

6.032-6.230

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

6.032 Supporting offender accountability and addressing polygraph results

The CST, after receiving input from the polygraph examiner, shall review the results of polygraph exams and share relevant information in order to respond to the exam with the offender. The CST should provide a consistent message to assist the offender in addressing any unresolved polygraph issues.

6.033 Technical expertise of the examiner

Questions regarding the technical aspects of the polygraph shall be referred to the polygraph examiner. When any team member has difficulty understanding or interpreting written polygraph reports or results, he or she shall contact the polygraph examiner for clarification on technical questions, and refrain from interpreting polygraph results beyond what is contained in the report. Offenders should discuss any questions or concerns related to the polygraph exam with the CST. If the CST is unable to provide the needed information, the CST may contact the polygraph examiner for clarification on the offender's behalf.¹

If the supervising officer and/or treatment provider has questions regarding information contained in the written polygraph report, they may request that the polygraph examiner review the audio and video recording of the exam to confirm the information provided. In addition, the supervising officer and/or treatment provider may also request a copy of the recording for review. If the offender has questions regarding information contained in the written polygraph report, the offender should discuss the questions with the supervising officer and treatment provider in an attempt to resolve them. The supervising officer and/or treatment provider may request a review of the video, as described above, on the offender's behalf.

Discussion: While the CST may consult with the polygraph examiner regarding technical aspects of the polygraph, it is not the polygraph examiner's role to recommend treatment or supervision interventions.

6.100 Adherence to recognized standards

In addition to the SOMB Standards, polygraph examiners shall adhere to the established ethics, standards, examination techniques, and practices of the American Polygraph Association (APA) for Post-Conviction Sex Offender Testing (PCSOT), and the American Society for Testing and Materials (ASTM).

6.110 Equipment and instrumentation

Examiners shall use a computerized polygraph system consisting of five or more channel polygraph instrument that will simultaneously record the physiological phenomena of abdominal and thoracic respiration, electro-dermal activity, changes in cardiovascular activity, and additional component sensors to monitor and record in-test behavior.

¹ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>. The APA Model Policy (11.1.2) states, "Following the completion of the posttest review, examiners should not communicate with the examinee or examinee's family members regarding the examination results except in the context of a formal case staffing."

6.120 Time allotted for examination

Each examination (including the pre-test, in-test, and post-test phases) shall be scheduled for a minimum of 90 minutes in duration. Examiners shall not conduct more than five post-conviction examinations per day.

Discussion: Time periods for polygraph examinations may vary depending upon the type of exam being conducted and the individual being tested. Some exams may last less than 90 minutes and others may exceed 90 minutes, however, all exams shall be scheduled for a minimum of 90 minutes.

6.130 Potential conflict of interest

In order to avoid a conflict of interest with an in-house polygraph examiner, the integrity of the distinct roles/perspectives of the CST must be preserved. The polygraph examiner and therapist or supervising officer must never be the same person. In community settings, the offender shall not be mandated to test with the in-house examiner.

6.140 Authorization and release

The examiner shall obtain the offender's agreement, in writing or on the audio/video recording, to a standard waiver/release statement. The language of the statement shall minimally include the offender's voluntary consent to take the test, that all information and results will be released to professional members of the community supervision team, an advisement that admission of involvement in unlawful activities will not be concealed from authorities, and a statement regarding the requirement for audio/video recording of each examination.

For offenders with a developmental disability, the examiner shall obtain the written agreement of the offender with a developmental disability, and if applicable, the legal guardian, for participation in the polygraph examination and the release of information authorization.

Discussion: Polygraph examiners are not mandatory child abuse reporters by statute; this includes polygraph examiners with clinical training. All members of the community supervision team who are mandatory child abuse reporters are responsible for assuring the timely and accurate reporting of child abuse to the appropriate authorities.

6.141 Offender background information

Prior to beginning the examination, the examiner shall elicit relevant personal information from the offender consisting of brief personal and demographic background information, case background information, and medical/psychiatric health information (including medications) pertaining to the offender's suitability for polygraph testing (see Section 6.210 regarding determination of suitability for testing).

6.142 Review of testing procedures

The testing process shall be explained to the offender, including an explanation of the instrumentation used.

6.143 Pre-test interview

The examiner shall conduct a thorough pre-test interview, including a detailed discussion regarding areas of concern (see Section 6.021 for CST communication to the examiner regarding areas of concern).

6.144 Test questions

Before proceeding to the in-test phase of an examination, the examiner shall review and explain all test questions to the offender. The examiner shall not proceed until satisfied with the offender's understanding of all test questions.

A. Question construction shall be:

1. Simple, direct, easily understood by the examinee, and tailored to the offender;
2. Behaviorally descriptive of the offender's involvement in an issue of concern
Discussion: Questions about knowledge, truthfulness, or another person's behavior are considered less desirable but may be utilized;
3. Time limited (date of incident or timeframe);
4. Absent of assumptions about guilt or deception;
5. Free of legal terms and jargon;
6. Avoid the use of mental state or motivational terminology.

B. While the community supervision team members shall communicate all issues of concern to the examiner in advance of the examination date, the exact language of the test questions shall be determined by the examiner at the time of the examination (see Section 6.022 for more information).

6.145 Number of test charts/presentations

A minimum of three primary test charts/presentations shall be administered on the exam issue(s).

6.146 Post-test review

The examiner shall review preliminary test results, if available, with the offender. Offenders shall be given the opportunity to explain or resolve any reactions or inconsistencies.

6.147 Examination recording

Recording (audio and video) of polygraph examinations shall be required. Audio and video recording of the entire examination and the written report shall be maintained for a minimum of three years from the date of the examination.²

6.150 Examination results

All testing data shall be hand scored by the examiner. Computerized scoring algorithms may be used for comparative purposes and quality assurance in the field. The computer algorithm shall never be the sole determining factor in any examination.

6.151 Test scoring results

The examiner shall render an opinion based on an empirically-supported scoring technique regarding the offender's reactions to each test question:

- A. No significant reactions, indicative of non-deception;
- B. Significant reactions, indicative of deception;

² American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>.

- C. No opinion/inconclusive;
- D. The examiners shall note in the examination report and communicate with the CST regarding suspected attempts to manipulate the test results.

6.152 Prohibition against mixed results

The examiner shall not conclude the offender has significant reactions, indicative of deception in response to one or more test questions and no significant reactions, indicative of non-deception in response to other test questions within the same examination.³

6.160 Examination report

The examiner shall issue a written report to the supervising officer and treatment provider within fourteen days of the examination. The report shall include factual and objective accounts of the pertinent information developed during the examination, including statements made by the examinee during the pre-test and post-test interviews.

Discussion: If there are any disclosures during the polygraph exam related to violations of the treatment contract or the terms and conditions of supervision, or of a previously unknown sexual assault victim that create a significant risk either to the community or offender, then the examiner should contact the supervising officer and treatment provider as soon as possible and prior to completing the written report.

6.161 Content of the examination report

All polygraph examination written reports shall include the following information:

- Date of examination;
- Beginning and ending times of examination;
- Reason for examination;
- Referring or requesting agents/agencies (supervision officer and treatment provider);
- Name of offender;
- Location of offender in the criminal justice system (probation, parole, etc.);
- Case background (instant offense and conviction);
- Any pertinent information obtained outside the exam (collateral information if available);
- Brief demographic information (marital status, children, living arrangements, occupation, employment status, etc.);
- Statement attesting to the offender's suitability for polygraph testing (medical/psychiatric/developmental);
- Date of last post-conviction examination (if known);
- Summary of pre-test and post-test interviews, including disclosures or other relevant information provided by the offender;
- Examination questions and answers;
- Examination results;
- Reasons for inability to complete exam (if applicable);
- Any additional information deemed relevant by the polygraph examiner (e.g., behavioral observations or verbal statements).⁴

³ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>

⁴ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>

6.162 Raw data and numerical scores

All numerical and computer scores shall be considered raw data and therefore shall not be disclosed in written examination reports.⁵

6.163 Information released only to professionals

Written polygraph reports and related work products shall be released only to the supervising officer and treatment provider, the court, parole board or other releasing agency, or other professionals as directed by the supervising officer and treatment provider.⁶

Discussion: In order to ensure that the written polygraph report can only be released by the examiner, a statement of sole proprietorship should be included with the report.

6.170 Peer reviews

The examiner shall seek peer review of at least two examinations per year using the protocol. Peer reviews shall consist of a systematic review of the examination report, test data, test questions, scored results, computer score (if available), audio/video recording (upon request), and collateral information. The purpose of the peer review shall be to facilitate a second professional opinion regarding a particular examination, to gain professional consensus whenever possible, and to formulate recommendations for the community supervision team.

6.171 Quality assurance reviews

The examiner is required to submit quality assurance reviews using the protocol form as part of the application and reapplication process (for more information, see Section 4.100).

6.172 Quality control reviews

When a quality control review is requested by the supervising officer or treatment provider, the examiner shall provide the required exam information to the polygraph examiner who will complete the quality control review.

Discussion: Quality control reviews may be initiated in response to a variety of circumstances, including but not limited to, when separate examinations yield differing test results regarding the same issue(s) and/or time period. This review would then be completed by the two examiners whose examinations yielded differing results. The purpose of this review is to clarify the reasons for the differing test results and formulate a recommendation for the community supervision team. If consensus cannot be reached, the team shall consult with a third, independent, SOMB listed full operating level polygraph examiner, agreed upon by both polygraph examiners, to review the conflicting information and offer an opinion regarding the issue. If differences in test results remain unresolved, both examinations shall be set aside and a new polygraph examination shall be conducted. Whenever consensus cannot be reached, the community supervision team must err on the side of community safety when considering their response.⁷

Discussion: If an offender would like to initiate a quality control review, the offender must first discuss the concern with the supervising officer and treatment provider in an attempt to resolve the concern within the context of a case staffing. If, after having reported the concern to the

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

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⁷ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>

supervising officer and treatment provider, and attempting to resolve the concern, the offender still wishes to proceed with a quality control review, then the offender may contract with a SOMB listed full operating level polygraph examiner to complete the review. The offender is responsible for all costs associated with the quality control review in such circumstances.

6.172 Selection of the reviewing examiner

When initiating a quality assurance review, the supervising officer and treatment provider shall contact the original examiner and, together with the original examiner, select an independent, full-operating level polygraph examiner to complete an objective peer review.

The reviewing examiner shall contact the original examiner with any questions and feedback, and shall complete the quality control review and the one-page Quality Control Summary Report together with the original examiner.

Discussion: It should not be assumed that a reviewer or reviewers present more expertise than the original examiner. Studies have found that results obtained by original examiners have outperformed those of subsequent reviewers.⁸ Quality control reviews serve only to offer an additional professional opinion to further advise community supervision team members regarding a polygraph test whose decisions may be affected by the information and results obtained.

6.173 Conclusions from the quality control review

The polygraph examiner shall complete the one-page Quality Control Summary Report, and the supervision officer and treatment provider shall include the Report in the offender's treatment and supervision files. Quality control reviewers shall refrain from making global or generalized conclusions regarding an examiner's work or competence (which cannot be done based upon a single examination). If the original results are not endorsed by the reviewer, a specific empirical flaw must be identified, and the reviewing examiner shall limit professional opinions to the following conclusions:

- A. Examination is supported - results shall be accepted;
- B. Examination is not supported - results shall be set aside;

Discussion: Setting aside an examination result does not include removal of the examination report from the offender's supervision and treatment files, but should include the addition of documentation regarding the community supervision team's response.

- C. Examination is supported but qualified by identifiable empirical limitations - results may be set aside or accepted with reasonable caution. Such qualifying limitations may include identifiable empirical limitations pertaining to offender suitability, data quality, and clarity of the issue/s under investigation, and are often noted by the original examiner in the examination report.

6.200 Suitability for testing

The supervising officer and treatment provider shall address suitability for testing related to issues such as severe medical, psychiatric, or developmental conditions as prescribed in Section 5.610. The supervising officer and treatment provider shall consult with the examiner before deciding whether to employ polygraph testing where there are questions related to suitability for testing.

⁸ Horvath, F. S. & Reid, J. E. (1971). The reliability of polygraph examiner diagnosis of truth and deception. *The Journal of Criminal Law*, 62(2), 276 - 281.

The CST shall not advise an offender to discontinue taking prescriptions as directed by a medical or psychiatric professional as part of the assessment of suitability for testing.

6.210 Determination of suitability for testing

Polygraph examiners shall utilize the American Polygraph Association Suitability Criteria (see Appendix L-2) in making decisions related to suitability for testing.⁹ Polygraph examiners shall not test offenders who present as clearly unsuitable for polygraph testing at the time of the examination. The CST shall periodically review each offender's suitability for polygraph testing. In cases where the offender is determined to be unsuitable for polygraph testing, the CST shall consider other forms of behavioral monitoring.

6.211 Sensitivity to suitability considerations

If the CST determines that it is appropriate to use a polygraph examination with an offender who presents with suitability considerations, the examiner shall conduct the examination in a manner that is sensitive to the offender's physical, mental, or emotional condition. The examiner shall note in the examination report those conditions that may have affected the offender's suitability for testing, and indicate the test results as "qualified" and to be viewed with caution

Discussion: In this context, "qualified" means that the test results may not have the same level of validity as test results that are not complicated by suitability considerations.

6.220 Language barriers

The need for language translation, including both foreign languages and sign languages, shall be assessed by the CST on a case-by-case basis.

Discussion: Polygraph examinations completed with the aid of a language interpreter should be regarded as "qualified" and the test results should be viewed with caution.

6.221 Selection of interpreters

The polygraph examiner shall utilize a court certified interpreter, whenever possible.¹⁰ It is important that idiomatic language usage be done accurately and consistently across each successive test chart. Offender's relatives or friends shall not serve as interpreters for polygraph examinations. The examiner shall inform the interpreter in advance about the process of the polygraph test. The examiner shall obtain from the interpreter a written translation, including a mirror translation, of each question presented during the in-test phase of an examination. This translation shall be prepared prior to the in-test phase and shall be maintained as part of the polygraph examination record.

6.230 Cultural awareness

Polygraph examiners shall be sensitive to ethnic or cultural characteristics when conducting examinations. Polygraph examiners shall attempt to elicit information regarding ethnic or cultural

⁹ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>

¹⁰ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>

characteristics in advance of the examination date and shall conduct the examination in a manner that is sensitive to those ethnic or cultural characteristics.¹¹

¹¹ American Polygraph Association (2016). *Model Policy for Post-Conviction Sex Offender Testing*. [Electronic version] Retrieved 11.22.2016, from <http://www.polygraph.org>