POST-CONVICTION SEX OFFENDER MONITORING: POLYGRAPH & TREATMENT TOGETHER WHY YOU SHOULD USE IT BUT NOT ABUSE IT

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History
How did we get here?

Historical References to PCSOT

Stan Abrams, Ph.D. 1980s
The Jackson County study, Oregon
The Linear Approach before the Containment Model
The CSOM/CSOT & The U.S. Dept. of Justice
Kim English group develops the Containment Model
The Evolution of Guidelines
The American Polygraph Association Guidelines (Pre-2007)
ASTM
Current APA PCSOT Guidelines (2009)
International Expansion of PCSOT (2010 - Present)
THE COUNCIL ON SEX OFFENDER TREATMENT

• CSOT
• HISTORY OF CSOT
• HISTORY OF ASSESSMENT AND TREATMENT OF SEX OFFENDERS

CURRENT TERMINOLOGY

PCSOT was originally referred to as the Clinical Polygraph Test. The term evolved from the test's original purpose -- to help treatment providers gain information to develop treatment plans. This term no longer is used. As the field of "Post-Conviction" testing evolved to include supervision, risk assessment, etc., the term 'clinical' was set aside in favor of PCSOT.

Stan Abrams, Polygraphing the Pedophile

The Post-Conviction Test

This term refers to a polygraph test administered to an individual currently under court order, under state supervision, and/or under conditions of court ordered treatment, and who in most cases is required to submit to polygraph as a condition of supervision.

HOLDEN 2000

This polygraph specialty began with applications to sex offenders only; but PCSOT—"POST CONVICTION SEX OFFENDER TESTING" and expanded to include oversight in additional areas (drugs, drinking, violence).

NOTE: ASTM still employs the term “Clinical Test”
CURRENT TERMINOLOGY

PCSOT – Refers to Community Based Testing ONLY

CCIT- Civil Commitment & Institutional Testing

CSOT HISTORY

• CSOT IS A GOVERNOR APPOINTED BOARD. MEMBERS: 4 PROFESSIONAL AND 3 PUBLIC 1983
• FOCUS: PUBLIC SAFETY; PUBLIC AND BEHAVIORAL HEALTH; REGULATORY (LICENSED; RULES); AND EDUCATIONAL
• 1994 CSOT & TEXAS ASSOC OF POLYGRAPH EXAMINERS,
• 09/01/2003 HB 2036 LICENSURE

HISTORY OF ASSESSMENT AND TREATMENT

• NO ASSESSMENT
• NO SPECIALIZED TREATMENT
• NO SPECIALIZED SUPERVISION
• NO RESEARCH-BELIEFS & PRISON POPULATION
• CURRENT:
  • RESEARCH
  • SPECIALIZED ASSESSMENT, TREATMENT AND SUPERVISION
  • CLINICAL POLYGRAPH
  • PPG AND ABEL
JPCOT & APA STANDARDS

• JPCOT
• HISTORY
• APA GUIDELINES AND DEVELOPMENT OF PSCOT STANDARDS

JPCOT, APA, & STANDARDS FOR PCSOT

• JPCOT – the Joint Polygraph Committee on Offender Testing, 1994-1998
• JPCOT Guidelines adopted by the APA
• Historically referred to as “Clinical Tests” later changed to PCSOTs
• 2007-2009 International Ad Hoc APA Committee drafted currently accepted Guidelines that exceed those of JPCOT.

Distinguishing Pre & Post-Conviction Testing

Pre-Conviction Polygraph Testing –

a. Pre-conviction represents the oldest applications of polygraph;
b. Pre-conviction testing has the most attention from the scientific community assessing validity and reliability;
c. Pre-conviction is the polygraph procedure least often admitted into Court and least considered by triers of fact.
Distinguishing Pre & Post-Conviction Testing

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WHAT SUPPORTERS ARE SAYING ABOUT PCSOT

“The Good Guys”

What Proponents Say

• Nearly 80% of Community adult sex offender programs in the United States and over half of residential ones make use of polygraph testing to inform treatment or supervision

McGrath, 2010; Grubin, 2016
What Proponents Say

• Polygraph Testing has been determined to be very important to the management and supervision of sex offenders in the United Kingdom. The British Parliament enacted legislation in 2014 mandating that paroled sex offenders determined to be moderate to high risk take regularly scheduled polygraph tests.

Grubin, D., Joyce, Andrew, & Holden, Jay, Polygraph Testing of ‘Low Risk’ Offenders Arrested for Downloading Indecent Images of Children, Sex Offender Treatment, Vol. 9, (2014), Issue 1

What Proponents Say

• “Polygraph makes important contributions to sex offender treatment and management by bringing to attention changes in risk, facilitating disclosures, and perhaps encouraging offenders to modify their behavior.”

Grubin, 2008; Levenson, 2009, Grubin, 2016

What Proponents Say

• “What may not be accurate enough in a National Security context or in a court of law may be sufficient for investigating crime or when used post-conviction.”

Grubin, 2016
What Proponents Say

• If disclosures and information obtained from polygraph adds significantly to what is otherwise known about treatment needs and risk, it is right to deny the potential benefits of PCSOT to an offender?"  
Grubin, 2016

What Proponents Say

• If PCSOT does reduce risk, how can one explain to a future victim why it did not form part of the offender’s treatment and supervision package?
Grubin, 2016

WHAT DETRACTORS ARE SAYING ABOUT PCSOT

“The Bad Guys”
What Opponents Say

• The Types of polygraph tests used in PCSOT lack validation, is unscientific, and potentially dangerous.
  Ben-Shakhar, 2008; Iacono, 2008

What Opponents Say

• Polygraph testing of sex offenders may adversely affect the therapeutic alliance between the offender, the therapist, and/or the supervisor.
  McGrath, et. al., 2010; Vess, 2011

What Opponents Say

• Polygraph PCSOT is based on manipulation or intimidation, potentially breaching a number of basic ethical principles relating to autonomy and non-malfeasance.
  Chaffin, 2011; Cross & Saxe, 2001; Maijer et.al., 2008
What Opponents Say

• Numerous studies have reported that individuals disclose information during a polygraph that they otherwise would have kept to themselves. Critics refer to this phenomenon as “a Bogus Pipeline.”

  Grubin, 2016

What Opponents Say

• The disclosures made during a polygraph test occur because “the examinee believes the polygraph test works and can detect deception. Those disclosures would not occur if examinees did not hold this belief.” – The Bogus Pipeline.

What Opponents Say

• PCSOT is a Screening Test. Screening tests tend to have higher false positive rates - tests which wrongly label an examinee as deceptive.
What Opponents Say

• One objection to PCSOT that has been voiced is that it carries with it the implication that sex offenders “are not to be trusted”, and this damages the relationship between supervisors and offenders!

What Happens When People Lie – And Why Does It Happen?

• What Causes the Body’s Measurable Reactions To Occur?
• How do Examiners Record or Capture Those Reactions?
• How Can Those Reactions Relate to Truth and Deception?

What is a Deceptive Act?

Three Things that Constitute a Lie!

• First, a **falsehood** has to be Uttered!
• Second, the person must be “**aware a Falsehood was told**”
• Third, The “**act must have been intentional**” (e.g., it is not a mistake).

* Taken from “Intentional False Responding Shares Neural Substrates with Response Conflict and Cognitive Control.” Jennifer Maria Nunez, et al.
The Immediate Body Response to a Lie

When there is STRESS associated with a lie, the process activates three major systems in the brain that regulate bodily functions.

- **Voluntary nervous system** – (The Brain & Spinal Cord)
- **Neuroendocrine system** – (Regulating Hormones)
- **Autonomic nervous system** – (Activating Internal Organs)
  - Sympathetic
  - Parasympathetic
WHAT DOES THE POLYGRAPH RECORD?

• Autonomic Nervous System (ANS) Reactions Recorded from Organ Systems:
  • Reactions of the heart
    (heart rate, relative blood pressure, etc.)
  • Reactions of the lungs
    (breathing changes)
  • Reactions of the skin
    (conduction changes in the skin)
  • May include others (pupil dilation, etc.)

What Causes A LIE to show a Physiological Reaction on a Polygraph Chart?

“Lying per se **does not create** the psychological state that results in the detection of deception reactions.”

  Amsel, 1997

There Must Be Something Else that “SPARKS” the Body to React!
FEAR

• FEAR IS PSYCHOLOGICAL IN ORIGIN. IT INVOLVES THE
  GENERATION OF EMOTION (PHYSIOLOGICAL REACTIONS)
  WHEN SOMEONE PERCEIVES AND INTERPRETS ANYTHING
  AS A THREAT TO THEIR WELL-BEING (HOMEOSTATIC BALANCE) FROM
  THE POLYGRAPH OUTCOME.

• AT LEAST THREE SUBSETS OF FEAR ARE INVOLVED IN A
  POLYGRAPH TEST (Amsel, Tuvia)

The Emotion of Fear in a Polygraph Test
(three sub-sets)

• The Fear of Exposure
• The Fear of Detection
• The Fear of Consequences

FEAR OF EXPOSURE

Examinee’s fear that the examiner and
the polygraph can detect a lie if told.

Most critical to some personality types, The Psychopath!
FEAR OF DETECTION

The examinee's awareness he/she is guilty and hiding something.
{Not the same as guilty feelings}

FEAR OF CONSEQUENCES

The examinee’s fear of the likely consequences if he/she lies and is caught.
{Fears of punishment, loss of positive rewards, fear of being exposed to a significant other, negative reward, jail, etc.}

Polygraph Terms & Scientific Language

▪ Error in Polygraph Tests
  ▪ FALSE + OUTCOMES
  ▪ FALSE - OUTCOMES
Error Rates & Polygraph

- If Wrong, it is either a:
  - False + error (a truthful person who fails the test); or,
  - False – error (a liar who passes the test)
- All Scientific studies conclude:
  - Most likely error on any polygraph test is a False + error = It appears the person is lying when they are telling the truth!

Error Rates & Polygraph

- It is undisputed that the greater share of polygraph opinion errors are attributed to examiner errors for:
  - Failure to properly design test & test questions -
  - Failure to properly conduct interview to focus examinee psychologically -
  - Failure to convince examinee the test works -
  - Failure to develop adequate questions -
  - Failure to properly evaluate test data -
- BM examinations undergo quality review to present this!

What Affects Accuracy

- The known Accuracy Depends on the Type of Test -
- Generally, the more issues addressed, the less accurate the test might be -
- One bad question on a multi-issue test, for example, can affect the opinion about all the relevant test questions –
  - Rule: Deception to one, Deception to all!!
- The scientific community has determined the "validity or accuracy" overall for each test type.
Example of Bad Questions Affecting the Overall Opinion

• **R1:** Since your last polygraph, other than what we discussed, have you had any contact with your victim?
• **R2:** Since your last polygraph, have you been alone in the presence of a minor?
• **R3:** Since your last polygraph, have you intentionally withheld information regarding your sexual behavior from your therapist?
• What is wrong with this list of questions?

> Behavioral Measure Institute 2017

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**JPCOT STANDARDS**

• **JPCOT** in 1998 defined 4 major test types classified by purpose:
  • **Supervisory Tests** (Oversight)
  • Maintenance Procedures
  • Monitoring Procedures
  • **Clinical Treatment Tests** (Disclosures)
  • Sexual History
  • Instant Offense

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**PCSOT STANDARDS UNDER APA**

• **APA (2007-2009)** further refined the Guidelines to further break down the standard test types into 8 categories to account for focus and procedural concerns:
  • Sexual History – 2 types
  • Instant Offense – 3 types
  • Maintenance with Monitoring
  • Maintenance without Monitoring
  • Monitoring
    • Each of the 8 approved APA tests will be discussed later in this presentation.
Getting a Better Understanding of Polygraph – Post Conviction

• What Types of Tests Are Available?

• What are the most important rules that therapists and P.O.s should understand about test questions?

• What does research show about PCSOT?

Classification of Test Types

• There are generally 3 types of Polygraph Tests classified by scientific studies rank ordered by published VALIDITY AND RELIABILITY Studies.

  • Each Type has a different known or projected accuracy rate when protocol is complied with.

  • We can refer to these categories as “TIERS.”

Tier 1 – Diagnostic Tests

• Tier 1 Test – Classified as “DIAGNOSTIC PROCEDURES” that include:

  • Single facet Test = Established 90-95% accuracy

  • Multi-facet Test = Established 85-90% accuracy
Relevant Question Structure in Diagnostic Polygraph Tests

- **Diagnostic Procedures – Scientifically Validated**

- **Single-Facet**: those tests in which the *relevant questions* cover a single and narrow behavior or act & address a conflict in statements or positions;

- **Multi-Facet**: Those tests in which the relevant questions cover multiple aspects (facets) of a single behavior or act.

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**Single Issue Evidentiary Examination**

Sexual Assault of Sally

On or about October 3, 2016, did your exposed penis touch Sally’s vagina?

Did your exposed penis touch Sally’s vagina on or about October 3, 2016?

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**Multi-Faceted Single Issue Investigative Examination**

Did your penis have contact with Sally’s vagina?

- Did you penetrate Sally’s anus with your finger?
- Did your mouth have contact with Sally’s vagina?
- Did your penis have contact with Sally’s mouth?
- Did you penetrate Sally’s vagina with your finger?
- Did you penetrate Sally’s anus with your penis?
Tier 2 – Screening Tests

- Screening Procedures are “investigative” procedures that include 2 major test types:
  - PCSOT &
  - Pre-Employment – Pre-Hire Background Disclosure Assessments
- These tests are distinguished from Diagnostic tests mostly by the structure of the Relevant Test Questions.

Relevant Question Structure in Screening Polygraph Tests

- Disclosure Procedures – Less or unknown validation-projection of accuracy for DI examinees - 80-85%
- Problem: little accuracy data reported or conducted!
- Multi-Issue: those tests in which the relevant questions cover multiple issues over long periods of time, generally do not address a conflict, and based on self – report
- Screening Procedures:
  - PCSOT
  - Pre-Employment

Multi-Issue Examination

- Pornography Use
- Alcohol Consumption
- Drug Use
- Being Alone with Children
Multi-Issue Maintenance PCSOT

• Since your last polygraph, have you drank any alcoholic beverages?
• Since your last polygraph, have you viewed any pornographic material?
• Since your last polygraph, have you been isolated or alone with anyone 16 or younger?

Tier 3 – Utility Test Procedures

• Tier 3 Test – A Utility Procedure for which protocol has been violated
  • Rules of Professional Interviewing violated
  • Rules of Professional Test Procedures violated
  • Rules of Professional question development violated
  • IN GENERAL, RULES WERE VIOLATED!

The Utility Test

"Eric Holden’s definition of a utility examination is clear: The value of the entire setting, instrument, interviews/interrogation techniques, etc. is to resolve issues, obtain statements and elicit admissions". The accuracy of the examiner’s professional opinion is not the primary focus, it is an investigative procedure!

Summary of 3 Tier Polygraph Test Procedures

• **Tier 1** – Diagnostic Procedures – Scientifically Validated
• **Tier 2** – Screening Procedures – Not Yet Scientifically Validated
• **Tier 3** – Utility Procedures – professional opinions useful, accuracy not dependable without corroboration; not scientifically validated

Understanding Screening Procedures

• Why Are Screening Procedures not classified as Diagnostic Tests?
  • The Structure of RQs is significantly different;
  • Most PCSOT RQs lack conflict, a necessity in validated testing;
  • Potential Consequences often lacking
  • Others

What is Validated by the Scientists?

• *The Test Questions*
  • Test Question Construction, both RQs and CQs
    • How they are worded
    • What they address
    • Where they are placed in the format
Analysis of Pre & Post Conviction

Pre-Conviction Validated Test
- Known Allegations
- Defined Conflict
- Specific Time of Reference
- Specific Frame of Reference
- Consequences based on crime/offense committed
- Limited examinations

Post-Conviction Non-Validated test
- NO
- NO
- NO
- NO
- NO
- NO

Where “NO” exists above, it is an “variable” making PCSOT protocol different from VALIDATED PROTOCOL

8 RECOMMENDED RULES FOR RELEVANT QUESTION CONSTRUCTION THAT EXAMINERS SHOULD FOLLOW POST-CONVICTION

RULE #1
- Relevant Test Questions Should NEVER address the examinee’s “mental state” or “state of mind”. It can change! Personalities and belief systems may have an effect on how test questions and question wording is interpreted. It can affect physiological systems being evaluated.
  - PCSOT Examples of state of mind:
    - Did you really believe Sally wanted to touch your penis?
    - Did you think she liked rough sex when you hit her?
    - Do you believe you are a sex offender?
    - Will you re-offend when you get off probation?
    - Did you mean to cause your wife pain when you slapped her?
  - See APA Exception
Improper Test - QC by POLY-TRAC in January 2017

R1: Have you been sexually aroused by any fantasies of minors since your last polygraph test?

R2: Since your last polygraph, have you been sexually aroused by images of minors?

R3: Other than what you told me, have you had any unreported contact with minors since your last polygraph?

Exception to “State of Mind” Rule

• The APA Guidelines now make an exception to testing “state of mind.” The exception is for sex offenses only. Where an admission is made that contact occurred, the examiner may test intent or state of mind to evaluate: “Memory of Purpose”

• APA PCSOT Guidelines - Improper to examine for state of mind before obtaining an admission of contact:

  “Did you touch Sally’s vagina for a sexual purpose?”
  (Ask only if examinee admits touching the vagina)

  The APA recognizes the phrase “for a sexual purpose” as a “state of mind” or “intent” issue.

RULE #2

RQs should not ask the examinee to account for someone else’s state of mind, or ask him/her to account for something clearly not within the examinee’s control or awareness:

*Did she want you to have rough sex with her?*

*Would a Doctor's report in 2006 have shown that she was a virgin?* (SO denies penetrating victim’s vagina)

*Was Sally a willing participant in the sex with you that night?*
Another's State of Mind Issue – Rule 2

**IMPROPER:**
- Did you have sex with Sally against her will? (Examinee cannot account for her state of mind)
- Did you have non-consensual sex with Sally? (QC of 2017 test)

**PROPER:** (OVERT ACTION)
- Did Sally say no (stop) before you had sex with her?
- Did you slip Sally a drug she was not aware of?

RULE #3

RQs should not refer to legal terminology or conclusions:

- Did you rape Sally?
- Did you murder Keith?
- Did you molest Sally?

RULE #4

*Should not* deal with motivation or intent, *where the actions alleged have not first been admitted*

Since you started probation, have you been unsupervised with anyone younger than 17 *for a sexual purpose*?
Examinee does not admit being unsupervised with anyone under 17!

Since your last polygraph, have you been looking at pornography *for sexual stimulation purposes*?
Examinee does not admit looking at pornography!
RULE #5

• RQs should not reflect offensive or emotion-evoking language, unless the examinee is clearly most comfortable with that particular language. “butthole v. anus”, “dick v. penis”

• RQs should not use words or phrases that allow for more than one possible interpretation by the examinee

IS MULTIPLE INTERPRETATION POSSIBLE?

Relevant Question from a Monitoring Test submitted for QC during revocation hearing:

“Was it you that sexually touched another person, since your last test, and wish to keep it secret?”

MULTIPLE INTERPRETATION EXAMPLE

IMPROPER:
Did you rape Sally?
Did you molest Sally?
Did you fondle Sally?

PROPER: (Test the overt act, NOT THE CONCLUSION)
Did you slap Sally?
Did you threaten Sally?
Did you point a gun at Sally?
Did your hand touch Sally’s breast?
Words That Can Cause Difficulty in a PCSOT

Be Careful using these in RQs

- Sexual Contact
- Deviant
- Fantasy
- Force
- Coerced
- Sex Partner
- Pornography

- Contact
- Inappropriate
- Consensual
- Against her will
- Intimidate
- Arousal
- Non-Consensual

SEX PARTNERS REAL CASE - ISSUE IS RQ WORDING

FROM PROBATION OFFICER, June 2016:

“Mr. Jones’ Instant Offense is Sexual Assault of an Adult Male. Recently, we learned that he was detained last October (2015) by DPD at an Adult Video Store for grabbing the genitals of a Dallas Police Officer. This incident occurred just over four months before a maintenance polygraph test that he passed.”

PO Note: “I am referring this offender to you to interview and examine. I am interested in how he passed the polygraph in February of 2016 about “sex partners” when four months before he was groping a police officer in an adult bookstore.”

SEX PARTNERS, Example, Continued

“The examiner did ask Mr. Jones if he had any sex partners that he’s keeping secret from his therapist, and Mr. Jones said NO.”

P.O.’s Humor: “But I personally wouldn’t call the cop a sex partner if I grabbed his package – however, in therapy aren’t they told that grabbing someone’s package would make that person a sex partner.”

Dallas County PO, Sex Offender Unit
The following Relevant Questions were asked on that maintenance polygraph:

RQ4: Since your polygraph last August, have you had any sex partners that you have kept secret?  
(Grade +3)

RQ6: Since January 2015, have you consumed any alcohol?  
(Grade +5)

RQ8: Since your polygraph last August, have you used any illegal drug?  
(Grade +3)

I concurred with the chart scores and agreed the examination should be reported: No Deception Indicated (RH)

Re-Interview and Monitoring Polygraph  
Conducted June 22, 2016

Sexual Contact Involving Mr. Jones and Any Other Person - Genital Contact

Mr. Jones admitted that he has kept secret many of his sexual behaviors with other persons since his treatment program began in June 2014; however, he denied he considers or views any of these contacts as "sex partners." He defined a "sex partner" as someone you are in a relationship with and have repeated sex with." He denied this date, as he did on the previous Maintenance Test, that he has had any "sex partner" nonetheless, he admitted multiple sexual contacts that involve random, anonymous sex with strangers in adult video stores. It was this behavior that caused his October 1, 2015 arrest.

Re-Interview and Monitoring Polygraph  
Conducted June 22, 2016

Sexual Contacts in Adult Video/Book Stores

Mr. Jones admitted going to adult video stores since June 2014 an average of 3-4x per week. He stated he estimates he has performed oral sex on strangers he "hooks up" with at those stores not more than 100x since he has been in treatment. Mr. Jones stated about 50x he estimates a stranger has performed oral sex on him. He estimates about 20x anal sex was involved with him either the active or passive partner. He estimates he has performed oral sex on not more than 5 men during any one visit. Mr. Jones stated his last visit to an adult video store was in early April 2016.
RULE #6
Should address overt actions where possible.
Examples:
• Did you (shoot, stab, threaten with a weapon, slap, hit, etc.) Sally?
• Are you lying about (alibi, statement, issue, etc.) to me today?
Lying becomes the overt act that the RQs address.

RULE #7
Should be defensible in Court or against professional scrutiny with published and professionally defined rules of test question construction. See APA, AAPP, TALEPI.
Should clearly address a defined target of the examination

PCSOT Relevant Test Question 2015
Monitoring Test, 2015
Test Purpose: Sexual re-offense or commission of any new sex crime
Relevant Test Question asked: “Have you had any type of sexual touching of any kind with any person since your last test?”
New APA RULE - #8

• No Relevant Question should be so broadly worded that if deception is indicated, the question will not point the examiner to the specific issue the examinee is lying about! (APA)
• The following are UNACCEPTABLE for RQs:
  • Are you now withholding anything from your sexual history questionnaire?
  • In the last year have you violated any of your probation conditions?
  • In the last year have you violated any conditions of treatment you have not told me about?

10 Important Principles
for Constructing RQ'S
for PCSOT TESTS under APA Guidelines

1. Have the Same Time of Reference
2. Have the Same Frame of Reference
3. Have Same or Similar Consequences for Lying
4. Address Issues containing conflict or no conflict – not both
5. Concisely and Directly Address a Targeted Behavior
6. Be Sufficiently Specific That a Deceptive Reaction Points the Examiner to a Specific Issue of Concern.
7. Avoids the Use of Slang Jargon Where Possible.
8. Not Attempt to Predict Future Behavior.
9. Not Be Interpretable as “Presupposing Guilt.”
10. Be Free of “Mental State” or “Motivational Terminology” except to verify the “Memory of Purpose” for an acknowledged act. (APA PCSOT MODEL)
REPORTING PCSOT & OTHER SCREENING TESTS

**TIER I** - Test results for event-specific diagnostic single & multi-facet tests should be reported as:

- No Deception Indicated (Scored Truthful)
- Deception Indicated (Scored Untruthful)
- Inconclusive (Unable to Determine)

**TIER 2 & 3** - Test Results – Exploratory Exams, Multi-Issue Testing, PCSOT

- Significant Response (SR)
- No Significant Response (NSR)
- No Opinion (NO)

Differences in Reporting – Why?

- The APA has reserved the labels “Deception Indicated”, “No Deception Indicated”, and “Inconclusive” for DIAGNOSTED TESTING PROCEDURES.

- All Screening & Utility Procedures should be Reported “Significant Responses”, “No Significant Responses”, and “Unable to Determine”.

- Conflict: State of Texas Law (from 1965) Requires all polygraph opinions be reported DI, NDI, or Inc. Thus, an ethical conflict results.

- Solution: Report Both:
  - Test Results: SR, NSR, or UTD
  - Professional Opinion: DI, NDI, NO
BMC Recommendation for Reporting

• Test Results: Test results were determined by applying nationally recognized scoring criteria. Additional evaluations by other examiners and/or computer algorithms established reliability. The conclusion from those evaluations is: (SR) (NSR) (NO)

• Professional Opinion: The examinee’s answers to the relevant test questions are considered: (DI) (NDI) (INC)

DEFINED POST CONVICTION SEX OFFENDER TESTS (PCSOT) IN THE APA MODEL
TIME OF REFERENCE FOR EACH TYPE OF SEX OFFENDER TEST

- Instant Offense Examination (I.O.)
- Instant Offense Investigative Examination (I.O.I.E.)
- Prior Allegation Examination (P.A.E.)
- Sexual History Type I Examination (S.H.E. I)
- General Sexual History II Examination (S.H.E. II)

- Maintenance Examination (M.E.)
- Sex Offense Monitoring Examination (S.O.M.E.)

APA Guidelines Define 7 PCSOTs

- The Below Are Defined As “Disclosure/Treatment Tests” and involve ONLY Pre-Supervision Behaviors
- The Below Are Defined As “Supervision Tests” and Involve ONLY Post-Supervision Behaviors

Testing Pre - Supervision Behaviors
Treatment Tests
POLYGRAPH SET UP – An Issue for Therapists

• PREPARE THE CLIENT
• COMMUNICATE WITH THE POLYGRAPH EXAMINER BOTH VERBALLY AND IN WRITING
• RELEASES
• PAYMENT
• REPORTS

THE TREATMENT PROVIDER’S RESPONSIBILITY

• THE TREATMENT PROVIDER MUST PREPARE THE CLIENT FOR THE POLYGRAPH TO INSURE FOCUS OF THE TEST IS CLEAR
• MAINTENANCE POLYGRAPHS: COP & TREATMENT
• MONITORING: SEX OFFENSES
• SEX HISTORY: FOCUS GENERAL VS VICTIM

INSTANT OFFENSE POLYGRAPH

• NEED OFFICIAL OFFENSE REPORT/VICTIM’S STATEMENT
• NEED OFFENDER’S WRITTEN STATEMENT
• REVIEW IN GROUP
• TEST OVER DIFFERENCES
• WHAT IF THEY FAIL?
Instant Offense Exam

PCSOT TESTS-IO

• RQs address conflicts between denials by offenders and the victim’s accusations

  • RQ targets significant actions of the crime the offender denies

  • RQs specifically ask “did you do it...?” ‘It’ is defined as the act or issue in conflict

  • RQs limited to specific issues for which clear concise allegations exist

Instant Offense Investigative Exam
PCSOT TESTS

- **Instant Offense Investigative Exam (IOI)**
  - **Purpose**: When offenders have admitted all of the reported allegations and any member of the treatment team wants to investigate other possible but unreported sexual behaviors between offenders and IO victims.
  - Exploratory with no known conflicts.

Another PCSOT
Prior to Court Supervision

PCSOT TESTS-PAE

- **The Prior Allegation Examination (PAE)**
  - **Purpose**: To test allegations that were made, where outcry were made but were never prosecuted. The offender denies these. They are tested just like the Instant Offense Test unless they are still being considered for prosecution.
  - These Tests must EXCLUDE any reference to the IO victim.
Additional Considerations Testing
Instant Offense Issues

- **Multiple victims**: If more than one prosecuted IO victim, each IO victim’s allegations should be tested as separately.
- Similarly, PAE outcry victims should be tested separately
- IO, IOI, and PAE shall not be mixed with any other type of examination or examination issue

On-Going Investigations

**APA Model**

- Examiners who engage in PCSOT activities should not interfere with or circumvent the efforts of any open or ongoing investigation of a new criminal allegation.
- If new allegations surface that should be or are pending referral to a LE Agency it is not subject matter for a PCSOT
- Former victim allegations not prosecuted should not be addressed on the IO examination. This is now defined as the Prior Allegations Exam (PAE).

**Sexual History Exams**
SEX HISTORY POLYGRAPH

- Sexual Autobiography
- Group Review
- Sex History Polygraph Prep
- Victim’s List
- What If They Fail?
- What Is Reportable?

O’CONNELL & ASSOCIATES POLYGRAPH RESEARCH

- 127 Cases of Adult Male Sex Offenders

Self-reports about deviant sexual behavior were recorded at: referral, after clinical interviews, and after sex history polygraph.

RESULTS

- 28.25 Victims were reported on referral
- An additional 65.38 Victims were reported during clinical interviews
- An additional 197.44 Victims were reported during course of the sex history polygraph
OTHER FINDINGS

• SUBJECTS REPORTED CROSS-OVER BEHAVIOR
• POLYGRAPH TESTING LEADS TO MORE DISCLOSURES OF SEXUALLY DEVIANT BEHAVIOR
• INCEST OFFENDERS WERE FOUND TO HAVE CROSSED OVER TO OTHER SEXUAL BEHAVIORS AND OTHER VICTIMS

MORE RESULTS....

• THE NUMBER OF KNOWN ADULT FELONY SEX OFFENSES DOUBLED
• MASTURBATION WAS UNDER REPORTED
• ACKNOWLEDGEMENT THAT SEX OFFENSES DIDN’T JUST HAPPEN, BUT WERE ACCOMPANIED BY SOME COVERT REHEARSAL AND REINFORCEMENT OF SEXUALLY DEVIANT AROUSAL

PCSOT TESTS - SHE

• Sexual History Exam (SHE)
  • Purpose: To explore all aspects of the sexual background of offenders, excluding victims before going on probation/parole
PCSOT TESTS-SHE

• The Sexual History Questionnaire MUST BE thoroughly reviewed by the examiner with the offender BEFORE testing.

• Examiners should not initiate and/or fill out the SHQ

• Examiner can reasonably add information during the pre-test, however, if offender spends substantial amount of time during pre-test adding numerous victims, the exam should be re-scheduled for a later date.

The Sexual History Exam (SHE #1)

• This is the first SH test that should be conducted.

• This test allows RQs that address only VICTIM Issues, to include:
  • All underage victims
  • All Adult Victims
  • Methods of victimization
    • Force
    • threats,
    • Coercion
    • Luring
    • Grooming
    • Etc.

APA: The SHE 1 may not address any sexual history matter that is not associated with victimization.

VICTIM-SHE

RQs for SHE regarding victimization issues:

• Other than what you told me, did you touch the sexual organs of anyone else under 18 years?

• Besides the one cousin, have you had sexual contact with any family members?

• Did you have sexual contact with anyone else without their consent?
  • (Preface with appropriate ToR)
The Sexual History Exam #2

• A “SHE 2” may be conducted that addresses:
  • All other sexual behaviors
  • Any or all Paraphilia

• A second exam is at the discretion of containment members
  • Whether it is administered
  • When it is administered

PCSOT TESTS-SHE 2

RQs for the SHE regarding other sex acts and/or paraphilia:

• Have you viewed any child pornography?
• Have you used the Internet to meet anyone under 17 years?
• Other Sexual History issues in SHQ

Testing
Post Supervision Behaviors
Maintenance Exam

MAINTENANCE POLYGRAPH

• WHAT IS TESTED?
• HOW OFTEN?
• PREPARING THE CLIENT
• GROUP PROCESS
• WHAT IF THEY FAIL?
• INFORMATION: PRE AND POST
• REPORTS

PCSOT TESTS-ME

• Time of Reference
  * e.g.
  • Since you started treatment...
  • Since you started probation...
  • Since your last polygraph...

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PCSOT TESTS-ME

• Frame of Reference

- Conditions of Probation or Parole
- Treatment Rules

PCSOT TESTS-ME

• RQs do not attempt to predict future behavior
  • e.g. When you visit your children, are you going to sexually touch them?

• RQs should not presuppose guilt on part of offenders
  • e.g. Have you stopped touching the sexual organs of minors with your hand in the last six months?

NEW APPROACH – The Maintenance Test that includes a Monitoring Question:

• RQs may address a variety of violations defined by a Frame of Reference
  • violations of probation/parole conditions (ME)
  • treatment rule/contract violations (ME)
  • new sexual crimes and re-offenses (MO)

if all are within the same Time of Reference and if ?????
1) If offenders are *NDI* or *NSR to all RQs* in the series, further testing is not required; However –

2) If offenders are *deceptive to any one or more of the RQs* in the MAINTENANCE series *in which a sexual crime RQ was included* –

3) Examiners MUST administer a Monitoring Test at earliest possible date.

4) This is considered a safeguard for public safety.

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**PCSOT TESTS-ME**

• RQ series can contain overlapping treatment issues and violations of probation/parole *if violations of both* - e.g.
  • Drug and/or alcohol usage
  • Being unsupervised with minors

• RQ series that contain treatment infractions *only* should not be mixed with any RQ that address probation violations –
  • Masturbation activities and reporting
  • Fantasy issues and reporting

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**PCSOT TESTS-ME**

• Frequency of SOME & ME
  • Best practices suggest intervals of 6 months
    Shorter when necessary for community safety
    Intervals may be lengthened but cannot exceed a reasonable person’s ability to recall and answer truthfully to the relevant questions.
  • The APA does not define a MINIMUM time necessary between tests. Examiner’s decision.
The Sex-Offense Monitoring Examination

MONITORING POLYGRAPH
• WHAT IS TESTED?
• WHEN OR HOW OFTEN?
• PREPARING THE CLIENT
• GROUP PROCESS
• WHAT IF THEY FAIL?
• INFORMATION: PRE AND POST
• RESULTS

PCSOT TESTS
Sex-Offense Monitoring Exam (SOME)
• Purpose
  • Investigate sexual re-offending and/or the commission of new sex crimes while in treatment and/or under court supervision
  • This procedure is identified as the "public safety test"
PCSOT TESTS-SOME

• SOME conducted if any of the following conditions exist for anyone in containment:
  • When containment believes risk is elevated
  • When primary interest in sexual re-offense
  • When there is a specific request
  • When deceptive reactions on Maintenance that included a sexual re-offending RO
  • Recommend A SOME when: the likelihood of sexual offense or other sexual crime is elevated.

PCSOT TESTS-SOME

• Time of Reference
  • e.g.
    • Since you started treatment...
    • Since you started probation...
    • Since your last polygraph...

  > > > > > > > > > > > > > > > > Present Time

PCSOT TESTS-SOME

Frame of Reference

The Book of Sexual Law Violations
PCSOT TESTS-SOME

Relevant Questions for the SOME

• RQs pertain to criminal sexual behaviors
  • Rape
  • Child Molestation
  • Etc

• RQs designed to address a direct target
  • e.g. Since you last polygraph, have you had sexual contact with a minor?

• RQs specific to a sexual behavior or type of sexual behavior
  • e.g. Since you started probation, have you had sexual contact with anyone without their consent?

• RQs specific so DI reactions direct containment team to prohibited sexual behaviors

• RQs do not attempt to predict future behavior
  • e.g. When you are finished with probation, are you going to re-offend?

• RQs do not pre-suppose guilt on part of offenders
  • e.g. Have you stopped touching the sexual organs of minors with your hand in the last six months?
PCSOT TESTS-SOME

• New Accusations: If a new sexual complaint is made against current sex offenders, a test of these matters should not be conducted within the PCSOT model or by PCSOT examiners involved with this offender until or unless the courts/police/prosecutors have closed cases.

Admissibility of Polygraph & PCSOT

Three Significant Legal Events


#2 - Dansby v. State (CCA, May 8, 2013)

#3 - SB 358 – Effective June 14, 2013

Leonard v. State, 385 SW3d 570
(Tex. Crim. App. 11/21/12)

- Placed on Deferred Adjudication for Aggravated Sexual Assault in November, 2004
- Required to submit to Sex Offender Treatment; as part of this condition, Leonard had to take polygraph examinations
- Leonard failed five (5) polygraph examinations and was terminated from the Sex Offender Treatment Program
- Trial Court held an Evidentiary Hearing in which Leonard's Sex Offender Treatment Provider testified and his testimony included the five (5) failed Polygraph examinations; the only other witness was the Probation Officer (Note: the Polygraph Examiner did not testify at the Adjudication Hearing)
Leonard v. State, 385 SW3d 570
(Tex. Crim. App. 11/21/12)

-The trial judge adjudicated Leonard and sentenced him to 7 years IDTDCJ
-On direct appeal to the 11th COA, the case was reversed
-The Court of Criminal Appeals, the CCA reversed the COA and affirmed the conviction on March 7, 2012 (Leonard I)
-On rehearing, they withdrew their original opinion and set aside Leonard’s conviction on November 21, 2012 (Leonard II)
-The majority opinion found that polygraph evidence was not scientifically reliable and therefore not admissible to revoke Leonard’s probation

Dansby v. State, No. PD-0613-12
(Tex. Crim. App. 5/8/13)

-Dansby plead guilty to the lesser offense of Indecency With A Child and was placed on 5 years DEF ADJ on July 9, 2008
-He also was ordered into a Sex Offender Treatment Program
-He attended approximately 50 Group Sessions and passed two “Maintenance Polygraph Examinations”
-Dansby was also required to take a “Sexual History Polygraph Examination” and he showed up to take that test on April 6, 2009
-When it became clear to Dansby that the Examiner was going to ask him about extraneous prior sexual offenses, Dansby told the Examiner: “his attorney told him not to say anything that might result in a prosecution”; based on Dansby’s comments, the Examiner felt he was left with no other option than to terminate the interview

Dansby v. State, No. PD-0613-12
(Tex. Crim. App. 5/8/13)

-Dansby was terminated from the Sex Offender Treatment Program and the State filed a Motion To Adjudicate; the State called two witnesses: the Polygraph Examiner and Dansby’s Therapist; Dansby called his Probation Officer as a witness
-Trial Court sentenced Dansby to 18 years IDTDCJ
-On Direct Appeal, the 5th COA held that Dansby’s 5th Amendment Rights were not violated
-However, on May 8, 2013, a majority of the CCA held that the “sexual history” exam did violate Dansby’s 5th Amendment Rights
SB 358 – Effective June 14, 2013

-Amended CCP Article 42.12 to be in compliance with the *Leonard* decision

-Prohibits a Trial Court from revoking a probation or adjudicating a defendant based solely on the "uncorroborated results of a polygraph examination"

Moving Beyond PCSOT

Polygraph testing has expanded beyond community-based testing post-convicted sex offender testing (PCSOT) to Civil Commitment Institutional Testing (CCIT) and confined residential treatment facilities.

CCIT

• Civilly committed sex offenders
  • sexually violent predators
  • inherently dangerous to the community
  • require incarceration in a secure treatment facility even after serving prison sentences
CCIT

• CCIT delves further than PCSOT
  • Able to have continuous access to offenders
  • Able to probe further into offenders’
    • Histories
    • Instant offenses
    • Current behaviors
  • More demands for variety of testing techniques

CCIT

• Polygraph to assess offenders’ progress
  • Validating self-report documents - maximize treatment effectiveness
    • Words
    • Thoughts
    • Deeds
    • Greatest production - breaking denial

CCIT

• Beyond traditional test to:
  • Validating penile plethysmograph findings
  • Trauma issue validations
  • Deviant / violent actions towards victims
  • Disclosure of deviant sexual thoughts / fantasies
  • Institutional behavioral issues
  • Medical claims and concerns
  • Female Sexual Arousal and Interests
CCIT

• Types of CCIT
  • Instant Offense: Similar to PCSOT except
    • Can be years later while medical / mental issues corrected

Types of CCIT

• Sexual History Exam: Similar to PCSOT except
  • Include prison & Institutional time
  • IO must be resolved first
  • Types of SHE – more breakout testing
    • Child victims only
    • Adult victims only
    • Paraphilias
    • General SHE that includes everything

CCIT

• Trauma History Testing
  • verify offenders’ claim of personal sexual victimization
  • offenders are considered to be victims until claims of victimization are disproved
  • It is not unusual for offenders to lie about personal sexual victimization (Hindman, 2001).
CCIT

• Penile Plethysmograph Validation
  • Upon completion of PPG test, offenders are asked to verify via polygraph testing that countermeasures were not attempted or employed

CCIT

• Institutional Maintenance
  • to ensure the safety of staff and offenders
  • investigative and are conducted to identify violations of institutional policy
    • possession of contraband
    • possessons of weapons
    • use and possession of alcohol and drugs
    • unauthorized sexual contacts

CCIT

• Thoughts and Fantasies Exam
  • Deviant sexual thoughts and fantasies, without masturbation, must also be confronted in CCI settings
  • Use the Sexual Thoughts and Fantasies Questionnaire
  • Questionnaire is completed and reviewed with treatment providers and/or sex offender treatment groups
The veracity of the questionnaires then becomes the target of the polygraph test - not specific thoughts or fantasies.
Effects of Repeated Testing

Very little research on the effects of multiple tests on continued accuracy; however “...there is concern that repeated administration of polygraph tests may habituate or sensitize offenders” (Branaman & Gallagher, 2005 in Rosky, Jeffrey, “The (F)utility of Post-Conviction Polygraph Testing, 2013).

Effects of Repeated Testing

“...After multiple tests are administered, failed outcomes are much less likely to be accurate than passed outcomes” (Grubin, 2013).

To offset this concern:
1) Use different examiners to test the examinee;
2) Switch to single issue from multi-issue testing
3) Don’t get to self-assured defending opinions.
4) Classify the test as “a utility test.”

Effects of Repeated Testing

-A follow-up to a Madsen & Grubin (2006) study...
...revealed that offenders who were wrongly accused of lying (F+) were more likely to have previously experienced a sanction due to a polygraph test. This may suggest that for some individuals, having been punished due to a polygraph result might predispose them to react to the relevant issues at a later test” (Increase False + likelihood).”

MYTHS VS. FACTS

• CAN THEY BEAT THE TEST?
• WHAT CAN AFFECT TEST OUTCOME?
• WHEN PCSOT SHOULD AND SHOULD NOT BE USED
• SELF-REFERRALS: SHOULD A PCSOT EXAMINER TEST THEM?

USING THE POLYGRAPH EFFECTIVELY

• GOOD RELATIONSHIP WITH POLYGRAPH EXAMINER
• POLYGRAPH EXAMINERS ATTEND GROUP
• LEARN ABOUT TYPES, QUALITY CONTROL
• LEARN ABOUT TREATMENT
• EDUCATE CLIENT, AND TEAM TO POLYGRAPH
• USE MUST BE CONSISTENT AND APPLIED TO ALL PARTS OF TREATMENT AND SUPERVISION
• ADEQUATELY PREPARE THE CLIENT AND STRONGLY PRESENT THE VALIDITY AND NECESSITY OF THE POLYGRAPH

THE CLINICAL POLYGRAPH

• USE WILL COMMUNICATE TO THE OFFENDER THAT THEY CAN NOT CONTINUE TO DENY
• HONESTY IS KEY TO SUCCESSFUL TREATMENT AND SUPERVISION
• TREATMENT AND SUPERVISION MUST BE SPECIALIZED SO THAT THEY UNDERSTAND AND USE THE POLYGRAPH
POLYGRAPH. . . .

• HOW GOOD IS TREATMENT OR SUPERVISION WITHOUT THE TRUTH THAT THE POLYGRAPH CAN PROVIDE?
• THE VALUE DEPENDS UPON THE PREPARATION OF THE CLIENT AND THE STRONG BELIEF IN THE INSTRUMENT AMONG THE ENTIRE TEAM

REFERRAL SOURCES AND USE OF THE POLYGRAPH

• THE COURTS
• SUPERVISION OFFICERS
• ATTORNEYS
• THE CLIENT OR CLIENT’S FAMILY

EFFECTIVE AND RESPONSIBLE TREATMENT AND SUPERVISION IS...

• OBJECTIVE
• SUBJECTIVE
• CREATIVE
• THE POLYGRAPH AIDS IN ALL AREAS
WHAT DOESN’T WORK

• SHORT TERM TX
• WORKBOOK TX
• SHAMING
• BATTERING
• SELF-REPORT ONLY
• POOR/NO COMMUNICATION
• THERAPY

• RIGIDITY
• POOR/NO BOUNDARIES
• UNTRAINED TX AND SUPERVISION
• UNCLEAR STRUCTURE
• NO POLYGRAPHS

QUESTIONS.....

Why are these tests not properly done?

RQ: In your sexual autobiography that you filled out today, have you intentionally left out any deviant sexual acts that you have done? A: No

RQ: Before January of 2003, did you know the real age of (IO victim)? A: No

RQ: Other than the two females we just talked about, are there any other individuals you have committed deviant sexual acts against? A: No

RQ: Did you try to suppress your arousal responses on the PPG test, that Bob White gave you? A: No
Why are these tests not properly done?

RQ: Since your last polygraph, other than what we discussed, have you had any contact with your victim?  A: No

RQ: Since your last polygraph, have you been alone in the presence of a minor?  A: No

RQ: Since your last polygraph, have you intentionally withheld information regarding your sexual behavior from your therapist?  A: No