex Offender Management Board Act**

#### **Sec. 19. Sex Offender Management Board Fund.**

(a) Any and all practices endorsed or required under this Act, including but not limited to evaluation, treatment, or monitoring of programs that are or may be developed by the agency providing supervision, the Department of Corrections, or the Department of Human Services shall be at the expense of the person evaluated or treated, based upon the person's ability to pay. If it is determined by the agency providing supervision, the Department of Corrections, or the Department of Human Services that the person does not have the ability to pay for practices endorsed or required by this Act, the agency providing supervision of the sex offender shall request reimbursement for services. The Sex Offender Management Board shall provide the agency providing supervision, the Department of Corrections, or the Department of Human Services with factors to be considered and criteria to determine a person's ability to pay. The Sex Offender Management Board shall coordinate the expenditures of moneys from the Sex Offender Management Board Fund with any money expended by counties, the Department of Corrections or the Department of Human Services. The Board shall develop a plan for the allocation of moneys deposited in this Fund among the agency providing supervision, the Department of Corrections, or the Department of Human Services.

(b) Up to 20% of this Fund shall be retained by the Sex Offender Management Board for administrative costs, including staff, incurred pursuant to this Act.

(c) Monies expended for this Fund shall be used to supplement, not replace offenders' self-pay, or county appropriations for probation and court services.

(d) Interest earned on monies deposited in this Fund may be used by the Board for its administrative costs and expenses.

(e) In addition to the funds provided by the sex offender, counties, or Departments providing treatment, the Board shall explore funding sources including but not limited to State, federal, and private funds.

(Source: P.A. 93-616, eff. 1-1-04.)

## **Addenda II**

(Raymond Nelson / H. Lawson Hagler (2004))

# Post-Conviction Sex Offender Testing

Summary of Presentation to  
New Mexico Sex Offender Management Board – May 27, 2004,  
by

**Raymond Nelson, MA, NCC / H.  
Lawson Hagler, MSW**

Due to the widespread and long-term impact of sexual abuse on victims of sex crimes, information surrounding the presence and activities of known sex offenders has become of paramount concern to communities everywhere. Because sexual abuse can generally exist only in a context of secrecy, sex offenders have often become masters at duplicity and deceit; once developed these skills do not easily atrophy. For this reason, sex offenders' behaviors in the community, cooperation with terms of supervision and engagement in treatment are a critical concern, and the inclusion of polygraph monitoring has become the standard of care and supervision in many jurisdictions.

## **Reasons for Post-Conviction Polygraph Testing**

### **Disclosure - Utility Value**

- Information gathering
- Risk assessment /treatment planning
- Reduction of denial
- Improved engagement in treatment
- Testing the limits of admitted behavior

### **Detection - Accuracy Value**

- Identifying deviancy, secrecy and dishonesty
- Relieving truthful persons of unjustified suspicion or concern

### **Deterrence - Monitoring Value**

- Increased likelihood of detection and consequences for misbehavior
- Improved behavioral compliance

### **Accuracy of the Polygraph Test**

- Studies demonstrate 95 to 98 percent accuracy rates
- National Academy of Sciences (2003) set median accuracy at 89% (range 70 to 99%)
- Field studies consistently more accurate than laboratory studies
- Truthful results more accurate than deceptive results

- Accuracy affected by purpose of the test (i.e., screening or diagnostic test)
- Accuracy reduced by scope of testing – broader tests may be more sensitive to a range of concerns, with some loss of specificity (Raymond Nelson / H. Lawson Hagler (2004))

### Testing Basics

- All tests are either **Screening** or **Diagnostic** in purpose
- Screening** tests search for the possible presence of one or more issues of concern
- Screening** tests biased for **sensitivity** (identify all persons who might express the issue or concern, then refer for further investigation or diagnostic testing)
- Diagnostic** tests investigate a single issue in response to a present concern (known incident or allegation)
- Diagnostic** tests biased for **specificity** (rule-out persons for whom the issue or concern does not apply)
- **Serial testing** (screening test followed by diagnostic test or other investigation) improves accuracy and is a common strategy in testing sciences

### Types of Post-Conviction Polygraph Tests

- **Specific Issue Testing** (instant offense / disclosure regarding the instant offense)
- Reduction of denial/minimization surrounding the instant offense
- New allegation or specific issues of concern
- Prior to clarification or reunification with children or younger sibling
- **Sexual History Disclosure Testing**
- Other victims – other victim selection behaviors (i.e., force/violence, incest, children, sleeping/unconscious persons, age of onset)
- Paraphilic behaviors / sexual deviancy / sexual compulsivity (among the most important risk predictor variables) – public indecency activities: exhibitionism, voyeurism, frottage, public masturbation, etc.

### Maintenance/Monitoring Polygraph

- Compliance/violations (primary focus)
- Unreported sexual contacts
- Pornography usage
- Unauthorized contact with children or vulnerable individuals
- Other unauthorized activities
- Masturbatory deviancy issues (i.e., fantasies involving past victims, force/violence or children)
- Re-offense behaviors
- Forced or violent sexual contacts
- Under-age children (statutorily defined)
- Incest activities
- Public indecency behaviors
- Goal is to identify precursor/risk behaviors prior to re-offense (waiting until re-offense is too late) (Raymond Nelson / H. Lawson Hagler (2004))

### Question Formulation

- Behaviorally descriptive (refers to actual behaviors vs. written summary of behaviors)
- Time delimited (date of incident, or time-bar to identify time of reference)
- Single interpretable meaning (simple and direct)
- Never presuppose guilt or deception

- Be easily answered “yes” or “no”
- Avoid legal terms and treatment jargon (i.e., victim, rape, grooming)
- Avoid mental state or motivational terminology (i.e., purposefully, knowingly, intentionally)

#### **Non-testable Issues**

- Intent (future behavior)
- Fantasy
- Thoughts

#### **Potential Benefits of Post-Conviction Polygraph Testing**

- Reduction of denial / avoidance / minimization –
- Improved engagement in treatment
- Improved behavioral compliance
- Improved focus and concern for personal integrity
- Improved treatment outcomes (reduction of failure re non-compliance and rule violations)
- Reduction of recidivism rates
- Reduction of treatment/supervision failures (and associated costs)

#### **Limitations of Polygraph Testing**

- No such thing as a “perfect” test that will work with everyone
- False positive results more common than false negative results
- Polygraph depends upon psychological organization and physiological (autonomic) health
- Test data may be less certain for psychiatrically disorganized persons (lack of reality contact)
- Test data may be impaired by persons in poor physical (autonomic or cardiovascular) health (due to exaggerated or dampened response potential, or difficulties remaining still during testing)

#### **Ethical and Policy Considerations**

- Tests don’t make decisions, people do – the accurate role of test is to provide an information source to inform decisions that are made by persons and teams
- Judges and juries are the “finders of fact” – the polygraph (or any other test) should never be allowed to usurp this role
- Always use caution when interpreting normative testing data with exceptional individual (i.e. persons whose functional characteristics lie outside the normal distribution of individuals in the intended sample or population)
- Policies should define referral and exclusionary criteria in response to suitability for testing
- Policies should clearly delineate the types of decisions that may or may not be influenced by polygraph test results



## THE CONTAINMENT APPROACH: An Aggressive Strategy for the Community Management of Adult Sex Offenders

Kim English  
Colorado Division of Criminal Justice

Most convicted adult sex offenders remain or return to the community. This article recommends a specific approach to the community management of adult sex offenders, which holds convicted abusers accountable for the risk they pose to the community. The containment approach can be achieved only when criminal justice and related agencies proactively engage in a multidisciplinary, multi-agency strategy that seeks to close the natural fragmentation that occurs across multiple agencies and systems. The containment strategy described here begins with 5 distinct components: (a) a victim-centered philosophy, (b) multidisciplinary collaboration, (c) specific management tools, (d) consistent multi-agency policies and protocols, and (e) program quality-control mechanisms. This strategy cannot be implemented without a local, ongoing commitment to teamwork and community safety. The strategy must be customized to jurisdictions seeking to minimize public risk and maximize offender and public agency accountability. It is an evolving approach that is based on empirical data and field experience.

### Introduction

Every 5 minutes in America, nearly 30 children are molested (American Humane Association, 1995) and someone is forcibly raped (Federal Bureau of Investigation, 1995). One in eight women is raped during her lifetime—nearly one third before the age of 11—and 84% of these rapes are never reported to the police (Kilpatrick, Edmunds, & Seymour, 1992).<sup>1</sup>

According to *Rape in America: A Report to the Nation* (Kilpatrick et al., 1992), only 22% of rape victims were raped by strangers. This means that the majority of rapists—nearly four out of five—had extraordinary access to their victims and sufficient privacy to commit this heinous crime.

It is clear that most rapists will never come into contact with the criminal justice system. But for those who do, criminal justice system policies and practices must eliminate both sex offenders' access to potential victims and any privacy the

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<sup>1</sup>Kilpatrick et al. (1992) conducted a 3-year longitudinal study of 4,008 adult American women. The study found that more than two thirds of the rape victims who did not report the crime said it was because they did not want their family to know about the rape (over one third of those raped were raped by family members) or they did not want people to think it was their fault (39% were raped by boyfriends, ex-boyfriends, or other acquaintances).



offenders may enjoy. The criminal justice system can exert significant control over offenders' opportunities to commit new crimes and, at the same time, strictly abide by nondiscriminatory and humane rules of ethics and the law. This is the essence of an aggressive sex offender containment strategy.

Criminal justice professionals in jurisdictions across the country have begun to reform many current practices that inadvertently give sex offenders opportunities to reoffend. Containment strategies operate in circumstances of multi-agency collaboration, explicit policies, and consistent practices that combine case evaluation and risk assessment, sex offender treatment, and intense community surveillance designed specifically to restrict offenders' privacy and access to victims.

While offenders are under official supervision, every effort is made to prevent them from obtaining the opportunity to hurt others. And, given the lifelong nature of this problem for many sexual abusers who come into contact with the criminal justice system, a growing number of professionals endorse court sentences that impose lifelong correctional supervision under the containment model.

#### Method

A study (English, Pullen, & Jones, 1996) conducted by the Colorado Division of Criminal Justice for the National Institute of Justice, U.S. Department of Justice, identified a system of innovative methods local jurisdictions are using to manage adult sexual offenders. The 2-year investigation involved a telephone survey of a national sample, stratified by population and geography, of 732 probation and parole supervisors; an extensive literature review on victim trauma and sex offender treatment; a systematic document review of scores of materials ranging from agency memoranda and protocols to legislation and administrative orders; and field research involving site visits to 13 jurisdictions in six states (Arizona, Colorado, Louisiana, Texas, Ohio, and Oregon). The findings from the field research resulted in a description of a promising approach for managing adult sexual offenders, which is presented here.

During the field research, more than 100 face-to-face interviews were conducted in formal and informal settings. Data were gathered from probation officers, parole officers, defense and prosecuting attorneys, law enforcement personnel, social service workers, sex offender treatment providers, sexual assault victim treatment providers, polygraph examiners, judges, correctional administrators, police detectives, parole authorities, victim advocates, and sexual offenders.

According to methodologist Babbie (1995) "[b]eing there" is a powerful technique for gaining insights into the nature of human affairs" (p. 300). Being there was, indeed, the only way to begin to build an understanding of the scope and complexity of issues that local criminal justice practitioners grapple with daily to safely manage sex offenders under their charge.<sup>2</sup>

During the study (English et al., 1996), patterns emerged from observing innovative management practices that many professionals were undertaking. These practices were grounded in the scientific literature, specifically sex offender treatment and victim trauma research and theory, and were frequently supported by

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<sup>2</sup>In fact, I urge policymakers to appoint committees of working professionals to advise them on issues related to this complicated and dangerous correctional population.

multi-agency agreements and often by state policy. Practitioners told us that they were working to close gaps and inconsistencies in sex offender management, because where gaps exist, offenders frequently position themselves to reoffend, cause conflicts among staff and agencies, and skillfully distract others from the dangerous threat they pose to the community.

Research findings are traditionally presented in the past tense, to reflect the time frame in which the data were collected and to restrict generalizations beyond that time period. Yet, hard work continues in many jurisdictions that served as the foundation for this study (English et al., 1996), work intended to improve the criminal justice response to sex offenders. In recognition of this ongoing work and because the containment approach is part research and part theory—an evolving social experiment that operationalizes the best of empirical data and human experience—the description below is in the present tense.<sup>3</sup>

### Research Findings

#### *The Containment Approach: Five Components*

*Overview.* In many jurisdictions in the United States, professionals are actively involved in the development, implementation, and evaluation of locally defined and developed sex offender containment strategies. In these locales, mechanisms are in place to hold identified sex offenders continuously accountable for the damage caused by sexual assault. Containment professionals believe that proactively coordinating policies and practices pertaining to the monitoring, supervision, and treatment of sex offenders allows for many, although not all, sex offenders to spend portions of their sentences in the community. Although many citizens believe convicted sex offenders are sent directly to the penitentiary, in fact, most sex offenders receive community supervision, either as a direct sentence to probation or, following time in prison, on terms of parole. Because many of these crimes occur within families, the relationship between the abuser and the victim is complex and multidimensional. “Lock ‘em up and throw away the key” sanctioning may not best serve the community’s interest, so the containment strategy is an important sentencing option.

Community-based sex offenders are held accountable for their behaviors, and every effort is made to avoid allowing the offender to access past or potential victims. While serving time in the community, many offenders on probation and parole work and pay for their supervision and treatment, and, sometimes, victim treatment.

The containment approach reflects a specific case-by-case management strategy that occurs within the context of a communitywide initiatives that are aimed to eliminate opportunities for reoffending by individuals convicted of sexual assault. Opportunities for sex offenders to assault again begin with society’s lack

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<sup>3</sup>Support for aggressive containment systems by Assistant U.S. Attorney General Laurie Robinson led to the recently created Center for Sex Offender Management in June 1997. The Center’s goal is to enhance public safety by preventing further victimization through improving the management of adult and juvenile sex offenders who are in the community. As a collaborative effort of the U.S. Office of Justice Programs, the National Institute of Corrections, and the State Justice Institute, the Center is jointly administered by the Center for Effective Public Policy and the American Probation and Parole Association and is located at 8403 Colesville Road, Suite 720, Silver Spring, Maryland 20910.



of understanding of the insidious nature of these crimes and the multitude of ways that offenders manipulate situations and perceptions specifically to lay the groundwork for the next crime. Closing the gaps on these opportunities requires a systemwide, multidisciplinary approach founded on a clear and common goal: victim safety.

Our research (English et al., 1996) suggests that a sex offender containment approach consists of five core components. The exact development of each component varies according to local needs and values, but some version of the following five elements seems to exist in a fully operational and continually evolving containment approach: (a) a consistent multi-agency philosophy focused on community and victim safety; (b) a coordinated, multidisciplinary implementation strategy; (c) a case management and control plan that is individualized for each sex offender; (d) consistent and informed public policies and agency protocols; and (e) quality-control mechanisms designed to ensure that policies are implemented and services are delivered as planned. These components are described below, and examples are given from jurisdictions engaged in implementing sex offender containment approaches.

*Component 1: Community safety philosophy.* The effects of sexual assault on victims are often brutal and long-lasting. Victim research indicates that entrenched, long-term trauma is significantly related to the trust violation between the perpetrator and the victim (abuse by a father or step-father is associated with the worst outcome) and also to the duration and frequency of the abuse (Beitchman et al., 1992; Hindman, 1988; Salter, 1988). Psychological recovery from the assault is often prolonged for victims of these types of assaults. Also, Hindman's research revealed that trauma may be associated with the response the victim receives when he or she discloses the crime. If the response—whether from a school counselor, criminal justice officials, or a parent—implies that the victim was at fault, then the experience of trauma is magnified and recovery may be delayed.

For this reason, the containment approach begins with an explicit philosophy that values victim protection and community safety as paramount objectives of sex offender management. Criminal justice officials' commitment to the healthy recovery of the victim and the well-being of the community begin to guide policy development, program implementation, and the actions of professionals working with sexual assault victims and perpetrators.

The need for the victim-oriented philosophy is based on the recognition that case management decisions, even those grounded in agency policies, can jeopardize public safety and negatively impact sex assault victims. A common, victim-centered philosophy allows for the reassessment of traditional policies and practices with a new awareness drawn from the research literature on sex offenders and victim trauma.

The key to understanding the need for a victim-oriented-public safety approach is understanding the constant struggle that professionals endure to hold the offender accountable. Holding dangerous, manipulative, and often obsessive offenders constantly accountable is difficult indeed.<sup>4</sup> Grappling daily with sex

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<sup>4</sup>See Pullen and Pullen (1996) for a compelling discussion of the very difficult job sex offender containment professionals perform to humanely uphold public safety.

offender psychodynamics can rock the foundation of professionals' personal belief systems. Sexual assault—from acquaintance rape to incest, rape—murders, voyeurism, or weaponless-stranger rapes—occurs because the offender deliberately obtained the opportunity to assault someone:

Our safety seems less precarious if we believe sexual abuse is performed by individuals who have taken momentary leave of their faculties. . . . Many aggressors, seeking to minimize their responsibility for offenses, would also have us believe their behaviors are the product of irresistible impulses overwhelming their self-control. Offenders have numerous incentives to misrepresent their acts as impulsive rather than as the product of active planning and intention. . . . In reality, many offenders carefully plan offenses so that they appear to occur without forethought. (Pithers, 1990, p. 344)

Understanding these matters of opportunity and planning, along with the fact that sex offenders are generally not forthcoming about the scope and frequency of their deviant sexual activity, is fundamental to the philosophical foundation of a containment approach to managing sex offenders. The significant planning involved allows containment professionals to identify the *modus operandi* of each offender. Then therapists and criminal justice professionals can deliberately interrupt the planning behaviors and aggressively contain the offender.

By recognizing that the official response to sex crimes can assist or impede the victim's recovery, it follows that a clear, victim-oriented philosophy is essential in jurisdictions committed to a containment approach to sex offender management. "Making the victim whole" is the restorative justice phrase used since the early 1980s to describe the mission of the Jackson County, Oregon, Probation and Parole Department in the sex offender management process.<sup>5</sup> "What's best for the victim?" is the question returned to again and again during quarterly meetings of Oregon's Sex Offender Supervision Network of adult probation and parole officers. Likewise the Colorado Sex Offender Treatment Board (1996) has designated that "community safety is paramount" among its nine guiding principles.

When a victim-oriented philosophy is at the center of a sex offender containment approach, it is reflected in public policies directed toward sex crime perpetrators. An example of operationalizing this philosophy is the Oregon law regarding sex offender notification. Because community notification laws might be devastating to the victim when the perpetrator is a family member, the 1994 Oregon statute explicitly directs probation and parole officers to develop and implement the notification plan. This mandate reflects the fact that the supervising officer is often in the best position to understand the case, that is, the offender's *modus operandi* to gain the necessary access and privacy to assault again. Most important, the officer understands the impact of notification on the victim. Public notification in some Oregon jurisdictions, then, occurs on a case-specific basis, which guards against revictimizing family members.

*Component 2: Collaboration.* The second feature of a sex offender containment approach includes a collection of implementation strategies that rely on cross-agency coordination, multidisciplinary partnerships, and within-agency job

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<sup>5</sup>See English et al. (1996) for a description of the Jackson County, Oregon, Probation/Parole Sex Offender Management Program, Oregon Sex Offender Supervision Network.



specialization. When this effort takes the form of intra-agency, interagency, and interdisciplinary teams that are made up of professionals who specialize in sex offender cases, management gaps begin to disappear. Teamwork tends to overcome the fragmentation that commonly occurs from the multilayered nature of the criminal justice system. Also, the team approach minimizes duplication of effort and maximizes resources. It creates a rich pool of information and perspectives to improve the management of sex offenders. Teamwork strengthens both the motivation and the effectiveness of individuals, and a well-functioning team provides a support network for coping with the ongoing stress of managing dangerous cases.

Sometimes, jurisdictions have one large interagency team that deals with policy issues, and several smaller teams are formed to accomplish a variety of more specific tasks. Depending on the task (e.g., law enforcement investigation vs. parole supervision), each team may meet at different points and with different frequency during the management of a single case. The teaming of prosecution and law enforcement for training purposes is crucial, for example, to ensure that the necessary information is obtained to prosecute a case and to preclude certain defenses. For example, Nanetti and Greer (1996) maintained that a knowledgeable police investigator can make a strong case by effectively interviewing the suspect.<sup>6</sup>

Colorado, for example, has a Sex Offender Treatment Board with multidisciplinary membership defined in legislation. The Board has issued guidelines for the evaluation, treatment, and behavioral monitoring of adult sex offenders (Colorado Sex Offender Treatment Board, 1996). The guidelines designate a case management team for community supervision, led by the probation or parole officer, and comprised (at a minimum) of the officer, a Board-approved treatment provider, and a Board-approved polygraph examiner. Naturally, any team is enhanced with the participation of a specialized law enforcement officer, the prison treatment provider (if the offender is on parole and had been in prison treatment), the victim's therapist, and other individuals with primary involvement in the case.

Finally, job specialization is central to multidisciplinary teams. Voluntary job specialization tends to increase consistency at all stages of sex offender management, from investigation through prosecution and sentencing to assessment, monitoring, and treatment. Whatever the size of the jurisdiction, job specialization shrinks the containment community and closes gaps in the system, gaps that are actively sought out by the perpetrator and often pried open for the sake of avoiding accountability measures. Also, cross-training by specialists

allows physicians to learn the evidentiary issues prosecutors face, law enforcement officers and prosecutors to learn about common reactions to trauma from rape crisis counselors, and victim advocates to learn more about the criminal justice system so that they can better help victims prepare for court. (Epstein & Langebahn, 1994, p. 85)

*Component 3: Containment-focused case management.* The research data are clear that many offenders have multiple paraphilias. *Crossover* is the term used

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<sup>6</sup>Nanetti and Greer (1996) noted that common defenses include (a) the touching was not sexually motivated or was accidental or innocent; (b) the child's graphic description of sexual matters is based on prior knowledge; (c) the alleged abuse is a fantasy, the child wants attention; and (d) the identification of the perpetrator is inaccurate.

to refer to the fact that many rapists of adult women also rape children and that many exhibitionists are also voyeurs and, given the opportunity, may progress to more aggressive behaviors. In groundbreaking research, Abel and Rouleau (1990) obtained self-report data from sex offenders that quantified this crossover: 51% of the 561 male participants had assaulted multiple age groups, 20% assaulted both genders, and 23% of incest perpetrators also molested children outside the family. This research also documented the frequency of offending behavior. The 561 participants reported victimizing 195,407 individuals, with crimes ranging from child rape to obscene phone calls. The crossover research also revealed an early age-at-onset for some abusers, with deviant behaviors starting as early as 10 years of age, suggesting that for convicted adult sex offenders, the behavior is likely to be well entrenched and integrated into the offenders' lifestyle (Able, Mittelman, & Becker, 1985; Awad, Sanders, & Levene, 1979; Becker, Cunningham-Rathner, & Kaplan, 1986; Groth, 1977; Groth, Longo, & McFadin, 1982; Smets & Cebula, 1987).

The acknowledgment of crossover and early-onset may be two of the most important aspects of the containment strategy, for the criminal justice system has traditionally managed sex offenders as if they were their conviction crime: "He is a rapist;" "She is a male-oriented child molester;" "He is a male pedophile." On the basis of these conviction-crime assumptions, many convicted offenders have been given, in the course of normal supervision, significant access to victims and an inordinate amount of privacy with vulnerable children and adults. For example, it is not uncommon to place a paroled rapist in a home with children because decision makers assume the conviction crime represents the scope of his sexual interests. If the offender sexually abuses one of these children, the approved parole plan then represents the first step in an officially sanctioned opportunity for the offender to rape again.

A successful sex offender containment approach includes a case management plan that clearly defines surveillance tactics to hold sex offenders accountable on a day-to-day basis. Information that is gathered specifically to identify the scope and frequency of the offender's deviant sexual arousal and behavior patterns forms the basis of a surveillance and management plan customized for each offender. This approach requires three interrelated, mutually enhancing activities: criminal justice supervision, sex-offender-specific treatment, and polygraph examinations. Visualize a triangle, with the three corners anchored with the three interventions just mentioned and with the offender contained inside the triangle. The triangle exists within a multitude of accountability measures: DNA testing, law enforcement registration linked to detailed modus operandi investigation database, specialized criminal justice caseloads, case management teams (including police units, social services, prosecutors, and probation, and parole officers), multidisciplinary investigation teams (including emergency room medical staff, rape crisis center staff, school counselors, victim advocates, prosecutors, prison officials, and law enforcement), official lists of approved service providers, confidentiality waivers, public service campaigns to stop child abuse,<sup>7</sup> fully funded and supported child advocacy centers, consistent and adequately funded public

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<sup>7</sup>STOP IT NOW! is a unique example of a primary prevention program developing strategies to prevent sexual abuse through public education and sex offender treatment. For further information, contact STOP IT NOW! at P.O. Box 495, Haydenville, Massachusetts 01039.



policies (including legislation and administrative and executive orders), and other efforts to control sexual offenders.

The triangle is anchored at each corner by three key activities: (a) criminal justice supervision and surveillance plans toward each offender's idiosyncratic offending patterns, (b) sex-offense-specific therapy for the offender, and (c) polygraph examinations conducted by highly qualified and specially trained investigators. The criminal justice supervision activity is informed and improved by the information obtained in sex-offender-specific therapy, and therapy is informed and improved by the information obtained during well-conducted postconviction polygraph examinations.

The three components are effective only if they work cooperatively, as appears to occur with many cases processed in many jurisdictions nationwide.<sup>8</sup> Nevertheless, the first anchor on the triangle is the criminal justice system. Sexual assault is a crime, and the criminal justice system has primary jurisdiction over convicted sex offenders. The criminal justice system has important containment power when it uses well-trained, multi-agency teams and supervision tools, such as surveillance officers doing unanticipated home visits, urinalysis testing, verified law enforcement registration, detailed presentence investigations, lengthy terms and special conditions of supervision, employment restrictions, and clear and consistent sanctioning practices.<sup>9</sup> Consistent plea bargaining is an important part of a successful containment strategy because certain pleas, such as Alford, no-contest pleas to nonsex crimes, and even sentences to diversion programs, minimize the seriousness of the behavior and can inadvertently reinforce an offender's denial of the crime.<sup>10</sup> Pleas to nonsex crimes are discouraged, and the factual basis of the crime should be entered as part of any plea agreement.

A key contribution of the criminal justice system to the containment approach is the consequences it can leverage against the offender whenever the conditions of community supervision are violated. Without this constant pressure to adhere to the behavioral expectations detailed in the conditions of supervision and the treatment contract, community safety is dependent on the goodwill of the offender. Even the most motivated client needs serious consequences leveraged on his or her behalf to support him or her in moments of dangerous weakness. The criminal justice system, in the containment strategy, provides external controls and meaningful consequences that can occur only within a legal environment. According to Herman (1989), "Vigorous enforcement of existing criminal laws prohibiting sexual assault might be expected to have some preventive effect since both the compulsive and opportunistic offenders are keenly sensitive to external controls" (p. 188).

<sup>8</sup>For further information, contact officials in Jackson County, Oregon; Ontario, Oregon; Multnomah County Oregon; Clakamus County, Oregon; Maricopa County, Arizona; Arapahoe, Boulder, Jefferson, and Mesa Counties in Colorado; Massachusetts State Police/Framingham, Massachusetts; Division of Community Corrections in Everett, Washington.

<sup>9</sup>One district judge in Colorado refuses deferred judgments for sexual assaults, but when the case is weak will enter this judgment and attach strict conditions of court supervision to increase the likelihood that dangerous offenders will violate and return to court on a revocation, only to have the deferred judgment stricken and the original sentence imposed.

<sup>10</sup>Salter (1988) described multiple levels of denial: denial of the acts themselves; denial of fantasy and planning; denial of responsibility for the acts; denial of the seriousness of the behavior; denial of internal guilt for the behavior; and denial of the difficulty in changing abusive patterns.

Vigorous enforcement translates into surveillance strategies that are geared to each offender's idiosyncratic assault patterns—that offender's method of operation combined with criminal justice consequences when the offender engages in preassaultive behavior. For example, if an offender uses the Internet for sexual gain, the terms and conditions of probation or parole must prohibit the offender from owning or accessing a computer, and the consequences for failing to comply with parole or probation conditions of supervision might be 3 days to 3 weeks in jail, or longer. Likewise, depending on the offender's habits, telephone bills must be scanned for 900 numbers (one offender in Maricopa County, Arizona, had to take out a second mortgage to pay for \$24,000 in bills for 900 calls). Home visits must be unscheduled, and officers must look for toys, children's videotapes, animal crackers, and catalogs that are dog-eared at the children's underwear section. Bindings such as silver tape, wire, shoelaces, and bungee cords become the target of searches of homes and automobiles. In some jurisdictions such as New York, state law prohibits searching for anything beyond that which is in plain view.<sup>11</sup> Such laws which are based on the protection of individual rights, may inadvertently protect dangerous sex offenders by granting them what might be argued as excess privacy. I recommend public-safety-based modifications of such laws in cases of convicted sex offenders.

Sex-offender-specific treatment, a second anchor in the triangle, assists clients to develop internal controls over deviant thoughts and behaviors. The Colorado Sex Offender Treatment Board (1996) defined *sex-offense-specific treatment* as "a long term comprehensive set of planned therapeutic experiences and interventions to change sexually abusive thoughts and behaviors"<sup>12</sup> (p. 9). Sex-offense-specific programming focuses on actual sexual behavior, arousal, planning, and rationalizations, not stress, alcohol abuse, or childhood injuries because these distract from important work pertaining to directly and immediately stopping the abuse. Related issues are addressed in time, and often simultaneously, but first the offender must fully assume responsibility for the damage he or she has caused the current victim(s) and take all measures necessary to prevent the future abusive behaviors.

Sex-offense-specific therapy is unlike traditional psychotherapy. Treatment providers care best for the client by not first trusting the client's word but by seeking corroborating information. The therapist immediately targets behavioral and attitudinal changes because a client's current beliefs and actions likely represent a threat to the community. Unlike traditional therapy, counselors will not support the client's lifestyle when it revolves, even remotely, around accessing victims unless a myriad of safety nets are in place. Also, by using criminal justice system consequences, therapists help to motivate nonvoluntary clients to engage in treatment, complete homework assignments, and learn and use the tools of internal management.

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<sup>11</sup>It is possible that when the New York legislature amended P.L. 65.10 by adding subdivision 5 in 1996, allowing the court to impose reasonable probation conditions when the court determines such conditions are necessary or appropriate to ameliorate the conduct which gave rise to the offense, that surveillance methods based on specific offending patterns of individual offenders might become allowable. My thanks to Janice E. Taylor, general counsel to the New York City Department of Probation, for clarifying this issue.

<sup>12</sup>I am particularly grateful to Linda Jones for her work with the Colorado Sex Offender Treatment Board in drafting the 1996 Colorado Standards.



Sex-offense-specific treatment providers seek to obtain from the client, in a group therapy setting, descriptions of misguided-thinking patterns, rationalizations, psychological defense mechanisms, and step-by-step methods each client uses to set up opportunities to assault victims. According to Pithers (1990), founder of the Vermont Prison's sex offender treatment program,

Although victims may be selected opportunistically, the act itself has generally been nurtured for a considerable time in the offender's most secret fantasies. The sex offender's deviant fantasies are tantamount to planning sessions for the refinement of future behaviors. (p. 334)

Thoughts and fantasies are the stuff of therapy, not criminal justice supervision. Regardless of whether therapy works,<sup>13</sup> its role in the criminal justice containment strategy is, at a very minimum, to get inside the offender's head and obtain the method-of-operation information necessary for criminal justice officials to safely manage the offender and protect potential victims.<sup>14</sup> Of course, treatment also provides the offender with self-management skills, and, by linking treatment to surveillance, public safety is enhanced. Furthermore, offenders may need to be pressed into a nondeviant lifestyle for some time—through close surveillance—before he or she begins to see its value and internalize the behaviors necessary to live safely and productively.<sup>15</sup>

By working with the therapist, the supervising officer can learn the offender's long-term patterns that precede actual assaults and tailor each offender's conditions of supervision to target his or her specific assault precursors. The officer can then restrict employment, driving, leisure-time activities, and other at-risk ventures as necessary. In cases of noncompliance with treatment or supervision requirements, officers can request that the court or parole board consequence the offender with supervised community service, jail time, halfway house placement, or long-term prison sentences. The key is detecting, for possible supervision revocation, at-risk behavior rather than new assaults.

This level of surveillance requires time, so probation and parole officers working toward a containment strategy should have a caseload size limited to 25. It is not uncommon for sex offender specialists to have caseloads that number in the hundreds, and under such circumstances, public safety cannot be secured. Reallocating criminal justice resources to safely implement a containment approach seems feasible. If the cost of incarceration averages \$20,000 per year per offender (for juvenile offenders, it is usually double this figure), then for every year that four adult offenders are aggressively supervised in the community rather than in prison, at least \$80,000 of public funds can be redirected to lower the caseload size for sex offender specialists. Construction costs may be estimated at \$80,000 per cell; if construction costs are avoided for four offenders, an additional one-time

<sup>13</sup>Ample evidence exists that certain types of intervention may work for certain types of sex offenders (see English, ch. 18 in English et al., 1996), but most of these studies rely on arrest records, which is an insensitive indicator of actual offending.

<sup>14</sup>I am grateful to Peggy Heil, Director of the Sex Offender Treatment Program at the Colorado Department of Corrections, for helping me understand this specific value of treatment.

<sup>15</sup>I am grateful to Sam Olsen, Jackson County, Oregon, Probation and Parole officer, for helping me understand this aspect, and so many others, of the containment strategy.

cost of \$320,000 could be reallocated toward aggressive community containment and victim services.

The third anchor in the supervision triangle is the postconviction, polygraph examination conducted by an examiner who specializes in sex offender exams. Data obtained from postconviction polygraph examinations are used to inform the treatment plan. Similar to a physician, psychotherapists cannot design a meaningful treatment plan without full knowledge of the offender's problems, current and historical. Furthermore, supervising officers cannot monitor the risk an offender poses to community without knowing all the types of opportunities and victims that attract the offender. The value of the polygraph examination in obtaining additional information that is helpful to case supervision and clinical intervention is well-known by those who use this tool.<sup>16</sup>

The postconviction polygraph examination is used to detect previously undisclosed deviant interests, behaviors, types of victims, and preassaultive behaviors (e.g., stalking or looking at pornographic material) that indicate a certain offender is approaching a level of imminent danger, either to a specific victim or to the community at large. The risk behaviors vary across offenders—they are as varied as any human's sexual interests and preferences—and the treatment provider, supervising officer, and other team members must work together to develop the most meaningful polygraph questions.

The postconviction polygraph examination is to sexual offenders what the urinalysis drug test is to drug offenders. It is an independent source of information that is not contingent on the offender's self-report. Its use in the containment strategy requires a highly qualified examiner that is a member of the American Polygraph Association and who has received special training in clinical testing with convicted sex offenders. The polygraph examiner is a critical member of the supervision team. The examiner plays a very distinct role within the containment system, and this role should not be contaminated by the training of therapists or officers to become polygraph examiners.

The polygraph report is released to both the treatment provider and the supervising officer. The report contains detailed information about disclosures obtained during the examination. The report identifies the questions asked of the offender and, using a computerized scoring system, presents the probability of error for each truthful or deceptive response. It is quite common to obtain inconclusive results on any given question, and this finding reflects a lack of data on the physiological measures and should not be interpreted otherwise (it is common for nonpolygraph professionals to infer a deceptive finding when inconclusive results are found).

The value of the postconviction polygraph seems undisputed among those who use it. Findings of multiple, previously undisclosed victims and paraphilias have been reported by researchers studying sex offenders and polygraph data (Abrams, 1991; English, Heil, & Alhmeyer, 1998; Hindman, 1988).

The value of the polygraph is reflected in its growing use in the community management of sex offenders. In 1995, the Tennessee legislature passed a law that

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<sup>16</sup>While conducting the field research that serves as the foundation for the description of the containment approach, numerous probation and parole officers reported that they considered the polygraph an essential component of community supervision of sex offenders. Many reported that they would not supervise this population without it.



made polygraph testing mandatory for sex offenders on probation (Tennessee House Bill No. HB0308, 1995). Since January 1996, Colorado has required the use of the polygraph in the treatment and monitoring of all sex offenders who are serving community sentences. On July 1, 1998, Wisconsin removed statutory barriers in the use of the polygraph with sexual offenders. California, Colorado, Florida, Indiana, and Texas have developed guidelines for polygraph examination with sex offenders, and at least three other states, (Oregon, Washington, and Wisconsin) are seeking to develop guidelines at this writing.

According to Colorado polygraph examiner J. Jenks (personal communication, August 18, 1997), the value of the data generated from an examination is tied directly to the ability of the examiner. Professionalism, accountability, and objectivity are key requirements, along with special training in conducting exams with this special population. The National Association of Polygraph Specialists in Sex Offender Testing/Monitoring (the members of which belong to the American Polygraph Association) has recommended core requirements for sex offender examiners, including the documentation of conducting at least 500 specific-issue polygraph examinations and a minimum of 20 hr of annual training in the area of sexual assault. In addition, Jenks recommended videotaping every examination to monitor professionals for quality control and to document offender disclosures that they may later recant. Colorado standards for managing adult sex offenders require the use and 3-year storage of such videotapes.

Question construction is a key factor in the validity of the polygraph examination. Questions must be specific and time-bounded, and the words used in the questions must be clearly understood by the client. A clinical, sex-offense-specific exam takes at least 1.5 hr and consists of three phases: the pretest, the actual test, and the posttest. During the pretest, the questions are presented to the client, words are defined, and the examination process is explained. During the actual test, the offender is connected to the machine to obtain measures of respiration, Galvanic Skin Response, and cardiovascular interbeat intervals. The exam is completed and is immediately scored. The posttest consists of an interview between the examiner and the client, and the offender is given an opportunity to amend answers given during the prior test phases.

According to the Association for the Treatment of Sexual Abusers (ATSA, 1997),

The polygraph's utility lies in its ability to elicit information not available through traditional interviewing techniques. When utilizing polygraph examinations with sexual abusers, therapists should work in conjunction with polygraphers in developing protocols for pre-examination interviewing, question formulation, reporting and use of results. Specific decisions relative to instrumentation, interpretation of data and questions formulation should be made by trained polygraph examiners.<sup>17</sup> (p. 52)

The polygraph is used in three ways in the containment of sex offenders. The sexual history examination, included as part of a comprehensive psychosexual evaluation, is used to obtain an abuser's lifetime sexual history. This examination ideally focuses on the offender's self-reported sexual history as disclosed in therapy and written as an ongoing homework assignment. Indeed, the verification

<sup>17</sup>ATSA devotes six pages to the polygraph examination (pp. 52-57). The Standards are available from ATSA, 10700 Southwest Beaverton-Hillsdale Highway, Suite 26, Beaverton, Oregon.

of the frequency and range of behaviors, numbers and types of victims, and the ages that paraphiliac behaviors commenced is essential for the development of a relevant treatment plan and a safety-oriented surveillance strategy. The specific-issue examination focuses on a specific allegation or behavior. Finally, the maintenance examination is conducted periodically to assess the offender's compliance with treatment and supervision requirements. Maintenance polygraphs should be used frequently when the supervision team has reason to believe the offender may be at risk of reoffending. The Department of Defense Polygraph Institute (Dollins, Cestaro, & Pettit, 1995) reported the efficacy of repeated polygraph testing for the Zone Comparison Test, so concerns about the habituation of offenders to frequent polygraphs may be unfounded.

Disclosures of new crimes may be handled in a variety of ways, from granting limited immunity, to requirements that new disclosures of crimes not reveal names, dates, places, or other prosecutable information, to granting no immunity. Whatever the approach, it must be agreed on by local criminal justice officials and become an explicit part of an overall containment strategy. When a supervision program "minimizes the importance of the actual behavior and does not provide any concrete method for monitoring it, failures are likely to go unrecognized, sometimes with disastrous consequences" (Herman, 1989, p. 184). The use of the polygraph every 3 to 6 months (and perhaps more frequently) in the context of a containment strategy, with clear consequences for failure to disclose, may minimize this type of failure.

One frequently unanticipated consequence of instituting the polygraph in the supervision of sex offenders is the emotional impact the new information has on workers. Many people cope with this difficult subject by staying uninformed about it to various degrees. Denial seems to be an important part of the sex offender's manipulation pattern, and it also can help containment professionals manage their stress. However, information obtained after jurisdictions begin using the polygraph disallows this coping mechanism. Many professionals who work with sex offenders become traumatized by the scope of deviant behaviors, the details of the abuse, and the numbers of victims hurt by offenders, and when such information gets multiplied every time polygraph details about a new case are obtained, professionals may begin to experience, on a very personal level, the pain of victims and perpetrators. When this occurs, professionals experience secondary trauma. Secondary trauma is likely to increase when jurisdictions introduce the use of the polygraph examination in the containment strategy.

Empathy and exposure to traumatic material are the forces behind this difficult syndrome, also called *compassion fatigue* (Figley, 1995; Stamm, 1995). Police, firefighters, and other emergency workers report that they are most vulnerable to compassion fatigue when dealing with the pain of children (Beaton & Murphy, 1995). "Trauma is contagious," said Herman (1990, p. 180). Add to this the fact that most sex offenders target criminal justice workers with their abuse of power and manipulative behaviors, and professionals are frequently left feeling shocked and overwhelmed (Pullen & Pullen, 1996). Because the containment system requires offenders to disclose the full scope and frequency of their abusive behaviors, key power holders in jurisdictions that implement the containment strategy should endorse and implement policies that help professionals with burnout, isolation, generalized feelings of mistrust, and other symptoms of



secondary trauma. These policies can include limiting caseload sizes, working in teams, frequently training on issues that include coping with trauma, supporting flex time, providing time for exercise, and valuing socializing.

*Component 4: Informed and consistent public policies.* The fourth component in this comprehensive approach requires the development and implementation of informed, consistent, and collaboratively generated public policies and agency protocols in regards to sex offender management. Ideally, local criminal justice practitioners are actively involved in creating public policy at all levels of government. That is, informed policy requires experts in sex offender management to work with state legislatures, governors, and state judicial and corrections departments to assure that the policies reflect the latest thinking in this ever-evolving field. Consistency is key, and as we have described elsewhere (English et al., 1996, p. 2.14), written guidelines should address, but are not limited to, the following:

- Timelines for victim reporting (Epstein and Langebahn, 1994);
- The acceptance or rejection of plea agreements in cases of sexual assault;
- The weight given in sentencing to an offender's denial of the crime;
- The use of polygraph information;
- Family-reunification–assessment protocols;
- Confidentiality waivers;
- Investigation procedures;
- Crisis intervention;
- Presentence investigation report information;
- Failure to progress in treatment;
- Revocation procedures;
- Third-party liability–duty to warn potential victims;
- Employment restrictions for sex offenders under criminal justice supervision;
- Length of community supervision (i.e., lifetime);
- Management strategies to deal with burnout and secondary trauma;
- Special supervision conditions, modified as more information about the case is disclosed through treatment and polygraph exams;
- Clear, felony consequences for sex offenders who fail to register with local law enforcement;
- Blanket immunity for containment professionals who act in good faith to safely and thoughtfully implement community notification laws; and
- Protocols to enhance team functioning when fragmentation occurs.

The range of activities that require such documentation is quite large and is reflected in the description of the other components of the containment approach. However, the primary activity among the components is the need for open communication and information-sharing at all stages of the management of sex offenders.

*Component 5: Quality control.* The fifth and final piece required to systematically contain sex offenders within criminal justice jurisdictions requires the implementation of quality-control mechanisms. Quality-control activities range from regular, multi-agency case review meetings to ensure prescribed practices are delivered as planned to the sophisticated collection of data-tracking offenders who fail in treatment or commit new sex crimes, as occurs in the Maricopa County (AZ) Probation Department.

Systematic monitoring of the processes of service delivery is vital to the

success of the approach described here. Sexual abuse cases are difficult to manage, and the offender generally attempts to manipulate the system and the criminal justice professional just as he or she did the assault victim(s). Containment professionals can burn out, get soft, miss red flags, or become cynical and otherwise ineffective. Working together as a team is the first line of defense against these common phenomena. To maintain the humanity and integrity that is the core of the containment system, policymakers must proactively develop and implement mechanisms that hold professionals accountable along with sexual abusers.

Honest communication among team members and strict adherence to agreed-on protocols are the first steps in a continuum of quality-control mechanisms. The next level is ongoing monitoring. The next step is process evaluation that brings together stakeholders to collectively define some of the most important aspects of a process evaluation and identify the questions to be addressed and the measures to be used. Such studies are the best vehicle for program directors to document success and get the necessary feedback to identify and resolve problems.

Quality-control measures include clear descriptions of the target offender population, the program selection process, dropout–revocation rates, and staff training. In the criminal justice community, program success is often measured according to whether an offender is rearrested in a given time period. Arrest is an inadequate measure for sexual recidivism because most offending goes unreported. And it is a particularly challenging measure when the objective of the containment system is to detect, detain, and, when necessary, sometimes revoke offenders before the commission of a new assault.

Most professionals in jurisdictions that implement an aggressive containment strategy are collecting data that can be analyzed and fed back into the program and also to policymakers. Such efforts help clarify failure and success and contribute to the knowledge base of an ever-evolving, innovative public safety model.

### *The Containment Approach Is Evolving*

The containment strategy is based on empirical data and theoretical concepts that are consistent with the best available information from the field. As new studies are conducted and published (about risk for reoffense, psychopathy, hormonal therapy, aggression and the brain, surveillance tools, and the impact of broad public policies such as public notification and civil commitment), the containment strategy will reinvent itself, prioritizing victims while influencing and being influenced by larger public policy debates.

Until a full-scale process and outcome evaluation of the containment approach is completed, anecdotal data obtained during field interviews reveal important support for the containment strategy for managing adult sex offenders who are serving community sentences:

- Many probation and parole officers believe containment strategies result in an increased likelihood that offenders will be officially detected committing preassault behaviors that, otherwise, might have escalated into sexual assaults.
- Many professionals engaged in collaborative efforts say that they better understand the responsibilities of their colleagues in other agencies and can better provide them with the information they need and that they, in turn, receive better information from other agencies.



- Professionals report fewer conflicts among each other because they are all working toward similar, explicit goals.
- Local victim organizations, including rape crisis centers, generally support containment strategies.
- Professionals directly responsible for containing sex offenders say that they feel they have more control of their clients and more influence on criminal justice decisions that affect their cases.
- Offenders often pay for their treatment and portions of their supervision, and sometimes they pay for their victim's treatment.

### Conclusion

The *Rape in America* (Kilpatrick et al., 1992) report is a reminder that most (84%) of sexual assaults are never reported to officials. Researchers and policymakers should use the attention currently riveted on this issue as a springboard to better understand and prevent the problem of sexual assault. Now is a time for careful research, judicious dialogue, and innovative programming.

As the media and the public focus on policies driven by heinous, but relatively rare, sex crimes, truly challenging problems loom ahead. Many cultural norms nurture environments in which some humans are objects to be overpowered by others in the name of power and sexual gratification. Although this last issue is obviously beyond the scope of this article, the public's interest in sexual crimes gives researchers and policymakers an opportunity to examine the problem of sexual assault with a wide-angle lens: The containment approach, civil commitment, and community notification are important but narrow components of the public safety discourse. The momentum from the current sex offender control policies must be used to spur thinking and challenge assumptions. For example, the responsibility for managing this social problem falls squarely on the shoulders of child and adult rape victims to report the crime,<sup>18</sup> yet most victims never tell a law enforcement agent. Without understanding this phenomenon, criminal justice professionals will never access many offenders who would benefit from involvement in the containment strategy.

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<sup>18</sup>I am most grateful to Fran Henry, President of STOP IT NOW!, for helping me understand this important component for building a safer society.

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## POLYGRAPH AS A MEASURE OF PROGRESS IN THE ASSESSMENT, TREATMENT, AND SURVEILLANCE OF SEX OFFENDERS

*H. Lawson Hagler, M.S.W.*

*Due to the epidemic nature of sexual abuse, addiction, and compulsivity, there is a need for increased efforts to accurately assess, treat, and monitor known sex offenders and those afflicted with sexual disorders. Polygraph testing serves as an effective tool in determining the type and severity of dysfunction present and the appropriate course of treatment. In addition, polygraph testing can improve treatment outcomes by shortening the denial phase and by drastically reducing relapse and/or reoffending rates.*

Although there is some debate as to whether the recent wave of sexual offenses is due to an actual increase in sexual abuse, to increased reporting by victims and significant others, or to questionable therapeutic intervention, an urgent need remains to accurately assess, treat, and monitor known sex offenders. Regardless of past controversy, the significance of clinical polygraph testing—for specific issues, for assessment, for disclosure, and periodic—is paramount.

As suggested above, there are four primary forms of polygraphy (forensic psychophysiology) used in assessing, treating, and monitoring sexual offenders. Polygraph testing has served as an invaluable tool for many years in addressing the criminal element of sex offenses. More recently, polygraph examiners have been called upon to assist probation/parole officers and

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treatment agents. In addition to presenting a fundamental explanation of the various techniques of polygraph testing, this paper will also consider possible benefits of using polygraphy as a treatment tool for sexual offenders involved in offense-specific treatment programs.

### *SPECIFIC ISSUE TESTING*

The closest tie between clinical polygraph examinations and traditional forms of polygraphy occurs in the realm of specific issue testing. According to a recent report of the Texas Clinical Polygraph Committee, a clinical polygraph examination is defined as "a polygraph examination session conducted on a convicted sex offender at the request of treatment providers, supervision specialists, or court officials that is designed and intended to specifically assist in the development of treatment and/or supervision programs" (1993, p. 4). In comparison, specific issue testing may be defined as an examination session designed to determine the truthfulness or deceptiveness of a subject regarding their responses to a set of questions involving a specific issue or occurrence.

Unfortunately, specific issue testing is not an infallible determinant of a person's truthfulness. Validity and reliability studies of polygraph techniques are perpetually questioned by members of the scientific community. Claims regarding the accuracy of polygraph testing range between 80 and 99%, depending on the research design and follow-up, among other factors. There is always some risk of false negatives (the deceptive person is found to be truthful) or false positives (finding the truthful person deceptive). Yet advancements in instrumentation, computerized scoring algorithms, and standardized test question techniques and methodology have greatly reduced these occurrences.

When addressing the issue of validity, one should consider that no superior tool exists for establishing a person's truthfulness or deceptiveness. Opinions rendered by polygraph examiners are merely probability statements of potential error. Because there is no universal lie response, these opinions are based on comparative analysis of known guilty knowledge or involvement to unknown guilty knowledge or involvement. Nevertheless, polygraph testing has withstood 90 years of research, development, and widespread use.

#### *Case 1: "David," Specific Issue Test*

David first learned of the allegations made against him by his son, Tim, in November 1991, when he and his wife were in the midst of a painful



divorce and custody battle. According to David, Tim had been placed in a group home during the court hearings because of increased truancy, suicidal ideation, and a reported sexual assault (fondling) of a younger girl at the elementary school. Following a series of lengthy psychological evaluations and ongoing family therapy, Tim's therapist requested a full custody evaluation due to suspicions that David sexually molested his son.

David stated that he was the third person to have been accused by his son of sexual assault, although Tim has since recanted his allegations against the other persons. David stated that Tim is very unhappy about his placement at the group home, and that he may be misbehaving and making accusations in an attempt to be discharged from there. David also questioned whether Tim had been pressured by therapists at the group home to name the person(s) who perpetrated him. David explained that Tim had demonstrated inappropriate sexual behaviors since age six, which raised questions in his mind, and in the minds of others, whether Tim may have been sexually abused. David asserted, however, that the recent allegations made by Tim were completely false.

When asked to state his reasons for requesting a polygraph examination, David stated that the investigating officer recommended that he do so. David further explained that although no criminal case had been filed, "people will wonder, and the polygraph should help me assert my innocence." As requested, David prepared a written statement listing any sexual contact that may have occurred between Tim and him. In the written statement, as well as during the oral pretest interview, David fully denied having any sexual contact with Tim or any other minor children. His only reported physical contact with Tim's genitals occurred during bathing, changing of diapers, and while applying Desitin ointment to treat diaper rash. The issues listed within this statement were discussed fully with David, and the above-mentioned physical contact was further clarified during this discussion.

A Modified General Question Test, United States Air Force Office of Special Investigations version, was conducted with David. The polygraph test questions were reviewed fully with the subject, including efforts to clarify the wording of each relevant question. In order to incorporate the disclosure of physical contact mentioned earlier, a modification was made to the question about placing his hand on Tim's penis. A series of four test charts were administered following the initial sensitivity test. In order to fully address the allegations, the following relevant questions were asked:

Question: "Did you ever have any type of oral sex with your son Tim?"

Answer: "No."

Question: "Did you ever insert your finger into your son Tim's anus?"

Answer: "No."

Question: "Other than for cleaning purposes, did you ever place your hand on your son Tim's penis?"

Answer: "No."

Question: "Did you ever have your son Tim place his hand on your penis?"

Answer: "No."

Following the examination, a numerical evaluation was conducted of David's four primary test charts. On a seven position scale of zero to plus or minus three, each relevant question was scored individually on each chart and then totaled. There were no reactions indicative of deception to any of the questions involving sexual contact with Tim. Due, in part, to these results, the District Attorney has rejected the case and all charges have been dropped. Tim has since recanted the allegations made against his father and is reportedly doing well in treatment for his own sexual perpetration issues.

### *SEXUAL HISTORY / ASSESSMENT TESTING*

Whether a client is being assessed as a component of a presentence investigation (PSI), a probation/ parole hearing following sentencing, or for treatment planning purposes, the application of clinical polygraph testing is viable and appropriate. A sex offender risk assessment would be ostensibly incomplete if based solely on self-report, psychological testing, and collateral data. Stan Abrams (1995) stated, "As a psychologist and polygraph examiner, there is no question that polygraph testing has much greater validity and reliability than any other clinical measure including the MMPI and Clarke Sexual History Questionnaire." Another clinician, Greig Veeder (1995), when asked for his opinion on the use of polygraph testing in the treatment of sex offenders, stated, "I am less concerned about the reliability of polygraphy. The fact is that every time I refer a client for polygraph testing, I end up with significantly more information than I started with. As therapists, court officials, or anyone invested in community safety, we would be remiss in not addressing all information available to us."

Regardless of the nature and seriousness of the acting-out behavior, and whether the client is being assessed for treatment as a sexual offender or a sexual compulsive, polygraph testing included as a required component of a comprehensive assessment will most likely result in additional clients being referred for offense-specific treatment. When proper screening occurs, the likely result is the increased reporting of sexual offenses, the opportunity for treatment for the disclosed victim(s), the possibility of appropriate treatment for the offender, and, ultimately, an increase in community safety.



Polygraph testing for diagnostic or assessment purposes is more closely related to the pre-employment testing used to determine the suitability of a job applicant. Assessment testing may involve procedures similar to those outlined in the discussion of disclosure testing that follows. Commonly accepted testing practices include having the client complete a comprehensive sexual history questionnaire and testing him on his overall truthfulness and/or whether he deliberately failed to report any sexual acts. The process is distinct from the forensic nature of specific issue examinations (did a person commit a specific criminal/sexual act). Assessment testing, therefore, relies heavily on client disclosures or admissions.

#### *Case 2: "Curtis," Sexual History / Assessment Test*

Curtis is a 16-year-old boy who entered a residential treatment program following a series of aggressive incidents in school—his most severe being the possession of a 9mm handgun, which resulted in his arrest and placement on probation. During the assessment phase of treatment and the contemplation of an appropriate treatment plan, Curtis began to demonstrate behaviors consistent with that of a sexual abuser (sexual acting out with his peers, frottage, compulsive masturbation, and inappropriate attempts to gain power over others). The therapist referred Curtis to the program psychologist who completed a battery of psychological tests and concluded that Curtis may have sustained "severe childhood trauma" and that he "exhibits significant antisocial personality traits." Also reported by the psychologist: "Curtis is extremely resistant to discussing his victimization issues and fervently denies having committed any acts of sexual abuse." The therapist then requested that he complete a polygraph examination to verify that he has been "completely honest" with program staff members.

During the pretest phase of the polygraph examination, Curtis disclosed having sexually molested three children prior to entering the residential treatment program. His new admissions included forced genital contact and attempted vaginal penetration of a four-year-old neighbor girl, approaching another girl of approximately the same age and asking her to suck on his "lollipop" (she reportedly placed her hands on his penis for a few seconds), fondling the genitals of a young boy during a "wrestling match," and secretly watching his mother and sister during showering activities using a mirror which he slid under the door. Curtis estimated that he has committed between 15 and 25 acts of voyeurism, including an attempt to spy on his sister during a recent home pass. In addition, Curtis stated that he has had sexual contact with animals on approximately 15 occasions. As stated by Curtis, this contact has consisted of "letting them lick my genitals" and "trying once to have intercourse with a dog." Curtis then stated that he recently

forced a campus therapy dog to "lick my penis after ejaculating for more arousal." Since he has been in treatment, Curtis has confessed to behaviors of extensive horseplay with peers for the purpose of obtaining power over others and for sexual arousal. He also disclosed having consensual sexual contact (oral intercourse) with another resident on one occasion. Relevant questions asked on the sexual history polygraph examination included the following:

- Question: "Do you have more sexual perpetrations that you deliberately failed to report?"  
Answer: "No."
- Question: "On purpose, are you holding back from me any person that you have had sexual contact with?"  
Answer: "No."
- Question: "Are you now in possession of any pornographic materials at the treatment center?"  
Answer: "No."
- Question: "Do you have more sexual behavior patterns that you deliberately failed to report in your sexual history questionnaire?"  
Answer: "No."

As a result of the disclosures made by Curtis, formal reports were made to Social Services for attempts to lend assistance to the child victims. A written summary of Curtis' behavior patterns, progress in treatment, and new admissions was drafted by the therapist in preparation for a scheduled review hearing with the probation officer. Additional charges are being filed against Curtis, which may eventually lead to an extension of his probation for several years. This step would allocate the funding and legal leverage necessary to continue treating Curtis within the residential program's sexual offender unit. In most cases, disclosures made in the context of treatment are seen as a positive step and will result in modifications of the client's treatment plan rather than placement in a detention setting. While immunity from criminal prosecution may be granted for new criminal disclosures of a similar nature to those originally charged against the offender, protection from civil charges and private lawsuits can never be extended. Since the exam, Curtis acknowledged his need for additional help and has begun working on his perpetrator issues.

### *DISCLOSURE TESTING*

There is a wealth of data supporting the need to obtain accurate and rapid disclosures from sex offenders in treatment. Primarily, the disclosed



information may be used to determine the needs of victims. In many cases, the offender is placed in treatment following perpetrations against one victim. In reality, there is often a large number of undisclosed victims, many in need of immediate help for their own victimization issues. In a study by Philip E. Humbert (1990), it was discovered that when a group of eight adult sex offenders was tested during the latter part of their treatment programs, their disclosures included a 600% increase in the number of sexual perpetrations reported originally. The new admissions included "thousands of acts of molestation, voyeurism, exhibitionism, bestiality and rape over many, many years" (pp. 2-5).

Another benefit of disclosure testing is the improved outcome for sexual offenders in treatment. Without the use of external measures such as clinical polygraph testing, many treatment efforts have been shown to be ineffective. As stated by Stan Abrams and Jared B. Abrams (1993):

If the major purposes of the periodic tests were to protect society and deter abusers from reoffending, the disclosure test served to break through the denial of the abuser. Therapists have indicated that treatment cannot be successful if the molester continues to deny his aberrant sexual behavior and the acts he has committed. Through the admissions made prior to the test and after it, much of the denial was reduced or even eliminated. (p. 13)

One can easily see the related benefits associated with breaking through the offender's denial. Pedophilia, for example, is a disorder maintained largely by the offender's ability to deny, justify, and rationalize the behavior. Much of the therapist's work is devoted to cognitive restructuring, the process of gradually rebuilding the offender's distorted thought process. Without the immediacy of accurate disclosure testing, the efforts of the therapist are often in direct opposition to the sex offender. Pedophiles, in particular, possess an extremely sophisticated denial system and distorted thought process, and often calculate strategies to gain power over their peers and treatment agents. Keeping secrets is one such strategy.

Disclosure testing of the sex offender typically begins after he has been in treatment for three to six months. This allows the offender to become invested in the process of "coming clean" and affords the opportunity to witness disclosures being made by peers and to observe how well these statements are accepted by the peer group.

Disclosure testing relies heavily on gaining admissions in the pretest phase of the examination. This approach is similar to a pre-employment exam in that respect. Admissions occur during three different phases of the process: when the offender learns that he is scheduled to take a polygraph exam,



during the pretest interview, and, if found to be deceptive, during the discussion of the results of each polygraph chart and at the end of the test.

Pretest questioning begins with a discussion of the victim(s) that the offender has been convicted of or has already disclosed. If the offender is continuing to deny the original accusations, it may be appropriate to administer a specific issue examination rather than a disclosure test.

The offender is then questioned about other victims. Prior to the exam, the polygraphist should have met with the therapist and probation officer to review the case and determine what action will be taken with new admissions. It is important that the polygraphist obtain as much specific data as possible from the offender when admissions are made. The therapist can then contact victim families to pursue necessary treatment.

Issues of additional interest in disclosure testing include whether the pedophile has himself been victimized as a child, whether paraphilias are present, types of fantasy and masturbation used, and any history of age-appropriate sexual involvement. If torture of animals is elicited, it is important to ask about fire setting and enuresis to determine if the McDonald triad is present (indicator of possibly extreme problems, antisocial personality types, etc.).

The disclosure test is among the most time consuming of all polygraph examinations, with all phases totaling up to four hours or more. Regardless of whether the pre-employment test form or the exploratory test form is used, these exams are extremely effective, with only minimal compromises in validity. Of concern, however, are those examiners who have reduced their fees in an effort to compete for client referrals. This situation may include secondary efforts to complete more than two examinations per day, thereby reducing the number of hours that can be devoted to each test. When this occurs, clients, therapists, and polygraphy as a profession are all negatively affected. Currently recommended fees range from \$150 for periodic exams to \$250 for disclosure or sexual history tests (Abrams & Abrams, 1993, p. 117).

### *Case 3: "Jeremy," Disclosure Test*

Jeremy was referred to a local outpatient treatment program following the acceptance of his guilty plea for a sexual offense that allegedly occurred in 1990 when he was a teenager, and was hired to babysit for a child in his neighborhood, Amber. At age 11, after she viewed a television program on child molestation, Amber told her mother that Jeremy touched her "private parts." Amber's parents reported the incident, and Jeremy was charged with Sexual Assault of a Child as a result of the allegations made against him by Amber.

The court system has made significant gains in the handling of sexual offenders. Although the District Attorney did agree to accept reduced charges of "Felony Menacing," the judge was vigilant in imposing four years of probation and completion of an offense-specific treatment program. Approved treatment providers in the county sexual offender program all require routine polygraph testing as a component of their treatment and monitoring process.

Jeremy denied any sexual misconduct during the first two months of treatment, stating that he "only held the girl" in his lap while watching television. When asked why he agreed to accept a guilty plea, Jeremy stated, "I didn't want to risk losing in a jury trial and being sent to jail." Jeremy was later asked to complete a sexual history questionnaire and was referred for polygraph testing. Prior to his arrival for the polygraph test, Jeremy disclosed that he "briefly touched Amber over her clothing on her genitals area." He was asked a series of disclosure polygraph questions including:

Question: "Do you have more sexual perpetrations against Amber that you deliberately failed to report on your sexual history questionnaire?"

Answer: "No."

Question: "Since 1985 (age 13), and not including Amber, have you touched the genitals of any child under the age of ten?"

Answer: "No."

Question: "Other than what you reported, did you have any sexual contact with a minor since you turned eighteen?"

Answer: "No."

Question: "Do you have more sexual behavior patterns that you deliberately failed to report on your sexual history questionnaire?"

Answer: "No."

Question: "Do you have more sexual victims that you deliberately failed to report on your sexual history questionnaire?"

Answer: "No."

Jeremy had deceptive responses on several test areas, indicating more assaults that he originally reported against Amber and the possibility of additional abuse victims. Jeremy made no new admissions during the polygraph process other than being "aroused and touching her for a few seconds" while Amber was seated on his lap. One week later, when Jeremy was confronted in group with the results of the polygraph test, he disclosed having placed his finger inside the girl's vagina, placing her hands on his penis, performing oral intercourse against her, and masturbating to the point of ejaculation in front of her. He has since disclosed having three other sexual victims and multiple perpetrations against each victim.



### PERIODIC TESTING

Because of the frustration of high reoffending and recidivism rates, two judges, working independently in Illinois and Washington State in the late 1960s, began imposing periodic or monitoring polygraph examinations as a requirement of probation (Abrams & Abrams, 1993, p. 7). Their results were extremely encouraging. Periodic polygraph monitoring programs were developed and refined in subsequent years. In Jackson County, Oregon, an extensive study was completed involving 173 convicted sex offenders monitored between 1982 and 1990 (Grindstaff, 1991, p. 5). Significant reductions in reoffending and recidivism rates were noted for subjects being monitored with polygraph exams. Further analysis generated the following results:

No subsequent sex crime convictions	95%
No other new criminal convictions	89%
No other new felony convictions	96%
No parole/probation violations	65%
No parole/probation revocations to prison	87%

Periodic monitoring or maintenance polygraph examinations are "specifically targeted to deal with issues of violations of probation and/or the commission of additional sexual offenses, yet unidentified, while the offender is on parole or probation" (Abrams & Abrams, 1993, p. 88). Periodic exams are often the most difficult to administer due to the increased risk of client habituation as additional tests are completed, often at a frequency of three to four exams per year. In addition, the target issues are often obscure or may include a wide range of deviant behavior.

#### Case 4: "Steve," Periodic Monitoring Test

From all indications, Steve was doing well in treatment. So well, in fact, that he petitioned his treatment providers for an early release from the outpatient program. Steve's probation officer requested that another polygraph examination be completed prior to any decisions regarding changes in status. The following relevant questions were asked during Steve's periodic polygraph examination:

- Question: "Since July 1st, 1994, have you been alone with anyone under age 18?"  
 Answer: "No."
- Question: "Since July 1st, 1994, have you had any sexual contact with a minor?"  
 Answer: "No."

Question: "Since July 1st, 1994, have you touched the sexual organs of a minor?"

Answer: "No."

Question: "Since July 1st, 1994, have you purposely shown your penis to anyone other than your wife?"

Answer: "No."

Question: "Since July 1st, 1994, have you obtained any pornographic materials?"

Answer: "No."

Steve was tested with a computerized polygraph instrument that has the added benefit of a scoring algorithm developed by staff of the Applied Physics Laboratory at Johns Hopkins University. Following the examination, the scoring algorithm revealed that Steve's "probability of deception" was greater than 98% on all but one of the relevant questions. When faced with these printed results, Steve confessed to three recent incidents of exposing himself to minor children and one episode of fondling a child in a public restroom. A probation hearing was subsequently scheduled resulting in formal revocation. Steve was also ordered to complete his original two-year prison sentence and acquired an additional six years of intense supervision upon release (which may include ongoing treatment conditions and polygraph monitoring as well).

### DISCUSSION

A few observations and recommendations regarding the use of clinical polygraph testing in the assessment, treatment, and monitoring of sexual offenders are worth noting. Not surprisingly, a primary concern and potential barrier involves the financial cost of incorporating a sex offender testing program as a component of treatment. Conversely, one should consider the financial expense incurred by choosing *not* to require polygraph testing for offenders in treatment. The sexual offender who remains untreated will pose an incalculable cost to taxpayers and to potential abuse victims. Additionally, cost/benefit formulas would certainly attribute the polygraph with reducing total expense when considering its ability to abbreviate the denial phase of treatment or to provide supervision officers with accurate information about their clients' behavior. The most effective polygraph programs require the offenders to pay for all, or part, of the examination expense. This financial commitment provides increased impetus for client honesty. Offenders learn quickly that a "failed test" represents additional cash outlay



for retesting and, if warranted, added expense due to regression within the treatment program.

The most effective programs for the supervision and treatment of sexual offenders include a case management team approach consisting of the parole/probation officer, the therapist, and the polygraph examiner. The proactive foundation of this team concept ensures routine communication between team members in an effort to inundate the sexual offender with a level of support and supervision appropriate to his or her needs.

The role of the therapist and probation/parole officer is crucial to the polygraph testing process. Client admissions are increased when treatment and supervision agents have imparted to clients their explicit confidence in testing outcomes. Clients readily respond to well-timed educational groups, testimony of peers who may have attempted to "beat" the polygraph, or those who have obtained success through authentic personal accountability. When possible, the therapist should view the actual examination from a monitoring room or request the videotaped records. Crucial information is often obtained from the offenders' presentation and affect that would be impossible to disseminate in a written report.

Not all people are appropriate for polygraph testing. In particular, limits are typically set depending on the client's age, level of functioning, physical limitations present, and perception of reality. Although appropriateness may be less a function of age than client maturity, polygraph testing of children under the age of 14 is not recommended. Examiners will typically refuse disordered clients who exhibit chronic or acute symptoms that could interfere with the basic testing process. Of particular concern are clients who are found to be psychotic, drug/alcohol impaired, sleep deprived, pregnant, or those with a history of coronary problems. Ironically, the primary risk factor is the likelihood of litigation if a client's malady is linked to a recent polygraph test.

Additional insight into the merits of polygraph testing can be gained by considering the commonly expressed concerns. For example, statements have been made about the *intrusiveness* of adolescent testing. Yet available research indicates that polygraph testing programs with this population is not only appropriate, but often plays a prominent role in evoking genuine change. An extensive study by Emerick and Dutton (1993) compared three sources of assault history information for 76 "high risk" adolescent offenders. All participants had been reported for, charged with, or adjudicated for a sexual crime. Information being compared was obtained through collateral sources (victim statements, police reports, psychological evaluations, medical records, etc.), clinical interviews, and clinical polygraph examinations. The study was designed to determine what effect the use of polygraphy had on

the self-report of a sample of adolescent sexual offenders. The authors reported, "Chi square analysis revealed significant differences between data retrieved by use of clinical polygraph examination and both of the other data sources" (p. 84).

Significant differences were observed for selected assault history variables, including number of victims, process of victim selection, degree of force used in the commission of offenses, use of pornography, use of mood altering substances, and degree of intrusion. These variables, particularly relevant for pretreatment decision making and risk assessments, provided important information about the assault history characteristics, including the relationship between substance abuse, use of pornography, and child sexual assault. As an example, the number of female child victims assaulted by the offenders was demonstrated to be significantly related to the type of pornography used as a stimulus while masturbating. These findings provide useful information about sexual violence among young people. Implications for future studies and prevention strategies are profound. In addition, the study clearly supports the use of clinical polygraph testing as an assessment tool because admissions of abusive behaviors were typically increased by 200-300% with the employment of this instrument.

In closing, several key points must be reiterated. First, clinical polygraph testing is a relatively new, yet widely accepted and innovative procedure for assessing, treating, and monitoring sexual offenders. Additional research is certainly needed to substantiate previous findings and explore alternative uses for these techniques. Possible application, limited only by personal bias and the shortage of accurate information about polygraph testing, may include the treatment of domestic violence or other abuse perpetrators, addictions and compulsive behavior patterns, and various psychological disorders. In addition, polygraph testing may assist in solving existing or future research dilemmas such as the issue of repressed memory. A recent study (Abrams, 1994) extolled this outcome.

Second, it is important to note that polygraph test results are only one component of a comprehensive clinical assessment and should be used in conjunction with all other available information. Correspondingly, the use of polygraph testing as a clinical tool or deterrent is ideally one of several factors used to address, manage, and reduce abusive behavior.

Finally, the goal of community protection cannot be overemphasized. While it may seem ironic to discuss "having empathy" for sexual offenders, it is a necessary component of successful treatment and allows them to develop empathy for themselves, their perpetrators, and their victims. Without proper treatment, including the application of assessment and treatment tools such as clinical polygraph testing, Philip Humbert (1990) predicts a bleak, abusive and possible self-destructive future:



These men have lived lives of dishonesty, silence and fear, often compulsively driven to engage in behaviors they cannot control. Fully aware that they are abusing their own children, betraying their marriages, violating the law and engaging in behavior which will destroy their lives when it becomes known, they continue. Even after public censure, sentencing, and months in treatment, they find it difficult to admit the extent of their sexual behaviors.  
(p. 4)

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**COLORADO SEX OFFENDER MANAGEMENT BOARD**

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**APPLICATION FOR PLACEMENT  
ON THE  
ADULT PROVIDER LIST  
AS A:**

**TREATMENT PROVIDER, EVALUATOR, CLINICAL  
POLYGRAPH EXAMINER, PLETHYSMOGRAPH  
EXAMINER, AND/OR ABEL ASSESSMENT  
EXAMINER**



**Colorado Department of Public Safety  
Division of Criminal Justice  
Office of Domestic Violence and Sex Offender Management  
Sex Offender Management Board  
700 Kipling Street, Suite 3000, Denver, CO 80215  
Email: [somb@cdps.state.co.us](mailto:somb@cdps.state.co.us)  
<http://dcj.state.co.us/odvsom/>  
Telephone: (303) 239-4526 Fax:(303) 239-4491**



**APPLICANT NAME:**

**DATE:**

**Provider #:**

(SOMB use only)

**Application:**

**For Placement on the Sex Offender Management Board's Adult Provider List as a Treatment Provider, Evaluator, Clinical Polygraph Examiner, Plethysmograph Examiner, and/or Abel Assessment Examiner.**

**After fully reviewing this application and the Standards, please check the category(ies) for which you are applying:**

- TREATMENT PROVIDER**
  - \_\_\_ FULL OPERATING LEVEL
  - \_\_\_ ASSOCIATE LEVEL
  - \_\_\_ DEVELOPMENTAL DISABILITIES SPECIALTY
  
- EVALUATOR**
  - \_\_\_ FULL OPERATING LEVEL
  - \_\_\_ ASSOCIATE LEVEL
  - \_\_\_ DEVELOPMENTAL DISABILITIES SPECIALTY
  
- CLINICAL POLYGRAPH EXAMINER**
  - \_\_\_ FULL OPERATING LEVEL
  - \_\_\_ ASSOCIATE LEVEL
  - \_\_\_ DEVELOPMENTAL DISABILITIES SPECIALTY
  
- PLETHYSMOGRAPH EXAMINER**
  - \_\_\_ DEVELOPMENTAL DISABILITIES SPECIALTY
  
- ABEL ASSESSMENT EXAMINER**
  - \_\_\_ DEVELOPMENTAL DISABILITIES SPECIALTY

## SECTION ONE Background and Identifying Information

### ALL APPLICANTS

This information will be used by SOMB staff to conduct a criminal history check, a background investigation, and to document your qualifications. The reasons for this process include: (1) referring agencies will expect a level of assurance that individuals with any history of sexually assaultive and/or violent behavior or unethical behavior will not be placed on the Provider List, (2) the realization that working in this area requires an ability to work cooperatively with other members of the professional community, and (3) the necessity for professionals in this field to demonstrate a high level of competency.

Applicant Name: \_\_\_\_\_

Other Names Used: \_\_\_\_\_

Gender:  Male  Female Social Security Number: \_\_\_\_\_

Date of Birth \_\_\_\_\_ Colorado Driver's License Number \_\_\_\_\_

Employer or Business Name: \_\_\_\_\_

*PLEASE NOTE THAT ALL ADDRESSES AND TELEPHONE NUMBERS BECOME A MATTER OF PUBLIC RECORD. FOR SAFETY REASONS, USE OF HOME ADDRESSES AND TELEPHONE NUMBERS IS NOT RECOMMENDED.*

Primary Business Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

County of Primary Location: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Secondary Addresses or Telephone Numbers?  No  Yes

*(If yes, please list below. If you have more than 3, please list on a separate sheet.)*

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

County(ies) of Secondary Business Address(es):

1 \_\_\_\_\_ 2 \_\_\_\_\_ 3 \_\_\_\_\_

(If you wish to be listed in more than 3 counties on the Provider List, please list on a separate sheet.)

Do you work with one or more co-therapists?  No  Yes

(If yes, please list name(s) of current co-therapist(s) below).

Please list languages, other than English, which you speak fluently and in which you can demonstrate clinical proficiency (*this information will be published on the Provider List*):

Please check the specialty areas in which you provide treatment for sex offenders (check all that apply).

- Adult female offenders
- Juvenile males who commit sexual offenses
- Juvenile females who commit sexual offenses
- Adult offenders with developmental disabilities
- Deniers of the crime of conviction
- Co-occurring substance abusers
- Co-occurring chronically mentally ill
- Co-occurring convicted domestic violence offenders (*you must be approved under Colorado law as a Domestic Violence Treatment Provider*)
- Other (please specify) \_\_\_\_\_

Are you on the Approved Provider List of the Colorado Domestic Violence Offender Management Board (DVOMB)? \_\_\_\_\_ Yes \_\_\_\_\_ No

Are you on SOMB Juvenile Approved Provider List? \_\_\_\_\_ Yes \_\_\_\_\_ No

Have you submitted a fingerprint card to the DVOMB? \_\_\_\_\_ Yes \_\_\_\_\_ No  
(You will not be required to submit new fingerprints if there is a current copy in your DV Provider file.)

Have you submitted a fingerprint card to the SOMB? \_\_\_\_\_ Yes \_\_\_\_\_ No  
(You will not be required to submit new fingerprints if there is a current copy in your Juvenile SOMB Provider file.)



**Authorization for Release of Information: ALL APPLICANTS**

I, \_\_\_\_\_, authorize and consent to have an investigation made as to my moral character, professional reputation and fitness to be on the Provider List as a **Full Operating Level Treatment Provider** or as an **Associate Level Treatment Provider** and/or as a **Full Operating Level Evaluator** or as an **Associate Level Evaluator** and/or as a **Full Operating Level Clinical Polygraph Examiner** or as an **Associate Level Clinical Polygraph Examiner** and/or as a **Plethysmograph Examiner** and/or as an **Abel Assessment Examiner** by the Sex Offender Management Board. I agree to give any further information that may be required in reference to my past record.

I authorize and request every person, hospital, clinic, government agency (local, state, federal or foreign), court association, or institutions having possession of any documents, records or other information pertaining to me, to furnish to the Sex Offender Management Board such information, including, but not limited to, documents and records, informal, pending or closed, or any other pertinent data and to permit the Sex Offender Management Board or any of its designated officers, committees, or staff to inspect and make copies of such documents, records and other information in connection with this application.

The foregoing authorization for release of information or records does not include consent for release of personal financial records, bank accounts, loans or other such personal information not related to my moral character, professional reputation, or fitness as a treatment provider and/or evaluator and/or clinical polygraph examiner.

I hereby release, discharge and exonerate the Sex Offender Management Board, its agents and representatives, and any person furnishing such information from any and all liability of every nature and kind arising out of the furnishing of such information to other medical or professional societies or organizations, hospitals and hospital committees, and government agencies in the event that other such organizations and agencies present to the Sex Offender Management Board a release of authorization for release of information executed by me or a facsimile of such release or authority executed by me.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Clearly Printed Applicant Name

Subscribed and sworn before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My Commission expires

COUNTY OF \_\_\_\_\_

STATE OF COLORADO

## All Applicants:

Please list your place(s) of employment and positions for the last five years. If you practiced psychotherapy or polygraphy in another state, with or without a license, please also include that work experience. You may substitute a professional resume if it provides all the information requested.

*You may copy this page*

Employer/Business Name:	Telephone:
Street Address:	
City:	State: Zip Code:
Position:	Dates of Employment: From To
Unless you were self-employed, list supervisor name:	Telephone:
If self-employed, provide the name of a professional reference to verify this employment:	Telephone:
Summary of job duties:	
Reason for leaving:	

Employer/Business Name:	Telephone:
Street Address:	
City:	State: Zip Code:
Position:	Dates of Employment: From To
Unless you were self-employed, list supervisor name:	Telephone:
If self-employed, provide the name of a professional reference to verify this employment:	Telephone:
Summary of job duties:	
Reason for leaving:	



## All Applicants:

You may substitute a professional resume if it provides all the information requested.

ACADEMIC DEGREE	SPECIALTY AREA	DATE OF DEGREE	NAME OF COLLEGE OR UNIVERSITY	LOCATION-CITY & STATE
B.A./B.S.				
M.A., M.S., M.S.W.				
Ed.D.				
Ph.D.				
Psy.D.				
Psychiatric Clinical Nurse				
M.D.				
Board Certified:	___ Yes ___ No			
Other (describe)				

## All Applicants:

- Have you ever been convicted of, or received a deferred judgment for, any offense involving criminal sexual or violent behavior?  
 NO  YES If yes, please explain.
  
- Have you ever been arrested, charged or convicted of any criminal offense?  
 NO  YES If yes, please explain.
  
- Have you ever been convicted of a felony?  
 NO  YES If yes, please explain.

**SELECTED CASES AND STATUTES**  
**POST CONVICTION SEX OFFENDER TESTING**  
 (Prepared for Presentation to the Colorado Sex Offender Management Board)

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**CASES**

**COLORADO**

**People v. Pauley**, 42 P.3d 57 (Colo.App. 2001)

Citing **Benz v. People**, upheld revocation of probation of sex offender on basis of failed polygraph.

**Benz v. People**, 5 P.3d 311 (Colo. 2000)

Supreme Court upheld community correction's rejection of sex offender from program due to failed polygraph examination. The court found that defendant received appropriate administrative review procedure.

**People v. Elsbach**, 934 P.2d 877 (Colo.App. 1997)

Admission of other crimes made by sex offender as part of required post-conviction examination are admissible so long as the probation office or department makes no threat to suspend probation for the defendant's exercise of Fifth Amendment rights.

CRS 15-

**FLORIDA**

**Meade v. State**, 799 So.2d 430 (Fla.App. 2001)

Probationer's failure to pay for or take a polygraph test not required by the court when imposing probation cannot serve as a basis to revoke his probation which required probationer, as a condition of probation, to receive sex offender treatment including classes.

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<sup>1</sup>This outline is prepared, in part, from cases summarized in Polygraph, Quick Reference Guide to the Law, 17<sup>th</sup> Ed. by Norman Ansley and Gordon L. Vaughan.

**Greenwood v. State**, 754 So.2d 158 (Fla.App. 2000)

Court's order that, as condition of probation, sex offender participate in annual polygraph examination did not improperly delegate duties that the law requires the courts to perform.

**Lane v. State**, 762 So.2d 560 (Fla.App. 2000)

Sex offender treatment provider could not require plaintiff to undergo polygraph examination where probation did not include such requirement and where crimes committed occurred before Florida's sex offender treatment statute providing for polygraph testing.

**Cassamassima v. State**, 657 So.2d 906 (Fla.Dist.Ct.App. 1995)

So long as not used as evidence at trial, sex offender could be required to take polygraph as a condition of probation.

#### HAWAII

**State v. Reyes**, 2 P.3d 725 (Haw.App. 2000)

While polygraph evidence not admissible at trial, it is within the court's discretion to sentence a sex offender to probation on the special condition that he participate in periodic polygraph testing.

**State v. Naone**, 990 P.2d 1171 (Haw.App. 1999)

Although master plan for Hawaii sex offender treatment program failed to specifically discuss polygraph testing as a treatment tool, trial court could properly require as part of a plea agreement that defendant submit to periodic polygraph testing.

#### IDAHO

**State v. Radford**, 998 P.2d 80 (Idaho 2000)

Where probationer required to disclose prior crimes as part of sex offender probation program, confession made to prior crime during required polygraph properly excluded as evidence at trial. However, subsequent confession made outside requirements of program was admissible as it was, under the circumstances of the case, voluntary and sufficiently distinguishable so as to be purged of the primary taint of the initial confession. The court further observed that defendant's confession to the prior crime should be used as evidence in a parole revocation proceeding.

#### INDIANA

**Johnson v. State**, 716 N.E.2d 983 (Ind.App. 1999)

Polygraph may be ordered as a condition of probation of sexual offender but may not order that parties stipulate that evidence of polygraph results be admitted.

#### MONTANA

**In re Marriage of Njos**, 889 P.2d 1192 (Mont. 1995)

Polygraph results not admissible in a court-ordered sex offender evaluation.

#### NEVADA

**Mangarella v. State**, 17 P.3d 989 (Nev. 2001)

Nevada statute providing that, as a condition of probation, a defendant shall "[s]ubmit to periodic tests to determine whether defendant is using a controlled substance and submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the defendant," is to be read to permit polygraph examinations to determine whether defendant is using a controlled substance (presumably preventing its use for monitoring sex offenders). The court further held that requiring a probationer to undergo polygraph testing did not violate his Fifth Amendment rights to self-incrimination.

#### TEXAS

**Berry v. State**, 2003 WL 22672395 (Tex. App.-Houston 2003) (unpublished).

Convicted sex offender required to submit to polygraph examinations as a condition of his probation did not have his Fifth Amendment rights violated when he voluntarily offered statement that he victimized several children to polygraph examiner.

**In re Commitment of Keen**, 2003 WL 22259440 (Tex. App.-Beaumont 2003).

Convicted sex offender's Fifth Amendment privilege against self-incrimination not violated by commitment order requiring him to submit to periodic polygraph examinations.

**Lewis v. State**, 2002 WL 396532 (Tex.App.-Houston [1 Dist.] 2002) (unpublished)

Attorney was not ineffective in failing to object to inadmissible polygraph evidence introduced during hearing to revoke sex offender's community supervision.

**Miller v. State**, 2001 WL 6790 (Tex.App.-Dallas 2001) (unpublished)

Polygraph examination required as part of sex offender's probation did not violate probationer's Fifth Amendment rights against self-incrimination. Trial courts have wide discretion in selecting



the conditions of community supervision and may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. The court further held that the mere requirement to submit to a polygraph test does not, in and of itself, infringe on probationer's right against self-incrimination as, unless probationer shows a realistic threat of self-incrimination and shows that he was nevertheless required to answer, no violation against his right to self-incrimination has occurred.

**Hall v. State**, 2000 WL 1228613 (Tex.App.-Houston 2000) (unpublished)

Sex offender who failed to comply with community supervision program and was sentenced to confinement argued that his constitutional rights to due process were violated by allowing probation treatment centers to use or require polygraph examinations which are inadmissible as a matter of law. Court held that issue was not raised at trial court and, as such, was untimely.

#### VIRGINIA

**White v. Commonwealth**, 583 S.E.2d 771 (Va.App. 2003).

Court erred in revoking probation of sex offender solely on basis of evidence of a failed polygraph examination.

**Commonwealth v. Hill**, 2001 WL 557579 (Va.Cir.Ct. 2001)

Trial court refused to rescind its prior approval of polygraph testing as a special condition of probation, notwithstanding defendant's argument that such condition unreasonably burdened his Fifth Amendment privilege against self-incrimination. The court held that strong policy arguments counsel against the extension of the self-incrimination privilege in the context of supervised probation. Probationers have "conditional liberty" and the sole limitation placed upon a trial court in determining conditions of probation is one of reasonableness. The court held that polygraph testing of sex offenders constitutes reasonable condition of probation.

#### WASHINGTON

**State v. Pease**, 2001 WL 13277 (Wash.App. Div. 2 2001)

While polygraph tests may be used as an investigative tool or to monitor compliance with sentencing conditions for sex offenders, they are not admissible as evidence at trial unless stipulated to by the parties. However, polygraph evidence is admissible in sex offender's parole revocation hearing.

**State v. Combs**, 10 P.3d 1101 (Wash.App. Div. 3 2000)

The court upheld polygraph testing to monitor sex offender's compliance with requirement that he make reasonable progress in treatment and other special conditions of community supervision. The



court noted, however, that such polygraph testing could be used only to monitor compliance with the community placement order and could not be used as a fishing expedition to discover evidence of other crimes, past or present.

**State v. Riles**, 957 P.2d 655 (Wash. 1998)

Trial court had authority to order polygraph testing during sex offender's mandatory community placement terms for purposes of monitoring offender's compliance with placement conditions.

**State v. Dods**, 941 P.2d 1116 (Wash.App.Div. 2 1997)

Even assuming that an un-Mirandized statement made by sex offender during post-conviction polygraph test was inadmissible, later voluntary Miranda statement to investigating police officer was admissible and did not have to be suppressed as the fruit of a poisonous tree.

#### WISCONSIN

**State ex rel. Koszewski v. Schwarz**, 2003 WL 327491 (Wis.App. 2003)

In probation revocation hearing for sexual offender, Defendant's written confession that he purposely did not cooperate in polygraph test is admissible where there is no law "prohibiting the admission of a defendant's lack of cooperation in taking polygraph test."

#### UNITED STATES SUPREME COURT

**McKune v. Lile**, 536 U.S. 24 (2002)

The United States Supreme Court held that the Kansas Sexual Abuse Treatment Program (SATP), which includes a polygraph exam, represents a sensible approach allowing prison administrators to provide to those repeat sex offenders who need treatment the incentive to seek it. In a sharply divided decision, the plurality decided that the adverse consequences faced by Kansas state prisoner for refusing to make admissions required for participation under Kansas' sex offender rehabilitation program were not so severe as to amount to compelled self-incrimination.

#### UNITED STATES COURT OF APPEALS FIRST CIRCUIT

**U.S. v. York**, 357 F.3d 14 (1<sup>st</sup> Cir. 2004).

Defendant, as part of post-conviction supervised release was required to participate in a sex offender treatment program which involved periodic polygraph testing as a means to ensure his participation in that program. Defendant argued that this requirement was in violation of his Fifth Amendment rights protecting him from coercive self-incrimination and that it was an impermissible delegation

to non-judicial officers the power to determine means of punishment. The Court disagreed and found the conditions of release reasonable.

**UNITED STATES COURT OF APPEALS  
THIRD CIRCUIT**

**U.S. v. Lee**, 315 F.3d 206 (3<sup>rd</sup> Cir. 2003)

Court held that sexual offender's required post conviction polygraph testing as a condition of supervised release did not constitute a custodial interrogation for purposes of Fifth Amendment privilege against self incrimination, was not void for vagueness, and was not an abuse of the trial court's discretion.

**UNITED STATES COURT OF APPEALS  
FOURTH CIRCUIT**

**U.S. v. Dotson**, 324 F.3d 256 (4<sup>th</sup> Cir. 2003)

Polygraph examination as a condition of supervised release is proper where used for treatment of sex offender and reasonably related to the "nature and circumstances of the offenses and the history and characteristics of the defendant."

**UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT**

**United States v. Morgan**, 44 Fed.Appx. 881, 2002 WL 1614120 (10<sup>th</sup> Cir. 2002)

Supervised release of sex offender conditioned on submission to penile plethysmograph examination, was not, on its face, a violation of the defendant's first or fourth amendment rights.

**Searcy v. Simmons**, 97 F.Supp.2d 1055 (D.Kan. 2000)

Inmate's substantive due process rights were not violated by the condition that he submit to a polygraph as a condition of his participation in sex offender treatment program that could result in reduction of prison sentence when participation in program was voluntary.

**UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT**

**U.S. v. Taylor**, 338 F.3d 1280 (11<sup>th</sup> Cir. 2003).

Court upheld supervised release requirement that defendant "participate in a mental health program specializing in sexual offender treatment including submitting to polygraph testing to aid in the



treatment and supervision process." The court rejected defendant's arguments that the polygraph testing improperly delegates judicial responsibility, that the polygraph testing condition violates his Fifth Amendment privilege against self-incrimination, and that the district court improperly ordered defendant to contribute to the costs of polygraph examinations based on his ability to pay.

### SELECTED STATUTORY PROVISIONS

Parole of sexual offenders may be conditioned, in part, on monitoring by the use of a polygraph. AZ St. § 36-3710. (ARIZONA)

A sexual offender management board requires appointment of a polygraph examiner for establishing and implementing sexual offender monitoring standards. C.R.S. §16-11.7-103. (COLORADO)

Sex offenders may be required to undergo polygraph testing by a polygraph examiner trained specifically in the use of polygraph for monitoring of sex offenders as part of treatment program. However, results of the polygraph examination may not be used at a hearing to prove a violation of supervision. Fla. Stat. Ann. § 947.1405 (10)(b)(1). (FLORIDA)

2001 Fla. Sess. Law Serv. Ch. 2001-124 (C.S.H.B. 245) (WEST)

#### PAROLE COMMISSION REFORM ACT OF 2001--INMATES--CONDITIONAL RELEASE

As part of a treatment program, sex offender may be required to participate in a minimum of one annual polygraph examination to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms. The polygraph examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders, where available, and at the expense of the sex offender. The results of the polygraph examination shall not be used as evidence in a hearing to prove that a violation of supervision has occurred. (FLORDIA)

In the case of a sex offender sentenced after November 1, 1989, and required by law to register pursuant to the Sex Offender Registration Act, the person must participate in a treatment program, if available. The treatment program may include polygraphs specifically designed for use with sex offenders for purposes of supervision and treatment compliance, provided the examination is administered by a certified licensed polygraph examiner. The treatment program must be approved by the Department of Corrections or the Department of Mental Health and Substance Abuse Services. Such treatment shall be at the expense of the defendant, based on the defendant's ability to pay. 2001 Okla. Sess. Law Serv. Ch. 170 (H.B. 1361) (OKLAHOMA)

2001 Okla. Sess. Law Serv. Ch. 170 (H.B. 1361) (WEST)

In the case of a sex offender sentenced after November 1, 1989, and required by law to register pursuant to the Sex Offender Registration Act, requires the person to participate in a

treatment program, if available. The treatment program may include polygraphs specifically designed for use with sex offenders for purposes of supervision and treatment compliance, provided the examination is administered by a certified licensed polygraph examiner. The treatment program must be approved by the Department of Corrections or the Department of Mental Health and Substance Abuse Services. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay. **(OKLAHOMA)**

**COLORADO SEX OFFENDER MANAGEMENT BOARD**

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**STANDARDS AND GUIDELINES  
FOR  
THE EVALUATION,  
ASSESSMENT, TREATMENT  
AND  
SUPERVISION  
OF  
JUVENILES WHO HAVE  
COMMITTED SEXUAL OFFENSES**



**Colorado Department of Public Safety  
Division of Criminal Justice  
Office of Domestic Violence and  
Sex Offender Management**

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Website: <http://dcj.state.co.us/odvsom>  
E-mail: [somb@cdps.state.co.us](mailto:somb@cdps.state.co.us)

July 2002



**7.000****POLYGRAPH EXAMINATION OF JUVENILES WHO HAVE COMMITTED SEXUAL OFFENSES**

7.100 The multidisciplinary team shall refer for polygraph examination those juveniles who meet the following criteria:

- A. Chronological age of 14 or older, and a minimum functional age-equivalency of 12 years
  - 1. Twelve (12) and thirteen (13) year olds may be referred for polygraph examination when the multidisciplinary team determines that the information and results would be clinically useful. There must be a determination of a minimum functional age-equivalency of 12 years, and the juvenile must meet other criteria for suitability for polygraph testing as defined in this Section.
  - 2. Standardized psychometric testing shall be employed when there is doubt about a juvenile's level of functioning.
- B. Capacity for abstract thinking
- C. Capacity for insight
- D. Capacity to understand right from wrong
- E. Ability to tell truth from lies
- F. Ability to anticipate rewards and consequences for behavior
- G. Consistent orientation to date, time, place.

7.110 At the time of testing the polygraph examiner shall make the final determination of suitability for polygraph examination and shall not conduct polygraph examinations with juveniles when clear indicators exist that results would be invalid.

7.111 The multidisciplinary team shall determine and document in case files the rationale for and type of polygraph testing used, frequency of testing and the use of the results in treatment, behavioral monitoring and supervision.

7.120 The multidisciplinary team shall not refer juveniles for polygraph testing when any of the following are present:

- A. Diagnosis of psychotic condition per the DSM IV-TR
- B. Lack of contact with reality
- C. DSM IV-TR Axis I severity specifier of "severe" for any diagnosis
- D. DSM IV-TR Axis V Current – Global Assessment of Functioning score indicative of serious or profound functional difficulties (i.e., GAF score less than 50)
- E. Presence of acute pain or illness
- F. Presence of acute distress

- G. Recent medication changes
  - H. Mean Age Equivalency (MAE) or Standard Age Score (SAS) is below 12 years (per standardized psychometric testing)
  - I. Clear indicators exist that results would be invalid.
- 7.121 Exceptions to the requirement to use polygraph testing shall be made by a majority of the multidisciplinary team in consultation with the polygraph examiner. The reasons for the exception shall be documented in the juvenile's file. If the exception(s) change, documentation is required regarding referral for or continued deferment from polygraph examination.
- 7.130 No juvenile shall be referred for polygraph examination without the full, informed consent of the parent/legal guardian and the informed assent of the juvenile. The potential consequences of compliance or non-compliance with the procedure should be fully explained including legal consequences.
- 7.140 Before commencing any polygraph examination with any juvenile who has committed a sexual offense, the polygraph examiner shall document that each juvenile, at each examination, has been provided a thorough explanation of the polygraph examination process and the potential relevance of the procedure to the juvenile's treatment and/or supervision. Review and documentation of informed assent will include information regarding the juvenile's right to terminate the examination at any time and to speak with his/her attorney if desired.
- 7.150 As per standardized polygraph examination procedure, polygraph examiners shall be required to explain during the pre-test interview the polygraph instrumentation including causes of psychophysiological responses recorded during testing.
- 7.160 Polygraph testing shall be used as an adjunct tool, it does not replace other forms of monitoring. Information and results obtained from polygraph examinations should never be used in isolation when making treatment or supervision decisions.
- 7.161 Information and results obtained through polygraph examination shall be considered, but shall not become the sole basis for decisions regarding transition, progress, and completion of treatment. Polygraph test findings for juveniles should be reported as "significant reactions," "no significant reactions," or as "inconclusive." Such findings become a focus area for treatment and supervision. The findings of polygraph tests, as well as the juvenile's compliance or refusal to comply with request for polygraph testing, should not be used as the sole source in making treatment and supervision decisions.
- 7.162 The multidisciplinary team shall respond to polygraph testing results in order to maintain the efficacy of the tool for maximum therapeutic benefit. Multidisciplinary team responses shall be in the form of sanctions, additional restrictions, rewards, or follow-up through the treatment and safety plans commensurate with the information obtained in the results.



7.170 The following types of polygraph examinations shall be used with juveniles who have committed sexual offenses:

A. Sexual History polygraph examination:

1. The multidisciplinary team shall refer juveniles determined to be suitable for polygraph examination according to the criteria defined in Section 7.100 for sexual history polygraph examination. When employed, the sexual history polygraph examination should be initiated within 3-9 months following the onset of treatment to allow for sufficient preparation and follow-up on the information and results
2. When necessary, the multidisciplinary team may accelerate or delay referral for sexual history polygraph examination, and the reasons for this decision must be documented in the juvenile's clinical and supervision records
3. The multidisciplinary team shall assure that juveniles referred for sexual history polygraph examination possess sufficient understanding of laws and definition regarding abusive and/or illegal sexual behavior
4. Test questions shall focus on issues that are clinically relevant to risk assessment, treatment issues and transition planning
5. Care shall be given to minimize the focus on detail that may be sexually arousing

B. Maintenance/monitoring polygraph examination:

1. The multidisciplinary team shall refer juveniles determined to be suitable for polygraph examination according to criteria defined in section 7.100 for maintenance/monitoring polygraph examination prior to transition to less restrictive placement settings in the community.
2. When indicated in accordance with suitability criteria, the multidisciplinary team shall refer juveniles for maintenance/monitoring polygraph examination approximately 2-4 months prior to transition from one supervision level to another.

Alternatively, the multidisciplinary team shall determine whether the juvenile may benefit more from participation in maintenance/monitoring polygraph examination 2-4 months following transition to a less restrictive setting, or may impose requirements for periodic maintenance polygraph examinations.

3. Test questions shall focus on issues that are clinically relevant to the assessment of safety and/or risk, compliance with the conditions of treatment and supervision and progress in treatment.

C. Specific Issue polygraph examination:

1. The multidisciplinary team shall, at its discretion, refer juveniles determined to be suitable for polygraph examination according to criteria defined in Section 7.100 for specific issue polygraph examination.
2. Specific issue polygraph examination shall be employed under the following conditions:
  - a. Substantial denial of offense
  - b. Significant discrepancy between the account of the juvenile who committed a sexual offense and the victims description of the offense
  - c. To explore specific allegations or concerns
  - d. Prior to victim clarification per Section 8.000 of these Standards.

7.200 Polygraph examiners shall be listed with the Sex Offender Management Board. Polygraph examiners shall adhere to the following standards of practice when testing juveniles who have committed sexual offenses:

- A. Polygraph examiners shall employ a modern computerized or late model (1980's or later), electronically enhanced, polygraph instrument capable of simultaneously recording the individual's respiratory patterns, cardiovascular functions, electrodermal response, and metered chart/test time.
- B. Polygraph examiners shall employ a standardized comparison question technique that is generally accepted within the polygraph examination profession, in addition to a peak of tension and/or sensitivity/calibration test when appropriate.
- C. Polygraph examiners shall develop and review with the examinee, examination questions that are consistent with the examinee's level of maturity, development and understanding. Polygraph examination questions shall adhere to the following requirements:
  1. Be simple, direct and as short as possible
  2. Exclude legal terminology or treatment jargon that allow for rationalization
  3. Exclude mental state or motivation terminology
  4. Provide clear and simple meaning and interpretation
  5. Contain reference to only one issue
  6. Never presuppose knowledge on the part of the examiner
  7. Use language that is easily understood by the examinee (all terms should be fully reviewed and explained to the examinee)
  8. Be easily answered "yes" or "no"
  9. Use language that is behaviorally descriptive
  10. Avoid the use of any emotionally laden terminology.
- D. Each examination shall be a minimum of 90 minutes in length, beginning when the examinee enters the examination room and ending when the examinee departs after examination.