

6.000

STANDARDS OF PRACTICE FOR POST-CONVICTION SEX OFFENDER POLYGRAPH TESTING (PCSOT)

6.000 Post-Conviction Sex Offender Polygraph Testing (PCSOT)

The polygraph is used to add incremental validity to treatment planning and risk management decisions regarding sex offenders in community and institutional settings. The concept of “incremental validity” refers to improvements in decision making through the use of additional information sources. Benefits of polygraph testing include improved decision making, deterrence of problem behavior and access to information that might otherwise not be obtained.¹

Polygraph test results (see Section 6.151) shall not be used as the sole determining factor in the supervision and treatment decision-making process.² The Community Supervision Team (CST) should consider all existing clinical indicators that provide information about a client's overall presentation. Such indicators may include, but are not limited to, interviews, quality of treatment participation, polygraph examination results and disclosures, scores on dynamic risk assessments, psychological evaluation results, behavioral observations, and collateral reports. These indicators should thoroughly inform decisions pertaining to an offender's progress in treatment, activities in the community, and contact with potentially vulnerable persons.

Polygraph testing is one of several methods of behavioral monitoring. Additional forms of behavioral monitoring include drug/alcohol testing, plethysmograph testing, viewing time (VT) assessment, and other case management practices such as collateral contacts, office and home visits, employment visits, computer and phone monitoring, and increased supervision and treatment requirements.

6.001 Expectation for Honesty

The CST shall set the expectation for honesty and complete disclosure from the offender. Such openness will contribute to community safety, the development of an appropriate treatment plan and successful progression through treatment.

6.002 Recommended Guidelines for Polygraph Exam Timeframes

Please note these timeframes are provided as recommendations for Community Supervision Team (CST) decision-making, which should ultimately be based on the risk, and supervision and treatment needs of the offender.

Instant Offense Exam – Implement within first 3 months of denier’s intervention, or at the start

¹ Gannon, T., Wood, J., Pina, A., Tyler, N., Barnoux, M., & Vasquez, E. (2014). An evaluation of mandatory polygraph testing for sexual offenders in the United Kingdom. *Sexual Abuse: A Journal of Research and Treatment*, 178-203.; Grubin, D., & Madsen, M. (2006). Accuracy and utility of post-conviction polygraph testing of sex offenders. *British Journal of Psychiatry*, 479-483.

² Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. (2014). *Sex offender management assessment and planning initiative*. Washington, D.C: US Department of Justice, Office of Justice Programs.

of sex offense specific treatment.

Sexual History Exams³ – Implement within first 12 months of sex offense specific treatment.

Maintenance/Monitoring Exams – Implement within first 3 months of sex offense specific treatment, and continue on a regular basis every 6 months thereafter.

6.010 Types of Post-Conviction Polygraph Examinations

There are six different types of Post-Conviction Sex Offender polygraph exams⁴:

Instant Offense Exams

Sexual History Exams

Maintenance Exams

Sex Offense Monitoring Exams

Child Contact Assessment Exams

Specific Issue Exams

CST members, including polygraph examiners, shall maintain the integrity of the distinct types of post-conviction polygraph examinations, and shall not mix questions among the various types of post-conviction exams, other than maintenance and monitoring exams which can be mixed. For example, an exam shall not combine a sexual history question regarding historical sexual offending behavior and a maintenance question regarding current alcohol consumption while under supervision.

6.011 Instant Offense Polygraph Examination

An instant offense exam is an event-specific polygraph for sex offenders who deny any or all important aspects of the allegations pertaining to their present sex offense crime(s) of conviction.⁵

An instant offense polygraph examination shall be used by the CST to manage sex offenders in denial as specified in Section 3.520, or prior to clarification with the victim, if there are any significant discrepancies between the offender and the victim, as specified in Section 5.752 D.

³ For offenders who refuse to answer incriminating sexual history polygraph questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I.2 to determine how to respond.

⁴ The American Polygraph Association identifies five types of polygraph exams: instant offense exams, prior-allegation exams, sexual history disclosure exams, maintenance exams, and sex offense monitoring exams. An issue-specific exam, such as the prior-allegation exam, may also be utilized by CSTs in supervising and treating sex offenders, as appropriate.

⁵ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>.

6.012 Sexual History Polygraph Examination

A sexual history exam assesses the sex offender's history of involvement in unknown or unreported offenses and other sexual compulsivity, sexual pre-occupation, or sexual deviancy behaviors. Information and results from these examinations should be provided to the professional members of the CST to add incremental validity to decisions pertaining to risk assessment, risk management and treatment planning.⁶

Sexual history polygraph examination is most effective when initiated within the first year of treatment to assist sex offenders with treatment engagement and progress.⁷ The CST shall utilize the sexual history polygraph examination process as part of treatment planning as indicated in Section 3.160 I. 2., and as one clinical indicator to assess treatment progress as identified in Section 3.160 M, when clinically appropriate. For offenders who refuse to answer incriminating sexual offense history questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I.2 to determine how to respond.

All of the language above was ratified by the SOMB on February 17, 2017. All of the language below has been approved by the Committee and is ready for SOMB ratification.

Policy Decision to be made: Refer to population in this section as offender or client?

Discussion: The use of the polygraph examination combined with the sexual history documentation prepared by the offender as part of the group process underscores the SOMB's expectation for honesty and compliance from offenders who have agreed to participate in supervision and treatment.

- A. The treatment provider shall ensure that the offender has completed a written sexual history disclosure using the SOMB Polygraph Sexual History Packet prior to the examination date. A sexual history polygraph examination should not be conducted until the offender has written his/her sexual history and reviewed it in their treatment program. The treatment provider shall ensure that the polygraph examiner has access to a copy of the offender's SOMB Polygraph Sexual History Packet prior to or at the time of the exam. If the packet is not received by the time of the examination appointment, the examiner shall have the discretion of administering a sexual history polygraph examination or another type of examination. For offenders who refuse to answer incriminating sexual offense history questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

Discussion: Proper polygraph preparation by the offender involves the thorough review of recent and past behaviors. If this preparation has not been completed, the treatment provider should consult with the examiner prior to an exam occurring. Offenders should be prepared to be open and honest with the polygraph examiner as the first step of offender accountability and community safety. Effective preparation has been shown to improve an offender's ability to resolve questions and issues of concern.

⁶ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org; add research>

⁷ Konopasek, J.E. (2015). Expedient Disclosure of Sexual History via Polygraph Testing: Treatment Outcome and Sex Offense Recidivism. *Journal of Offender Rehabilitation*, 54:3, 194-211.

- B. The sexual history polygraph examination process* shall cover the following areas:
1. Sexual contact with underage persons (persons younger than age 15 while the offender is age 18 or older);
 2. Sexual contact with relatives whether by blood, marriage, or adoption, or where a relationship has the appearance of a family relationship (a dating or live-in relationship exists with the person(s) natural, step or adoptive parent);
 3. Use of violence to engage in sexual contact including physical restraint and threats of harm or violence toward a victim or victim's family members or pets, through use of a weapon, or through verbal/non-verbal means; and
 4. Sexual offenses (including touching or peeping) against persons who appeared to be asleep, were drugged, intoxicated or unconscious, or were mentally/physically helpless or incapacitated.

*For offenders who refuse to answer incriminating sexual offense history questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

- C. At the discretion of the CST, additional polygraph assessment may be necessary to explore the offender's history of involvement in other paraphilias (e.g., internet-facilitated sexual offending including use of child sexual abuse images) including sexually compulsive behaviors, other sexually deviant activities, or unlawful sexual behaviors.

Discussion: CST members should consult with the examiner regarding addressing the offender's sexual history polygraph examination requirements in a series of narrowly focused examinations (e.g., single issue exam) instead of broader examination methods (e.g., multi-issue exam). The final decision related to the method for the sex history exam is made by the polygraph examiner.

- D. The CST shall consider utilizing relevant questions that ask the female offender if she has helped or planned with anyone to commit a sexual offense, either against a minor-aged person, or a forcible sex act against anyone. Another area of consideration is whether she has been present when anyone has committed an illegal sex act. These questions should be covered in the female sex offender's sex history exam, and can also be utilized during a monitoring polygraph exam. For offenders who refuse to answer incriminating sexual offense history questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

Discussion: Problematic and concerning behaviors by female offenders may not be detected or covered in the typical sex history questioning.

- E. The CST, including the polygraph examiner, should convene a staffing if an offender does not verify his/her sexual history via no significant reactions (indicative of non-deception) on polygraph results. The purpose of the staffing should be to identify how to address this issue in treatment and supervision planning, including any steps necessary to support the offender in successfully completing the sexual history disclosure and polygraph examination process. For offenders who refuse to answer incriminating sexual offense history questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

- F. Under certain circumstances, the CST can waive the SOMB requirements for fully resolved sexual history polygraph examination results – such as when an offender has

already made substantial disclosures in all areas of inquiry and when additional information is unlikely to more fully inform the community supervision team about risk level, sexual deviancy or compulsivity patterns, and related treatment needs. For offenders who refuse to answer incriminating sexual offense history questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

- G. Sexual history polygraph examinations should generally be delayed for offenders who are denying significant aspects of the instant offense, including any substantial discrepancies between the victim's and offender's account of the abuse (see Section 3.500 regarding managing offenders in denial). Proper procedure dictates that denial surrounding the details of the instant offense be satisfactorily resolved before proceeding to a more general sexual history polygraph. However, when history examinations do occur prior to resolving the index offense, test questions shall exclude reference to the victim(s) of the instant offense.

6.013 Maintenance/Monitoring Polygraph Examination

A maintenance exam thoroughly assesses, either periodically or randomly, the sex offender's compliance with any of the designated terms and conditions of probation, parole, and treatment rules.⁸

A sex offense monitoring exam explores the possibility the sex offender may have been involved in unlawful sexual behaviors including a sexual re-offense during a specified period of time. Other relevant questions dealing with behaviors related to probation and treatment compliance should not be included.⁹

Discussion: Maintenance/monitoring exam questions can be covered on the same exam, however, the examiner should consider saliency of questions covered if utilizing the same exam.

Maintenance/monitoring polygraph examinations shall be employed to periodically assess the offender's honesty with community supervision team members and compliance with supervision and treatment. Maintenance/monitoring polygraph examinations shall be implemented every three to six months, starting within the first 90 days of treatment and then periodically thereafter. A minimum of two maintenance/monitoring polygraphs shall occur on an annual basis, except as allowed by this Section and Section 5.600, and can be completed more frequently based on the offender's risk and need. Maintenance/monitoring polygraphs shall be employed more frequently with those offenders who present as high-risk, have previously unresolved examination results, or may benefit from more active monitoring.

The CST shall regularly assess the ongoing use of maintenance/monitoring polygraphs, and may unanimously elect to adjust the use of maintenance/monitoring polygraphs based on all clinical indicators of an offender's risk and need, which may include prior polygraph results. In the case of an offender who consistently exhibits as lower risk based on such clinical indicators, the CST may decrease the frequency of the maintenance exams to 9 months and monitoring exams to 1 year.¹⁰

⁸ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>

⁹ *ibid*

¹⁰ Note the different timeframes for maintenance (9 months) and monitoring (1 year) exams. The CST can use these timeframes but must address these issues separately during the exam if timeframes are going to be between 9 months and 1 year.

In cases where only monitoring exams are being used on an annual basis, maintenance exams may still be employed on an as-needed basis to address specific identified supervision and treatment risk concerns, but it is not appropriate to conduct maintenance exams covering time periods longer than 9 months.

Discussion: The determination of an offender's low risk should be based on all clinical indicators which demonstrate a reduction in risk behavior. This may include polygraph results with no significant reactions (indicative of non-deception) over a consistent period of time, as well as continued amenability and cooperation with treatment, supervision and polygraph examinations.

Discussion: The maintenance/monitoring polygraph conducted in the absence of any new allegations or incidents of concern may be an effective deterrent to high risk or non-compliant behavior.¹¹ The use of polygraph may reduce involvement in ongoing high risk behaviors, and improve treatment and supervision compliance.¹² In addition, the expectation of a polygraph exam assists offenders in avoiding or controlling high risk behaviors.¹³ For this reason, community supervision team members should consider the possible deterrent benefits of randomly scheduled maintenance/monitoring exams for offenders.

- A. Maintenance/monitoring polygraph examinations shall cover a wide variety of sexual behaviors and compliance issues that may be related to victim selection, grooming behaviors, deviancy activities or high risk behaviors. Maintenance/ monitoring polygraph examinations shall prioritize the assessment and monitoring of the offender's involvement in any non-compliance, high-risk, and deviancy behaviors that may change over time. Information obtained from these exams may signal an increase in risk level prior to re-offending if these behaviors were present, or a decrease in risk if they were absent. Narrowing the scope of maintenance/monitoring examinations can sometimes be helpful to address concerns about possible re-offending, and may be useful to resolve the concerns of the community supervision team. The purpose of maintenance/monitoring exams is to identify risk behavior prior to sexual reoffending.

Discussion: It is generally understood in testing sciences that broader screening examinations, regarding multiple or mixed issues, offer greater screening utility through sensitivity to a broader range of possible concerns, but these tests can slightly diminish validity. More narrowly focused tests offer greater diagnostic specificity to support action or intervention in response to known incidents or specific allegations, and have greater validity. CST members should consult with the examiner regarding the type of

¹¹ Buttars, A., Huss, T. & Brack, C. (2016). An analysis of an intensive supervision program for sex offenders using propensity scores. *Journal of Offender Rehabilitation*, 61-68.; Grubin, D., Madsen, L., Sosnowski, D., & Warberg, B. (2004). A prospective study of the impact of polygraphy on high risk behaviors in adult sex offenders. *Sexual Abuse: A Journal of Research and Treatment*. 209-222.

¹² Grubin, D., & Madsen, L. (2006). Accuracy and utility of post-conviction polygraph testing of sex offenders. *British Journal of Psychiatry*, 479-483; Grubin, D., Madsen, L., Sosnowski, D., & Warberg, B. (2004). A prospective study of the impact of polygraphy on high risk behaviors in adult sex offenders. *Sexual Abuse: A Journal of Research and Treatment*. 209-222; Madsen, L., Parsons, S., & Grubin, D. (2004). A preliminary study of the contribution of periodic polygraph testing to the treatment and supervision of sex offenders. *The Journal of Forensic Psychiatry and Psychology*, 682-695.

¹³ . Grubin, D., Madsen, L., Sosnowski, D., & Warberg, B. (2004). A prospective study of the impact of polygraphy on high risk behaviors in adult sex offenders. *Sexual Abuse: A Journal of Research and Treatment*. 209-222.

monitoring/maintenance exam, and the final decision regarding the type of exam is made by the examiner.¹⁴

- B. Maintenance/monitoring polygraph testing shall be based upon the requirements of the Standards as outlined in this section, including the offender's risk and need. The timing of other polygraph testing, such as sexual history or instant offense exams, shall not be a factor in considering when to complete maintenance/monitoring exams. The CST may increase the frequency of maintenance/monitoring testing if the offender's sexual history disclosure is unresolved.

6.014 Specific Issue Polygraph Examination

Specific issue polygraph examinations assess the details of an offender's involvement in a known or alleged incident, or to help resolve any discrepancies or inconsistencies in the offender's account of a known incident or allegation.

The CST shall not conduct specific issue polygraph examinations on active criminal investigations, unless by agreement with the investigators.

6.015 Child Contact Assessment Polygraph Examination

Child contact assessment (CCA) polygraph examinations shall be used to assist the community supervision team in making recommendations about contact with the offender's own children who are not already known to be victims or siblings of victims. The CCA polygraph shall occur prior to the completion of the child contact assessment (pursuant to Standard 5.700). This examination is conducted in the absence of known or alleged offenses against the offender's own children, and is conducted for the purpose of gathering information to assist in the assessment of the offender's potential risk to offend against his/her own children. For offenders who refuse to answer incriminating sexual offense history questions, including incriminating sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

6.020 Communication with the Offender

Informing test subjects of potential areas of inquiry is a generally accepted practice by CST members. However, the CST shall not advise offenders of specific test questions prior to the scheduled appointment. The CST shall inform the offender regarding the type of examination.

Discussion: Discussing potential sanctions before or during the polygraph exam process, by any CST members, can have a negative impact on the exam results and should be avoided.

6.021 Communication with the Examiner

CST members shall discuss and collaborate with the examiner on the type of exam to be administered as well as any specific areas of concern. The examiner shall notify the CST, if known, when a polygraph examination is scheduled, and request needed information based upon the type of exam to be administered. The CST should provide supporting documentation related to the areas of concern, if available and appropriate.

6.022 Examiner Responsibility for Test Questions

The examiner shall make the final determination of questions used, and determine whether to administer a broader or more narrowly focused examination within the scope of the requested

¹⁴ National Research Council (2003). *The Polygraph and Lie Detection*. Washington, DC: National Academies Press. Retrieved from: www.nap.edu/openbook.php?isbn=0309084369.

polygraph exam. The examiner shall note the reasons for the change in focus of the examination in the exam report, if such a change is made.

6.030 Follow-up Examinations

If the examination has unresolved responses to any test questions, communication between CST members shall occur to determine the best course of action, including whether or not to do a follow-up exam, the timeframe for any follow-up exam, and the areas of focus for any potential follow-up exam (See Sections 5.600).

The CST should prioritize the investigation of more recent behaviors when evaluating the offender's present stability or dynamic risk level. The CST should generally require that all test questions and all time periods are satisfactorily resolved before moving on to another maintenance/monitoring exam with different questions or time-frames (See Section 5.600).

Per the APA model policy, the examiner shall discuss with the CST the use of the successive hurdles approach to polygraph to maximize both the informational efficiency and sensitivity of multiple or mixed-issue screening polygraphs, and the diagnostic efficiency and specificity of specific issue exams. Follow-up examinations should utilize a single-issue technique whenever increased validity is needed to resolve an issue.¹⁵

Discussion: A successive hurdles approach may result in a focus on more concerning risk behavior and no longer testing on less serious risk factors that can be verified through other clinical indicators. It is not necessary to resolve all issues in follow-up maintenance/monitoring exams, but if the CST believes it important to return to a previously unresolved issue at a later date, timeframe parameters outlined in Section 6.013 must be followed.

- A. Timeframes for follow-up examination shall be based on all clinical indicators of risk, need, and protective factors. Follow-up maintenance/monitoring exams should occur more frequently than the minimum required timeframe for such exams, and it is recommended that it occur within 60 days of the initial examination (see Sections 5.630 and 5.655). The timeframe for testing shall be prioritized based on the offender's level of risk, and can be adjusted based upon the offender's preparedness to address and resolve any remaining issues of concern.
- B. Resolution of remaining concerns upon follow-up testing shall be regarded as satisfactory resolution of the earlier test results.

Discussion: The follow-up exam may cover the same timeframe as the unresolved test, or it may extend beyond the original timeframe to include the time lapse between the original exam and the follow-up. When scheduling the next maintenance exam, it is important to include timeframes not accounted for in previous testing. As outlined in Section 6.013, it is still the responsibility of the CST to ensure a minimum of 2 exams per year.

- C. In most cases it is recommended that the initial follow-up examinations be completed with the same examiner, but the CST can change examiners for later follow-up examinations, if appropriate. If a change in examiner takes place, the CST shall provide the results of the unresolved exams to the new examiner.

Discussion: Non-deceptive test results are considered conclusive and the issue(s) under investigation shall be considered satisfactorily resolved. However, all clinical indicators

¹⁵ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>. For more information on the successive hurdles approach, see the APA Model Policy.

of risk, need, and protective factors should be considered, including polygraph results. Non-deceptive test results alone do not ensure safety on the part of the offender, nor should they automatically result in reduced monitoring on the part of the community supervision team.