

The Value of the Post-Conviction Polygraph: The Importance of Sanctions¹

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Abstract

The use of the post-conviction polygraph is becoming a valuable tool in the management and treatment of convicted sex offenders. An accurate polygraph examination and an effective supervision strategy are contingent on whether sanctions are imposed against the offender when new information is revealed, or when the offender scores deceptive on the examination. Close collaboration and information sharing between the probation or parole officer, treatment provider and polygraph examiner is vital to ensure that sanctions are invoked. Consequences should be consistent, immediate and flexible. The type of action taken relates to the severity of the violation. Data are presented that examine the types and frequency of sanctions given to sex offenders as the result of new information learned about offenses that occurred before and after the index crime, for violations of supervision conditions, and for deceptive exams with no information admitted.

Key words: post-conviction sex offender testing, sanctions, survey, utility

Polygraph examiners in many areas of the country are testing more convicted sex offenders than ever. The same perpetrator is likely to be tested several times over a period of years. This is a burgeoning area of specialization: the sex offender post-conviction polygraph examination.

The use of post-conviction polygraphs to support the treatment and management of convicted sex offenders is relatively new to many criminal justice jurisdictions, but some probation and parole agencies, notably in Washington and Oregon, have been consistently using this tool since the early

1980s. Combined with criminal justice supervision and sex offense-specific treatment, post-conviction polygraph exams are making a substantial contribution to managing the significant risk that sex offenders present to the public.

During the last six years, the Division of Criminal Justice in Colorado² has conducted two national studies on the ways in which adult sex offenders are managed in probation and parole offices across the country³. The second of the two studies focuses almost exclusively on the role of post-conviction polygraph examinations in the

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¹ This research was sponsored by the National Institute of Justice, U.S. Department of Justice, Grant Number D97LBvx0034. The views presented here are those of the authors and do not necessarily represent the position of the National Institute of Justice.

² The Division of Criminal Justice is part of the Colorado Department of Public Safety.

³ The research included two national telephone surveys of a representative sample of over 700 probation and parole supervisors (interviewed in 1994 and 1998), an extensive literature review on victim trauma and sex offender treatment, a systematic review of scores of agency documents, field research interviewing hundreds of professionals working in 27 jurisdictions in eleven states, and detailed data collection on sexual assault incidents from 232 convicted sex offender case files from five jurisdictions in four states.

management and treatment of adult sex offenders. Funded by the National Institute of Justice, the research arm of the U.S. Department of Justice, these studies confirm the complexity of issues involved in the management and supervision of adult sex offenders serving sentences in community settings.

In a growing number of jurisdictions nationwide, criminal justice professionals are working hard to incorporate innovative methods for managing adult sex offenders in community settings. Thanks to the cooperation of hundreds of criminal justice practitioners nationwide, we were able to identify a collection of best policies and practices used by local jurisdictions to manage this difficult population. These methods, labeled a containment approach, encompass five key elements: 1) a philosophy guided by community and victim safety, 2) collaboration across agencies and disciplines, 3) containment-focused risk management teams, 4) consistent policies and procedures, and 5) methods for ensuring program quality control (English, Pullen and Jones, 1996).

Many polygraph examiners are not accustomed to thinking of themselves as part of a case management team (#3 key elements), and may feel uncomfortable or uncertain about this role (Wygant, 1999). According to Matte (1996: 622),

The success of the [polygraph] examination program depends to a large extent on the enforcement of the conditions of parole or probation. The offender must know with certainty that violation of any of the conditions of his or her parole will result in some form of discipline with the possibility of parole/probation revocation. The enforcement of parole/probation conditions provides the offender with the "fear of detection" deterrent which is useful in the treatment process, and the underlying basis of the [polygraph] examination.

Teamwork and close collaboration are key, particularly since the sanctions necessary to maintain the offender's fear of being found deceptive come from the other team members. Consequences or sanctions for deceptive polygraphs, then, are vital to the validity of the polygraph technique, and teamwork is essential to assure that these consequences are invoked (Matte 1996; Abrams 1991). In this article, we describe the value of the treatment/polygraph process for sex offender risk management. We emphasize the need for consequences following an offender's deceptive polygraph results and the need for official actions or sanctions when assaultive or potentially pre-assaultive information is disclosed.

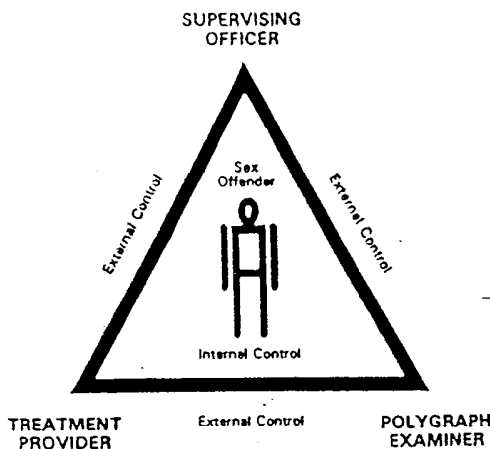
Overview of the Containment Triangle

Contrary to public perception, most convicted sex offenders will be sentenced to probation, and most of those who receive prison sentences will return to the community on parole. Probation and parole officers nationwide are grappling with growing caseloads. The containment strategy, an innovative and promising approach to managing sex offenders in the community, relies on regular and effective communication between the members of the containment team: the criminal justice case manager (probation or parole officer), the sex offender treatment provider and the post-conviction polygraph examiner.⁴ These individuals cooperate with each other to collect and use important risk management information. The team works together to provide external controls on a sex offender's behavior, to assist the offender in becoming accountable for his or her behavior and to teach the offender to develop internal controls over his or her conduct. Conceptually, these three individuals make up a triangle within which the offender is contained during probation or parole supervision. (English, Pullen, and Jones, 1996).

All three components of the team are essential to the provision of strong external controls. Monitoring, supervision and

⁴ The case management team may be expanded to include others, such as child protection workers, or the victim's therapist, as appropriate.

Figure 1. The Containment Triangle



treatment of the offender must occur by team members in conjunction with each other. For example, the criminal justice system provides external controls via specialized sex offender conditions of probation or parole. These conditions are likely to include sex offense-specific treatment and regular polygraph examinations. Within a group treatment setting (Knapp, 1996) the sex offender therapist promotes internal controls and personal accountability by confronting the offender's denial, minimization and secrecy, and by expecting active and honest participation in treatment, including the development of a viable relapse prevention plan (Laws, 1989).

Getting the information needed to manage an individual's risk is not easy. Sex offenders generally are not motivated to enter treatment or to reveal the depth of their deviant offending patterns (Salter, 1988). These behaviors, generally well entrenched over a lifetime, are often illegal, exciting and self-gratifying for the offender. Furthermore, the offender risks public humiliation and feelings of shame for disclosure of deviant behaviors (Carnes, 1983). Secrecy, manipulation, and denial have been integral to his or her ability to abuse others. Often an offender's life revolves around gaining access to potential victims. Deviant fantasies and behaviors are also central aspects of the offender's life, and he or she is not likely to admit to or readily change them. Nonetheless,

to effectively manage risk, the professionals need this information.

Risk management activities are intended to reduce or eliminate secrecy, privacy, opportunity, and access to potential or past victims by convicted sex offenders. Team members must commit to provide the preparation and follow-through necessary to maintain the integrity of the risk-management plan. The polygraph examiner is a critical component to the supervision team, exposing deceptions and verifying the information the offender provides to the treatment provider and the probation/parole officer. This process, in turn, can help reduce the offender's denial and increase his or her level of accountability and responsibility.

Because consistent and complete communication is the foundation of sex offender risk management, waivers of confidentiality are required across members of the containment team. If gaps in communication exist in the supervision of the offender, he or she will often use them to manipulate his or her situation and possibly harm more victims. Therefore, collaboration among team members must include the identification, documentation and continual refinement of policies and practices regarding the supervision/treatment/polygraph process. Policies specifying the type and severity of sanctions to be invoked will strengthen our ability to effectively manage this dangerous population.

The Post-Conviction Polygraph Examination

The post-conviction polygraph examination applies polygraph technology and practice to the risk-management issues that are raised when a convicted sex offender is in treatment and under community supervision. The types of post-conviction polygraph exams administered to convicted sex offenders generally fall into three categories: specific issue exams, disclosure (or sex history) exams, and periodic maintenance exams (Abrams, 1991).

A specific issue exam is used to address concerns regarding a specific incident or victim. For example, it is used with convicted offenders who are still in denial of the crime of conviction. By concentrating only on the "specific issue" of the conviction crime, the containment team compels the offender to admit his or her behavior regarding the index crime. The offender cannot start effective treatment without this admission. Specific issue exams may be designed and used for other purposes as well, such as a specific allegation of victim contact or other high-risk behavior.

The disclosure or sexual history exam is usually administered within three to twelve months after the offender has started treatment. It tests for the accuracy and completeness of the sexual history information the offender has prepared in treatment. Important for both treatment and case management reasons, this exam can pressure offenders into revealing previously unreported paraphilias that then can be addressed in treatment and supervision. The sexual history exam, in conjunction with treatment, may also clue the treatment provider and case manager into additional victims or interests otherwise unknown to the criminal justice system. Additional information revealed in the sexual

history treatment and polygraph process also aids the supervising officer in tailoring probation conditions to the offender's risk areas, thereby minimizing the potential for future victimizations. For these reasons, it is recommended that sexual history preparation and examination occur in the early stages of treatment.

The periodic maintenance exam confirms or denies the offender's self-report about his or her current behavior while under supervision. Most frequently given every six months, it may be given more often if the offender is considered to be at especially high risk to re-offend. This type of exam monitors compliance with supervision and treatment conditions and may indicate whether the perpetrator is re-offending, engaging in high-risk behavior, or breaking rules of supervision. These exams are particularly useful to inquire about modus operandi behaviors, such as stalking, using public transportation, visiting public swimming pools, or other activities used by the offender in the past to access victims.

Adding these polygraph examinations to the treatment and supervision process helps the supervising officer determine if the probation or parole conditions are being followed or if the offender is re-offending or preparing to re-offend. Likewise, these exams can pinpoint treatment and supervision issues, and help break through an offender's denial of the crime or crimes.

Value of the Post-Conviction Polygraph: Information

If knowledge is power, then the value of the post-conviction polygraph lies in the staggering amount of information it can generate for sex offender risk management. This was confirmed through our 1998 national telephone survey⁵ of a sample of 679 probation

⁵ The 1998 national telephone survey replicated the sample used from a similar survey conducted by the researchers in 1994. The national sample was stratified by geography and population density. Actual interviews were conducted with 679 probation and parole supervisors, yielding a response rate of over 90%. Respondents were divided into two groups: those whose agencies never or rarely used the post-conviction polygraph for treatment or management purposes (n=533), and those whose agencies sometimes, often, or always use the post-conviction polygraph with convicted adult sex offenders (n=146). Some of the offices had consolidated with others since 1994, so the numbers of interviews were appropriately weighted. For those using the polygraph, weighted n=544, and for those never or rarely using the polygraph, weighted n=155. The full report may be requested from the Colorado Division of Criminal Justice, 700 Kipling St., Suite 3000, Denver, CO 80215.

and parole supervisors.⁶ The most commonly reported benefits by those respondents using the polygraph most often were "enhanced disclosure and knowledge of the offender's activities/behavior" (76.1%) and "leads to better management and supervision of the offender" (66.5%). One respondent stated that the knowledge regarding "cycles and stimuli" leads to a more comprehensive picture of the offender that would be difficult, if not impossible, to obtain otherwise. Other respondents reported that the polygraph has the ability to "keep the offender honest" and "forces a level of honesty" beyond what other tools are able to provide. The value of the post-conviction polygraph was corroborated during field interviews in five states, where criminal justice supervisors and treatment providers using the polygraph told us that they could no longer imagine supervising or treating sex offenders without the information provided by the treatment/polygraph process.

To quantify its value, we conducted an in-depth review of 232 criminal justice/treatment files in five jurisdictions in four states.⁷ In one of the five jurisdictions, the polygraph was not used in sex offender management; in the other four jurisdictions, use of the post-conviction polygraph was at various stages of implementation.⁸ During the extensive data collection, we identified new

information that resulted from a combination of treatment, sexual history information and polygraph exams, information that would have otherwise been unknown to criminal justice professionals.⁹ We collected victim information such as age, gender, and relationship to the offender. To quantify the amount of information gained, we recorded the offender's disclosures regarding the number of individuals victimized by the offender over his or her lifetime, the types of offenses committed against these victims and the frequency of the crimes.

We collected the following pieces of information:

1. Hands-on crimes such as vaginal, oral, or anal penetration, and fondling/frottage.
2. Hands-off crimes such as voyeurism, exhibitionism, and stalking.
3. Paraphilias such as bestiality, theft of undergarments, excessive masturbation, group sex, coprophilia and urolagnia.
4. High-risk behavior such as the offender's use of drugs or alcohol during the assault and substance use while under supervision, specific victim preparation or grooming behaviors, engaging in prostitution, excessive fantasizing (especially regarding

⁶ For a more detailed discussion of this survey, see English, Jones, Patrick, Pasini-Hill & Gonzalez, this issue.

⁷ We collected data on approximately 60 offenders from each site: Oregon n=57, Texas n=62, Wisconsin n=61, California n=52. The criteria for sample selection was having participated in sex offender treatment for at least 3 months and having completed a sexual history disclosure form. All but 30 offenders among the sites that use the polygraph had received at least one polygraph examination. The remaining 30 had not yet received a polygraph but were "under the threat of the polygraph". This means that they were aware that post-conviction polygraphs were a condition of their supervision and treatment program and that they also would be required to take these examinations in the future. The sample consisted of probationers and parolees who had both misdemeanor and felony convictions. The offender files were selected randomly from each supervising officer's caseload, except for California where the population was used.

⁸ California did not use the post-conviction polygraph as an integrated part of criminal justice management at the time of our collection. Therefore, while valuable data were collected that quantified the sex offender treatment process, this site was not included in the analysis presented in this document.

⁹ The information on the data collection form was organized into two major sections. The first section consisted of all information regarding the offender's current crime and sexual offending history that was known to the criminal justice officials apart from the combined sexual history/polygraph process. The data sources for this section were the pre-sentence investigation reports, the police reports of the instant offense and case notes made by the supervising officer pertaining to information learned independent of the polygraph process. This is called "pre-polygraph/sexual history information". The second half of the data collection instrument consisted of all information that was learned about the offender as a result of treatment and preparation for the polygraph, and admissions revealed during the exam. Data sources included the sexual history document, homework assignments, polygraph reports, and case management notes pertaining to the sexual history/polygraph process.

victims), use of pornography, engaging in juvenile firesetting, and torture of animals.

We recorded the dates polygraph exams were administered, the point during the exam when the offender made admissions (pretest, test, or posttest), the results of the exam (deception indicated, no deception indicated or inconclusive), and any official response to polygraph examination information (consequences or sanctions). We also noted when no additional information was disclosed.

The case file analysis provided a wealth of information about the value of the treatment/polygraph process. The differences in the amount of information obtained "before treatment/polygraph process" and "after treatment/polygraph process" were analyzed in terms of numbers of victims, numbers of victim types abused (commonly referred to as offender crossover behavior,¹⁰) types of paraphilias and high-risk behaviors. Table 1 depicts crossover information learned through this analysis.

Table 1
Crossover and Additional Behaviors Before and After
The Treatment/Polygraph Process

PROFILE OF BEHAVIORS of Offenders in Texas, Oregon, Wisconsin with Polygraph, and Wisconsin Under the Threat of Polygraph but None Given (N=180)	BEFORE (a)	AFTER
Have male victims	20%	36%
Have female victims	90%	94%
Have both male and female victims	10%	29%
Have child victims	91%	95%
Have adult victims (b)	19%	44%
Have both child and adult victims	10%	33%
Commit hands on offense (c)	93%	98%
Commit more than one type of hands on offense	64%	82%
Commit hands off offenses (d)	22%	67%
Commit more than one type of hands off offense	3%	35%
Have high risk behaviors (e)	58%	93%
Commit more than one type of high risk behavior	27%	80%
Are incest perpetrators	38% (f)	58% (g)

a) Information defined as "before" comes from the offender file and includes victims that would be known to the criminal justice system without the polygraph process. "After" includes all information known in the file plus that obtained via the sexual history/polygraph process.

b) Includes individuals 18 years or older and elderly/at risk individuals

c) *Hands on* offenses include vaginal and anal penetration, fondling/frottage, and oral sex

d) *Hands off* offenses include exhibitionism, voyeurism, stalking.

e) *Risk behaviors* include urination with sexual act, bestiality, giving alcohol or drugs to victim, offender under the influence at the time of offense, abuse of alcohol and drugs during time periods when offenses occur, more than one unwilling participant, pornography, obscene internet or phone, masturbation to deviant fantasy, excessive masturbation, specific victim preparation, and other.

f) The "before" column includes only those individuals convicted of incest as the current offense.

g) Includes all offenders noted as an incest perpetrator anywhere in their history or polygraph information.

Crossover

As shown in Table 1, information known about the sex offenders in our sample before the treatment/polygraph process is incomplete to evaluate risk. Compared to

information known before the treatment/polygraph process, almost twice as many offenders admitted to having male victims and three times as many admitted to perpetrating against both sexes. Offenders in this sample have not only perpetrated against both

¹⁰ Crossover is the term is used to describe multiple paraphilic behaviors, i.e. the behaviors of a sex offender who victimizes both males and females, more than one developmental age group (for example, pre-school children and adults), who engages in both incest and out-of-family sexual assault, and/or who practices other forms of paraphilias.

genders, but against multiple age groups. The proportion of offenders who admit to abusing both child and adult victims increases three-fold after the treatment/polygraph process. The proportion of perpetrators who admitted to sexually abusing someone in their family at some point in their lives increased by one-third after the treatment/polygraph process. The proportion of offenders who admitted to engaging in more than one hands-off offense increased ten-fold (hands-off offenses are frequently part of the assault pattern).

The large increase in admissions to crimes such as voyeurism and exposing suggest that this type of deviant activity is widespread. We believe these findings underrepresent the extent of sexual abuse committed by this sample because a portion of the sample was "under the threat of the polygraph" and they were probably less likely to disclose deviant behavior.

These data indicate an alarmingly high rate of crossover behavior among the convicted sex offenders in our sample. Despite the fairly persistent public perception that sex offenders are interested in only one gender or age group, or offend only within or outside the family, many clinicians and criminal justice practitioners have known for over a decade that most sex offenders have many more paraphilias and victims than are generally disclosed early in treatment (Abel, et. al., 1987; Abel and Rouleau, 1990; Ahlmeyer et. al., in press; Freund, 1990; Becker and Coleman, 1988; Faller, 1990; Weinrott and Saylor, 1991). Without knowing the who or how of an offender's assault pattern, officials cannot make good decisions: A parole board may allow a rapist to live with small children; a judge may allow a male-oriented pedophile to live with a family that has teenage daughters. It is, therefore, imperative to public safety that containment members gain knowledge about offender's crossover behaviors. The data presented above reflect the significant value the treatment/polygraph process provides in attaining that knowledge.

Why Consequences Are So Critical

The need for consequences lies in the nature of polygraph technology and theory: Detecting and evaluating physiological responses requires the emotional arousal of an individual's autonomic nervous system. The polygraph process must induce a fear of detection of deception, that is, the fear of being caught in a lie. This fear must occur in both truthful and deceptive clients. Abrams (1991) observes that, if the offender has nothing to gain by telling the truth, and nothing to lose by lying or failing to disclose required information, he or she will become an increasingly difficult subject for a polygraph exam. Over time, the offender's fear of detection will decrease, diminishing the ability of the polygraph examiner to accurately measure and interpret the physiological responses of the client. Ultimately, the utility of the exam will be undermined.

Sanctions for lying or failing to disclose required information also have important implications for treatment when the denial regards the index crime. Matte (1996) asserts that a lack of consequences surrounding denial of something as important as the instant offense sends a strong message to other treatment group members they need not tell the truth. This could ultimately lead to deterioration of the group treatment process.

The consequence may depend on a number of factors: how long the person has been in treatment, if he or she has had opportunities to harm others, or if a particular victim is at risk. The type of consequence given usually depends on the nature of the information learned during the exam (or lack of information learned!). The sanction may be as minor as increased supervision or as severe as revocation, but it must be meaningful to the offender and it must occur quickly. In some jurisdictions, probation and parole officers are able to quickly jail the offender for a limited period of time, without first returning to court. In another location, probation officers have the discretion to expeditiously move the offender to an intensive supervision caseload. And, of

course, the more high-risk the behavior, the more critical the timeliness of the consequence. As one Colorado polygraph examiner noted after an offender revealed high-risk behaviors in a maintenance exam, "This guy will take a message from what happens to him in the next week. If nothing happens, he will escalate his cycle of abuse and probably target a specific victim" (David Amich, personal communication, 1998).

While the results of the polygraph alone are not usually sufficient to revoke an offender's probation or parole, offenders who are deceptive on polygraph exams shine a spotlight on themselves, inviting further investigation or sanctions the therapist or supervisor deems appropriate. Consequences need to be concrete and felt by the offender to be the most effective. It is important for the supervising officer and the treatment provider to agree on consequences that are specific and meaningful to the offender. One probation/parole officer stated it succinctly during an interview with us, "We're dealing with individuals here; they're not made from cookie cutters."

Although the polygraph examiner does not apply the sanctions, he or she may recommend consequences such as a suggestion for a retest, by the same examiner or another one. The examiner can also recommend revocation or removal of the offender from the home if potential victims reside there. The containment team is empowered to apply sanctions by the legal authority of the criminal justice system. It is a key responsibility of the supervising officer to collaborate with the containment team and apply the agreed-upon sanctions. Often the treatment provider can effectively apply sanctions such as requiring the offender to participate more frequently in group therapy sessions (and assume the subsequent cost). The criminal justice professional must support and empower the treatment provider's use of therapy-related sanctions.

Some consequences are relatively easy to invoke while the implementation of others may depend on the availability of resources. Effective and immediate consequences do not necessarily have to negatively impact supervisors and budgets. Employing consequences that are creative and flexible to the offender's circumstances can be just as beneficial to deterring dangerous behavior as expensive sanctions are. In one site we visited, offenders received sanctions requiring community service: They were washing police cars! Obviously such a sanction would be in response to a minor probation violation rather than a new sexual crime.

The sex offender treatment program at the Colorado Department of Corrections has developed a sanctions grid. The grid links sanctions to when the new information was disclosed. An offender who reveals information during group therapy, in his or her sex history log (a requirement of the treatment program), or even during the polygraph pretest, may receive lesser consequences than one who continues to deny until the posttest, or later.¹¹ As a result, an offender is encouraged to be truthful and fully disclose to the treatment provider and the examiner before the exam. The severity of the consequence, then, is linked to when the information is disclosed, and the type of information or violation revealed.

Meaningful and appropriate consequences must be applied for every deceptive polygraph result. Consequences must also occur when high risk or new assaultive behaviors are disclosed. If this does not occur, the validity of the polygraph test may be compromised (Matte, 1996) and treatment providers or criminal justice professionals could inadvertently weaken its utility in the risk management process. Policies specifying the type and severity of sanctions to be invoked will strengthen our ability to effectively manage this dangerous population.

¹¹ For a more detailed discussion of the sanctions grid, see "Integration of Polygraph Testing with Sex Offenders and the Colorado Department of Corrections", this issue.

Table 2
National Telephone Survey: Typical Consequences Reported by Probation and Parole Supervisors (n=146)

CONSEQUENCES	POLYGRAPH RESULTS OR INFORMATION LEARNED (% Indicating Response) *				
	Deception	Offenses Before Current Conviction	Offenses After Current Conviction	Violation of Supervision	Inconclusive
Summary of Respondents' Comments					
NONE	7.7%	44.5%	3.9%	1.3%	27.7%
INCREASE SUPERVISION, e.g., "tighten up," more surveillance, electronic monitoring, increase contacts, [offender] reports more often, ISP, more in home visits, and longer probation term, house arrest, and period of increased observation. Also, urinalysis, antabuse, drug testing.	46.5%	5.2%	9.0%	58.1%	25.8%
INVESTIGATION—own, District Attorney's, or law enforcement. Contact authority. Contact DA who decides on investigation.	9.0%	38.1%	52.9%	2.6%	7.7%
CHANGE OR ADDRESS IN TREATMENT, e.g., increase or longer treatment, talk about in treatment, more homework, start treatment over or suspend from group. Notify provider to re-evaluate.	37.4%	4.5%	5.2%	38.1%	14.2%
REVOCATION, TERMINATE TREATMENT OR PROGRAM OR UNSUCCESSFUL DISCHARGE.	25.8%	1.3%	34.2%	28.4%	2.6%
RETEST OR INCREASE TESTS. Do test on a specific issue.	16.1%	.06%	.06%	1.3%	38.1%
GO BACK TO COURT, including preliminary case hearing, administrative hearing, contempt of court, prosecute, new charges, and return to legal system.	15.5%	6.5%	25.8%	21.3%	.06%
JAIL OR ARREST, including 15 day temporary custody.	10.3%	.06%	17.4%	18.7%	1.9%
IMPOSE CURFEWS, home confinement for longer hours, impose as intermediate sanctions.	14.2%	.06%	.06%	17.4%	0%
CHANGE IN CONDITIONS OR PRIVILEGES, APPEARANCE BEFORE PAROLE BOARD OR RETURN TO PRISON. Also, loss of earned time, or change conditions, e.g., change in employment. Apply grid system.	3.9%	1.3%	8.4%	9.0%	0%
DISCUSS WITH OFFENDER AND OR OTHERS. Talk, question, interrogate, verbal admonishment or letter of warning to offender. Case conference, staffing or talk to provider.	9.0%	0%	.06%	7.1%	5.8%
VIOLATION REPORT.	1.9%	0%	5.2%	6.5%	.06%
REDUCE CONTACT WITH FAMILY, REMOVE FROM HOME OR LIVING SITUATION. Also, unable to move back with family.	1.3%	2.6%	0%	1.9%	.06%
REPORT TO HUMAN SERVICES, report to social services if child is the victim.	0%	2.6%	2.6%	0%	0%
AA, EDUCATION PROGRAM.	0%	0%	0%	6.5%	0%
MORE PUBLIC SERVICE HOURS, community service, fines.	0%	0%	.06%	4.5%	0%
NOTIFICATION OF NEIGHBORS, COMMUNITY, VICTIMS, including public notification.	1.3%	1.2%	0%	.06%	0%
LOOK FOR ANOTHER POLYGRAPH EXAMINER.	0%	0%	0%	0%	1.3%
PLETHYSMOGRAPH.	0%	.06%	0%	0%	0%
TOO NEW TO KNOW.	.06%	.06%	2.6%	.06%	4.5%

* Percentages do not equal 100% because respondents could give more than one answer.

The Truth About Consequences: Selected Findings from the Research

Telephone Survey

Our 1998 national telephone survey¹² investigated the types of consequences that are levied against offenders in criminal justice jurisdictions using post-conviction polygraphs. Table 2 describes the types and frequencies of the various consequences used by these probation and parole offices.

The data indicate a difference in the types of sanctions used, depending on the information revealed. The severity of a sanction increases with the level of the infraction. The most commonly reported response to a "violation of supervision", for instance, was an increase in supervision (56.1%), followed by addressing the issue in or changing of treatment (36.1%). The most common response to offenses occurring after the crime of conviction was to contact authorities/initiating an investigation (52.9%), followed by revocation, termination or unsuccessful discharge from supervision or

treatment (34.2%). Similarly, the most frequently reported consequence for a deceptive polygraph was an increase in supervision (46.5%). An increase in supervision can include intensive supervision probation, electronic monitoring, house arrest, more frequent reports to the supervising officer, a longer probation term, more home visits, urinalysis, Antabuse, and drug testing.

As mentioned above, the successful implementation of consequences requires that they be administered expeditiously. The telephone survey results revealed that nearly two thirds (61.9%) of the responding agencies who use the polygraph have the authority to arrest and temporarily jail offenders without first going to court.

Case File Data

Findings from the review and analysis of 232 case files¹³ also yielded valuable information on the extent to which consequences are being used in response to polygraph results. Table 3 describes the number of polygraphs by type of polygraph result that received at least one action or sanction¹⁴.

Table 3
Polygraphs from Three Sites Resulting in Actions or Sanctions

POLYGRAPH RESULT (N=125)	POLYGRAPHS RESULTING IN SANCTIONS OR ACTIONS	
	#	%
Deception	84	67.2%
No Deception Indicated	25	20.0%
Inconclusive/No Opinion	16	12.8%
Total	125	100.0%

¹² Please see footnote 4 for a more complete description of the telephone survey.

¹³ Please refer to footnote 5 for a description of the data collection.

¹⁴ These results reflect sanctions documented in the offender's case file. It is possible that some offenders faced treatment or criminal justice consequences that were not recorded in the files.

As expected, the majority of the sanctions were imposed on those cases that scored deceptive on the exam. We analyzed 125 polygraph examinations that resulted in documented sanctions. Deceptive polygraphs were those most likely to result in at least one sanction or action (67.2%). Polygraphs with no deception indicate (NDI), account for 20% of those that resulted in at least one action or sanction suggesting that, for these cases, concerning information was admitted in the pretest that was severe enough to warrant a response. Even though no deception was indicated on these exams, it is still appropriate for offenders with admissions of probation/parole violations, high-risk behavior or sexual offenses to receive consequences.

It is important to remember that an inconclusive result means that the examiner

does not have enough information to make a decision. An inconclusive polygraph finding is not an indication of guilt. Re-tests are recommended. The exception to this is when purposeful countermeasures are employed by the offender to cause an inconclusive reading. "An accurate test cannot be obtained unless the offender cooperates." (Abrams, 1989). If an individual tries to interfere with the polygraph intentionally, he or she should be confronted and the exam should be discontinued if the countermeasures do not stop. The record in the file should read "exam terminated because the client would not cooperate." Appropriate sanctions should result in these cases.

Table 4 describes the frequencies and conditions under which various sanctions are administered.

Table 4
Sanction by Type of Polygraph Result

SANCTIONS/ACTIONS TAKEN Number of Cases Receiving a Sanction or Action (N=75)	DECEPTION		NO DECEPTION INDICATED		INCONCLUSIVE		TOTAL ACROSS ROWS	TOTAL ACTIONS TAKEN
	n	%	n	%	n	%	n	%
Antabuse	0	0	1	3.8	0	0	1	.6
Re-Test	17	13.8	2	7.7	6	22.2	25	14.1
Increased Supervision/Including Electronic Monitoring	5	4.0	2	7.6	4	14.8	11	6.2
Short Term Jail	13	10.6	7	26.9	3	11.1	23	13.0
Residential Adjustment	1	.8	1	3.8	2	7.4	4	2.3
Revoked to DOC/Court	1	.8	0	0	0	0	1	1.1
Confrontation in Group	11	8.9	1	3.8	2	7.4	14	7.9
Addition to Relapse Plan	3	2.4	0	0	1	3.7	4	2.3
Modification of Management Plan	4	3.3	2	7.7	0	0	6	3.4
Expelled from Treatment	9	7.3	0	0	2	7.4	11	5.2
Behavior Restricted	1	.8	0	0	1	3.7	2	1.1
Other	58	47.2	10	38.5	6	22.2	74	41.8
Total	123	100%	26	100%	27	100%	176	100%

* Note that (n) does not refer to the number of deceptive polygraphs. For example, there were not 17 polygraphs with deceptive results indicating a re-test. Rather, there were 17 re-tests resulting from deceptive polygraphs. This is because a polygraph result could indicate more than one action. Data collectors could note up to three sanctions or actions for each polygraph result.

** So much information was revealed during the pre-test portion of the polygraph that the polygraph was not actually administered; therefore, there is no result. Person was revoked to DOC.

Analysis of the criminal justice files concurred with what we heard from the phone survey respondents: Professionals are using a variety of actions or sanctions to respond to the results of polygraph examinations. Actions or sanctions were imposed on approximately half (75) of the 147¹⁵ offenders who received polygraph exams for deceptive, nondeceptive, and inconclusive findings. A total of 176 sanctions or actions were taken with these offenders.

Most of the actions or sanctions imposed were the result of deceptive polygraphs. Re-tests accounted for the most commonly used sanction (13.8%) for this group. One in ten (10.6%) of the sanctions imposed were short-term jail sentences. In some instances (8.9%), actions or sanctions consisted of confrontations of the offender by members of his or her treatment group.

A small proportion of the number of sanctions imposed (14.7%) were the result of polygraphs where no deception was indicated (NDI). More than one in four (26.9%) of the NDI exams revealed information that warranted a short-term jail sentence. A small proportion (7.6%) of the NDI exams resulted in increased supervision. We suspect this response occurs more frequently than is recorded in the file since over half of our telephone survey respondents reported that increased supervision was a common response to information obtained in the polygraph process. A small proportion of NDI exams (7.7%) resulted in a re-test. In these cases, a containment member may have had knowledge or suspicions of questionable behavior, even though the polygraph exam did not yield the information. If so, a retest is an appropriate response.

Of the 27 sanctions (15.2% of all sanctions) resulting from inconclusive polygraphs, approximately one in five (22.2%) resulted in a re-test. Other types of sanctions or actions were also administered including increased supervision (14.8%), short-term jail sentences (11.1%) and residential adjustments (7.4%). The latter two sanctions suggest that

the offender posed a significant threat and the supervising officer responded accordingly.

The "other" category included a wide variety of sanctions. It consisted of community services hours, discussions with the criminal justice officer or therapist, writing a clarification statement explaining the polygraph results, or writing an addendum to the sexual history document that explains the new admissions.

Recommendations and Conclusions

Data describing crossover behavior indicate that we have much to learn from each offender about the scope of their sexual offending behavior. Valuable information on the frequency of sexual crimes, the extent to which offenders abuse both males and females, within and outside of their families, and against different age groups, increases the ability of professionals to effectively manage the risk of offenders in the community. Case management and treatment plans can be tailored directly to the needs and risks of the individual. This is the essence of the containment approach.

From interview data, we learned that maintaining and preserving the usefulness of polygraph information requires written policies and practices that support its use in the risk management of convicted sex offenders. Foremost among these policies are those that identify sanctions (positive and negative) to be invoked based on the results of the polygraph exam and when pertinent information is disclosed. Positive sanctions for nondeceptive polygraph results may be desirable, but the lack of these will not affect polygraph test findings. On the other hand, a lack of negative sanctions for the use of countermeasures or deceptive polygraphs will, over time, adversely affect the efficacy of the treatment/polygraph process.

Results from both the 1998 telephone survey and case file data collection indicate that sanctions are in place in many areas, but that few areas have completely implemented a

¹⁵ Three offenders were included in the sample that were reported to have had polygraph exams, but the reports were not found in the files.

thorough and complete sanctions policy covering all situations. Some sex offenders, no doubt, are escaping the consequences of their behaviors, or facing mild consequences (e.g. talking about it in group, with no other consequence) that likely provide insufficient incentives for full disclosure of deviant behavior. This can ultimately compromise public safety.

Given the analysis of the interview and case file data pertaining to sanctions, we make the following recommendations:

- Polygraph examiners, treatment providers and criminal justice personnel must work together to develop and refine a range of sanctions for sex offenders who disclose new information, have deceptive results, or practice deliberate countermeasures.
- Waivers of confidentiality must be obtained to promote the necessary flow of communication among containment team members. This prevents the offender from using communication gaps to his advantage and harming more victims.
- Treatment providers and supervising officers require discretion in applying sanctions.
- The application of sanctions must be well documented.
- Sanctions should be certain, prompt, consistent, and linked to the severity of the behavior detected or disclosed.

- Sanctions must be individualized to each offender's needs and risks, and significant enough to assure that the offender will not prefer the consequence to disclosing the necessary information.

- Written policies and procedures for post-conviction polygraph examinations and sanctions are key to assuring consistency. These policies then become integrated into instruction manuals to be used for frequent reference by staff.

- Quality control measures should be implemented for polygraph examiners, criminal justice and treatment professionals to ensure appropriate use of the post-conviction polygraph and the administration of sanctions.

- Further research should be conducted specifically evaluating the link between the implementation of sanctions and recidivism.

In sum, the highest priority of the containment team lies in protecting victims and potential victims from future harm. Marshall, et al (1990) states "Sexual assaults have devastating effects on innocent victims, so that any reduction in the rate of offending should be viewed as beneficial...The real reduction in suffering occurs when even a few of these men are prevented from reoffending." Use of the post-conviction polygraph exam, when used with properly administered sanctions, plays a major role in reducing this suffering.

References

- Able, G. G., Becker, J.V., Mittelman, M., Cunningham-Rathner, J., Rouleau, J. L., & Murphey, W. D. (1987). Self-reported sex crimes of nonincarcerated paraphiliacs. *Journal of Interpersonal Violence*, *2*(1), 3-25.
- Able, G. G., & Rouleau, J. L. (1990). The nature and extent of sexual assault. In W. L. Marshall, D. R. Laws, & H. E. Barbaree (Eds.), *Handbook of Sexual Assault: Issues, theories, and treatment of the sexual offender* (pp. 9-21). New York: Plenum.
- Abrams, S. (1989). Probation polygraph surveillance of child abusers. *Prosecutor*, *21* (3), 29-36.

- Abrams, S. (1991). The use of polygraphy with sex offenders. *Annals of Sex Research*, 4, 239-263.
- Alhmeyer, S., & Heil, M., Mckee, B. & English, K. (in press). Polygraph disclosures in a sample of prisoners and parolees. *Journal for the Association and Treatment of Sex Offenders*.
- Becker, J. V., & Coleman, E. M. (1988). Incest. In V. B. Van Hasselt, R. L. Morrison, A. S. Bellack, & M. Herson (Eds.), *Handbook of family violence* (pp. 187-205). New York: Plenum.
- Carnes, P. (1983). *Out of the shadows: Understanding sexual addiction*. Minneapolis, MN: Compcare.
- English, K., Pullen, S., & Jones, L. (Eds.). (1996). *Managing adult sex offenders: A containment approach*. Lexington, KY: American Probation and Parole Association.
- Faller, K. C. (1990). Sexual abuse by paternal caretakers: A comparison of abusers who are biological fathers in intact families, stepfathers, and noncustodial fathers. In A. L. Horton, B. L. Johnson, L. M. Roundy, & D. Willaims (Eds.), *The incest perpetrator: A family member no one wants to treat* (pp. 65-73). Newbury Park, CA: Sage.
- Freund, K. (1990). Courtship disorder. In W. L. Marshall, D. R. Laws, & H. E. Barbaree (Eds.), *Handbook of sexual assault: Issues, theories and treatment of the offender* (pp.195-207). New York: Plenum.
- Knapp, M. (1996). Treatment of sex offenders. In English, K., Pullen, S. and Jones, L. (Eds.), *Managing Adult Sex Offenders: A Containment Approach*. American Probation and Parole Association: Lexington, KY.
- Laws, D.R. (1989). *Relapse Prevention with Sex Offender*. New York: Guilford Press.
- Marshall, W. L., Laws D. R. & Barbaree, H. E. (1990). Issues in sexual assault. In W.L. Marshall, D. R. Laws, & H. E. Barbaree (Eds.), *Handbook of sexual assault: Issues, theories and treatment of the offender* (pp. 1-8). New York: Plenum.
- Matte, J.A. (1996). Psychophysiological veracity examinations using the polygraph in sex offenses. (pp. 596-627). *Forensic psychophysiology using the polygraph: Scientific truth verification-lie detection*. Williamsville, NY: J.A.M. Publications.
- Salter, A. (1988). *Treating child sex offenders and victims: A practical guide*. Newbury Park, CA: Sage.
- Weinrott, M. R., & Saylor, M. (1991). Self-report of crimes committed by sex offenders. *Journal of Interpersonal Violence*, 6(3), 286-300.
- Wygant, J. (1999). Counterpoint: The special status of sex offender treatment. *American Polygraph Association Newsletter*, 32(3).