

**Sex Offender Management Board
Standards and Guidelines Impacted by Recent Polygraph Court Rulings
August 19, 2016**

Adult Standards and Guidelines:

3.160 A provider shall employ treatment methods that are supported by current professional research and practice:

- I. Offense-specific treatment for sex offenders shall:
 - 2. Require offenders to disclose all current sex offending behaviors and complete a full sex history disclosure. If the offender refuses to answer sexual offense history questions, including sexual offense history polygraph questions, then the provider shall meet with the supervising officer to identify and implement alternative methods of assessing and managing risk and needs. The provider shall not unsuccessfully discharge an offender from treatment for solely refusing to answer sexual offense history questions, including sexual offense history polygraph questions;

- M. An offender can be moved to a maintenance phase of treatment when the community supervision team reaches consensus that the sex offender has:
 - Completed the non-deceptive sexual history disclosure polygraph process. For offenders who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond;

5.733 CCA Pre-Screen

CCA Pre-Screen Chart (If no Exclusionary criteria)	
PRE-SCREEN FACTORS	PRE-SCREEN DATA SOURCES
<i>If <u>2 or more factors</u> indicated, ineligible for CCA and must meet criteria in 5.740 to have minor child contact</i>	Evaluation Procedures or Documentation
Adult ¹ history of illegal sexual behavior with child(ren) age 12 or younger ²	Self report ³ Criminal history Substantiated civil court history

¹ Adult is defined as 18 years old or older

² The age of 12 or younger is based on the distinction between pubescent and pre-pubescent development stages. There is disagreement in the current research regarding the onset of puberty, and the SOMB recognizes the limitations of defining the criteria based on a specific age.

³ Admission made during polygraph assessments are considered self-report

Three or more unlawful sexual behaviors	Self report Collateral Criminal history (conviction, factual basis, or plea agreement) Substantiated civil court history
Sexual interest or arousal to prepubescent children	Valid baseline or initial PPG or VRT ⁴ Self report Criminal history of child pornography ⁵
Unresolved CCA polygraph*	CCA polygraph
Level III denial	SOMB Standards, section 3.510 ⁶

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

5.740 Criteria for Contact with Secondary/Non-Victim Minor Children

These criteria shall be applied in the following circumstances:

- Contact with any child(ren) under the age of 18, including an offender’s own child(ren)
- When the CST has determined that contact is not allowed based on the results of the CCA
- When the CST has determined that contact with an offender’s own minor child(ren) is allowed based on the results of the CCA and the offender requests contact with a minor child who is not an offender’s own

Treatment providers, in conjunction with the CST, shall ensure the offender achieves the following criteria specific to the minor child with whom the offender wants contact before contact can be initiated:

2. The offender has yielded non-deceptive results in all required areas of the sexual history disclosure polygraph exam(s). For offenders who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond;

5.752 Victim clarification procedures shall be approved by the CST and specifically include the

⁴ Tests that are inconclusive or show no response (flat line) are not valid and must be repeated or tested with the other procedures

⁵ Conviction or documentation of history of seeking child pornography

⁶ If one other factor is present, a complete CCA polygraph must be completed. A CCA polygraph is not necessary if 2 or more prescreen factors are present. If no other factors are present, the CCA polygraph can be delayed until the full CCA assessment.

victim representative. The CST shall use the following criteria:

- H. The offender displays decreased risk by demonstrating progress in all the areas identified in section 3.160 (I), which are supported by polygraph testing. For offenders who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

6.002 Minimum Polygraph Requirements following onset of treatment

	Sentencing Sex Hist 2*	Instant Offense	Start of Tx	Maintenance	Sex Hist 1*	Maintenance
days	Deniers	90 days	0 days	90 days	270 days	270 days
						360

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

6.012 Sexual History Polygraph Examination

Sexual history polygraph examinations shall be employed to thoroughly investigate the offender’s lifetime history of sexual behavior, including identification of victims and victim selection behaviors, numbers of sexual partners, and deviant or compulsive sexual behaviors. An initial sexual history polygraph examination should be administered within the first nine months of treatment and shall be completed within the first eighteen months of entering treatment. For offenders who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

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 shall 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 sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

- 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 sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

- D. The CST should 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 sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.
- E. Failure to verify the offender's sexual history via non-deceptive polygraph results within twelve months after the onset of sex offense specific treatment shall result in a face-to-face or telephone staffing to determine the reasons for the offender's non-compliance with this requirement, and any steps necessary to effect more complete disclosure and satisfaction of this requirement. Structured intervention approaches, such as the polygraph decision grid in Appendix C-4, shall be used to address and correct these situations. For offenders whose sexual history polygraph examination results remain unresolved following this time-frame (12 months after onset of treatment), the CST shall respond to the offender's risk level in a manner consistent with offenders who are highly impulsive with prominent deviancy, compulsivity, and widely varied offending behaviors. Offenders who reside in highly restrictive institutional settings may be subject to programmatic time-lines that differ from community based programs. For offenders who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.
- F. Under rare 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 sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

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 5.7). 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 sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2 to determine how to respond.

Section 10.000

6. Family Reunification is dangerous.

In child sexual abuse cases, family reunification is dangerous. When family reunification is a goal of the child protection agency, family reunification should be avoided until after disposition of the criminal case. Before recommending contact with a child victim or any potential victims, responsible parties shall assess the offender's readiness and ability to refrain from revictimizing, i.e. to avoid coercive and grooming statements and behaviors, to respect the child's personal space, and to recognize and respect the child's indication of comfort or discomfort.

A. In addition, the following criteria be met before visitation can be initiated:

11. The offender has completed a non-deceptive sexual history disclosure polygraph and at least one non-deceptive maintenance polygraph. Any exception to the requirement for a non-deceptive sexual history disclosure polygraph must be made by a consensus of the community supervision team. For offenders who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2;

Appendix D RISK ASSESSMENT

Adult Sex Offender Low Risk Protocol (LRP) Approved by the SOMB March 18, 2011

Assessment Items: Any of the following items identified during the course of the assessment process will *exclude* the offender from being designated as low risk. Thus, ALL items MUST be assessed.

- H. Unresolved sexual offense history disclosure process, as demonstrated by treatment participation and polygraph results⁷ For offenders who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 3.160 I. 2.

Juvenile Standards and Guidelines:

7.100 Suitability Criteria/Exclusionary Factors for Polygraph Testing:

- A. The multidisciplinary team shall review the following suitability criteria and refer for polygraph examination* those juveniles who meet these criteria:

* If the juvenile refuses to answer sexual offense history questions, including sexual offense history polygraph questions, then the provider shall meet with the supervising officer to identify and implement alternative methods of assessing and managing risk and needs. The provider shall not unsuccessfully discharge a juvenile from treatment for solely refusing to answer sexual offense history questions, including sexual offense history polygraph questions.

- 7.121 The MDT must reach consensus when determining that a juvenile who is suitable for testing should not be tested. If the MDT makes such a determination based on appropriateness criteria, the reason for this determination should be documented in formal treatment and supervision reports:

For juveniles who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 7.100.

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

A. Sexual History polygraph examination*:

The Sex History polygraph focuses on the juvenile's lifetime history of sexual behavior, including identification of victims and victim selection behaviors, numbers of sexual partners, and deviant or compulsive sexual behaviors:

1. When employed, the sexual history polygraph examination should be initiated in the early stages of treatment to allow for sufficient preparation and follow-up on the information and results.
2. The multidisciplinary team shall assure that juveniles referred for sexual history polygraph examination possess sufficient understanding of laws and definitions regarding abusive and/or illegal sexual behavior.

⁷ Please see Standards of Practice for Post-Conviction Sex Offender Polygraph Testing (Standards and Guidelines for the Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders) Section 6.000.

3. Information and results received from the exam are used to adjust existing treatment and supervision plans and provide information on past history to be addressed in treatment and supervision.
4. Information and results from the exam can be helpful in corroborating information gathered during treatment through the sex history disclosure packet as well as providing a more accurate assessment of static risk.

*For juveniles who refuse to answer sexual offense history questions, including sexual offense history polygraph questions, providers shall refer to Standard 7.100.