

# THE VALUE OF POLYGRAPH TESTING IN SEX OFFENDER MANAGEMENT

## Research Report Submitted to the National Institute of Justice

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# INTRODUCTION

According to a national telephone survey conducted by the Colorado Division of Criminal Justice,<sup>1</sup> 16 percent of probation and parole agencies nationwide used the post-conviction polygraph with adult sex offenders in 1998.<sup>2</sup> Despite the polygraph's relatively limited use, the value of applying polygraph technology to the risk management of adult sex offenders became clear during the course of the research reported here.

This report builds on a previous 1996 study undertaken by the Colorado Division of Criminal Justice for the National Institute of Justice, which indicated that in 1994 fewer than ten percent of probation and parole agencies used the post-conviction polygraph (English, Colling-Chadwick, Pullen, and Jones, 1995; English, Pullen, and Jones, 1996; English, Pullen, and Jones, 1997). The 1996 study focused on describing the most promising case management practices of adult sex offenders on probation and parole nationwide. Findings included a description of policies and practices that effectively contained the risk of sex offenders serving sentences in the community.<sup>3</sup> This collection of selected policies and practices was labeled a "containment approach."<sup>4</sup>

The containment approach is a five-part strategy. Each of the five parts represents a fundamental element in the effective management of adult sex offenders. In the current study, we again found these same elements must be present to maximize the effects of risk management efforts by criminal justice professionals. A comprehensive containment approach to the risk management of adult sex offenders must include the following components:

1. **A clearly articulated community safety/victim-oriented mission** that requires case decisions, individual case practices, and cross-agency policies to be based on methods that prevent harm toward current and potential victims by known sex offenders.

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1 This research was supported by grant number D97LBVX0034 from the National Institute of Justice to the Colorado Division of Criminal Justice. The views expressed here are those of the authors and do not necessarily represent the position of the National Institute of Justice.

2 The 16.1 percent indicates those agencies that reported using the polygraph "often" or "always." Appendix A contains the findings from the 1998 telephone survey.

3 Approximately 60% of convicted sex offenders receive sentences to probation and, of those that go to prison, 98% eventually return to the community (Greenfeld, 1997).

4 Researchers and policy analysts at the Division of Criminal Justice, in the Colorado Department of Public Safety, began studying the management and containment of adult sex offenders in 1993. For the first study, we conducted a national telephone survey of a stratified (by population density and geography) sample of 732 probation and parole supervisors. The telephone survey was part of a two-year investigation that included an extensive literature review on victim trauma and sex offender treatment, and a systematic document review of scores of materials ranging from agency memoranda and protocols to legislation and administrative orders. The study included field research in 13 jurisdictions in six states. During the field research over one hundred interviews were conducted with professionals with expertise in sex crimes, including law enforcement officers, defense and prosecuting attorneys, judges, victim counselors and advocates, child protective workers, probation and parole administrators, supervisors and officers, treatment providers, polygraph examiners, and sex offenders. The findings from the research resulted in a description of a promising approach for managing adult sexual offenders. A description of this *Containment Approach* is available elsewhere (for example, see English, Pullen, & Jones, 1996; English, Pullen and Jones, 1997; and English, 1998).

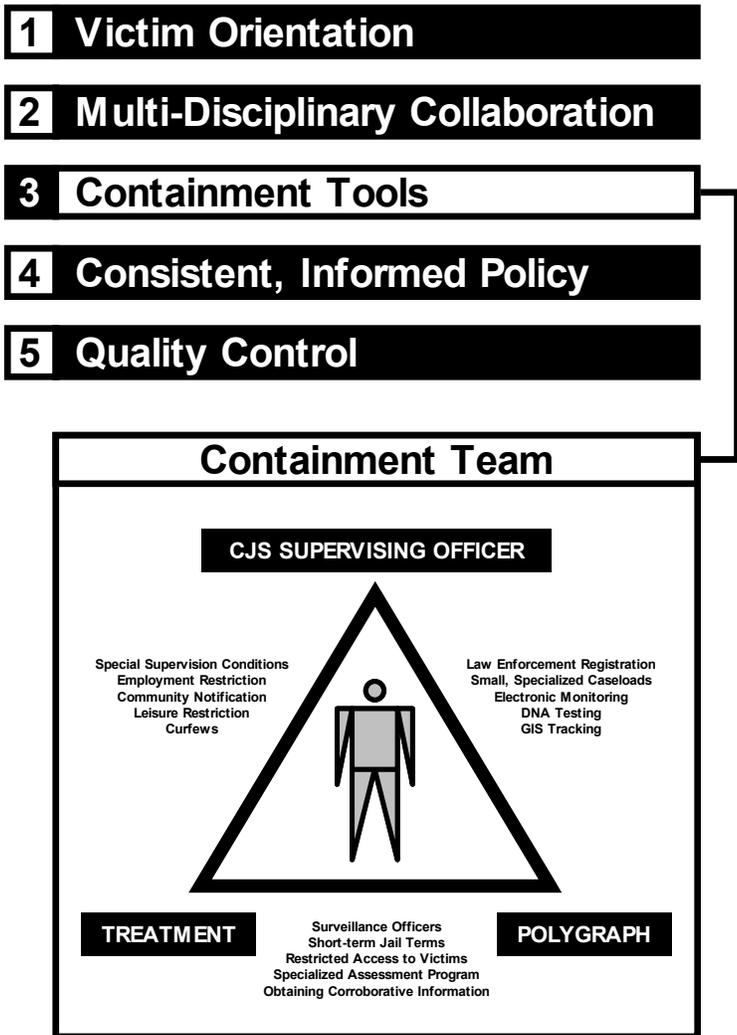
2. **The coordinated activity of many well-informed, multi-disciplinary, intra- and interagency collaborative teams**, with participating agencies committed to developing specialized sex crime units where possible and appropriate. This teaming integrates expertise from the victim community, law enforcement, probation, parole, the treatment community (including prison treatment providers), the court, social services/child protective services, hospital emergency room staff, victim therapists, and the prosecution and defense bars. Various teams form and work together as cases proceed through the criminal justice system (and/or child protection system) and contribute to the development of consistent policies focusing on victim protection and offender accountability. Representatives from these organizations also train staff in other organizations to emphasize the need for an integrated approach. The containment team, highlighted in the next component, is a very specific collaborative grouping, and is at the heart of the containment approach.
  
3. **The use of a variety of containment strategies**, especially a containment team consisting of the supervising officer, treatment provider and post-conviction polygraph examiner that works closely together to obtain the information needed to manage the offender.<sup>5</sup> Community containment strategies are usually implemented by this 3-member team and include a wide range of risk management tools such as intense surveillance, specialized treatment that incorporates regularly scheduled post-conviction polygraph examinations, law enforcement registration, urinalysis testing, electronic monitoring, curfews, and DNA testing. Effective containment limits access to potential victims by monitoring and restricting work activities, leisure time and internet use, among other things. Containment strategies require the consistent use of an ample array of sanctions for *pre-assaultive (or precursor) behaviors and emotions* that many sex offenders commonly carry out before committing a sexual assault (for example, Pithers, Kashima, Cumming, Beal, and Buell, 1988; Pithers, 1990; Laws, Hudson, and Ward, 2000; Ward and Hudson, 2000).
  
4. **Consistent, informed public policies** (legislation, judicial, executive, administrative and program policies, for example) that are based on research and best practices. Policies address gaps in risk management activities and empower the supervising officer to respond quickly to offender behaviors that are out of compliance with treatment requirements and supervision conditions.
  
5. **Resources dedicated to state and local quality control efforts.** Quality control is directed at 1) program monitoring and evaluation activities, and 2) professional standards of practice to ensure that efforts aimed at victim safety

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<sup>5</sup> The containment team should expand as needed to include, for example, child protection services, or the victim's therapist. Although the well-being of current and potential victims is paramount in guiding the decisions of the team, (see component #1), the victim is not expected to participate directly in a containment team. It is not the victim's responsibility to manage the behavior of the offender.

and the humane treatment of offenders are not compromised.

FIGURE I. THE CONTAINMENT APPROACH HAS FIVE COMPONENTS



## The Post-Conviction Polygraph as a Containment Tool

Our recommendation to use the post-conviction polygraph examination as a component of a containment approach was among the most controversial findings of the 1996 study. After all, the polygraph has a controversial history in criminal justice. When criminal justice professionals hear discussions of the polygraph, we often think of its failure to hold up to evidentiary standards in court (Pullen, Olsen, Brown and Amich, 1996).<sup>6</sup> Also, stories of its use on crime suspects who have “fooled”

<sup>6</sup> See the discussion on admissibility on page 22 of this report.

the machine have led the general public and many criminal justice professionals to distrust this tool.

These concerns about the polygraph can distract criminal justice professionals from a fundamental issue in sex offender management: the need for complete and accurate information to (a) determine risk to the public and (b) develop a treatment plan that reflects the offender's needs. The expectation that the sex offender will be honest and forthright, as a condition of community supervision, can often be lost in debates about the post-conviction polygraph. Complete information about the scope and frequency of a sex offender's deviant activities is available only from the offender, yet most sex offenders have made secrecy and dishonesty a part of their lifestyle.

In fact, most sex offenders have deceived many people, often for many years,<sup>7</sup> and few containment professionals believe that sex offenders will suddenly begin telling the truth when they are placed under correctional supervision (Pullen et al., 1996). The skill that has allowed these offenders to manipulate many victims allows them to manipulate criminal justice system officials as well (see Strate et al., 1996, for a discussion of criminal justice policies that reinforce this type of manipulation). This lack of disclosure by sex offenders led the international Association for the Treatment of Sexual Abusers (ATSA, 1993) to state, in its *Practitioner's Handbook*, that therapists should not rely solely on offenders' self reports. Rather, to determine compliance with treatment requirements, ATSA made recommendations for the use of the polygraph to validate the offender's self-report. Using polygraphy—formally known as the psycho-physiological detection of deception (PDD)—with sex offenders is akin to using urinalysis testing with drug offenders. It is a method of monitoring very specific behaviors.

Indeed, the research literature reflects the inadequacy of official record data to describe an offender's sexual assault activity. Ahlmeyer et al. (2000) used the post-conviction polygraph to encourage disclosures for treatment and found that, for a sample of sex offenders in prison, fewer than one percent of victims were identified using official record data. In fact, some research on sex offenders reveals an astonishing level of secret sexual abuse activity. Abel and Rouleau (1990) studied 561 sex offenders who responded to an ad in the paper or voluntarily sought treatment from two community-based clinics. According to the self-report data, the researchers found that half of the sample engaged in sexual abuse before the age of 18. This "early onset" group had committed, on average, 380 sex crimes by age 18. Ahlmeyer et al. (2000) found in their sample of prisoners in treatment that each had committed, on average, 528 sex offenses in their lifetime against 184 victims.<sup>8</sup> With this high level of activity by sex offenders, it is easy to understand Kilpatrick et al.'s (1992) estimate, based on victimization surveys, that 13 percent of women will experience a forcible rape in their lifetime.

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<sup>7</sup> Sex offenders report the time between their first sex crime and their first arrest to be, on average, 13 to 16 years (Abel et al., 1987 and Ahlmeyer et al., 2000, respectively).

<sup>8</sup> Abel et al. (1990) and Ahlmeyer et al. (2000) include both hands-on and hands-off offenses. Ahlmeyer et al. report a median of 95 sex offenses against a median of 26 victims.

Given the need for accurate information on individual sex offenders and the growing use nationwide of the post-conviction polygraph exam, we undertook this study to address some basic questions regarding the use of the polygraph with sex offenders: **How is the polygraph used in a sex offender containment approach? Is it reliable? Is its use with convicted sex offenders legal and ethical? Is the information admissible in court? Is its use really necessary? What does its use add to the management of sex offenders?**

To address the questions above, we conducted a national telephone survey of over 700 probation and parole supervisors, observed post-conviction polygraph examinations, undertook literature reviews on sex offender treatment and victim trauma, reviewed unpublished documents, examined relevant case law, and engaged in field research in 17 jurisdictions in seven states (New York, Massachusetts, Texas, Wisconsin, Colorado, Oregon, and California).<sup>9</sup> Sites were selected based on the length of time the post-conviction polygraph was in use (or not), the extent to which containment activities were integrated (or not), and the role of the polygraph examiner (most examiners were in private practice, and one was a member of the state police). We conducted unstructured interviews with treatment providers, prosecution and defense attorneys, sex offenders, criminal justice officials, probation and parole officers and their colleagues and supervisors, and specially trained post-conviction polygraph examiners.<sup>10</sup> We collected data directly from the case files of 232 convicted sex offenders who were under community supervision in four states. We attended national meetings sponsored by the American Polygraph Association, the Association for the Treatment of Sexual Abusers, and interviewed more than two dozen examiners from across the nation, including those working for the Department of Defense Polygraph Institute. Here is some of what we learned.

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9 In prior years we also traveled to Texas, Oregon, Louisiana, Colorado, Ohio, and Arizona to study sex offender management practices in a variety of jurisdictions. Please see Appendix A for a complete description of the methods used to conduct this study.

10 We asked professionals questions about risk assessment strategies, treatment and supervision tools, policies regarding the use of information generated from the polygraph examination, their perception of gaps in the containment of these offenders in their jurisdictions, barriers to closing the gaps, and program implementation issues. We asked many questions about the extent to which they interacted with other professionals engaged in this work (especially other containment team members), their expectations of offenders and team members, and how the additional information obtained from sex offenders via the polygraph exam affected them personally. We asked offenders about their experiences with the polygraph test and the examiner, the supervising officer, and their treatment provider. Interviewees in jurisdictions not using the post-conviction polygraph examination were asked about their perceptions of the use of the polygraph exam for this purpose, implementation issues, and other containment strategies.



## BACKGROUND

### How Is the Polygraph Used in a Sex Offender Containment Approach?

The post-conviction polygraph examination is used to obtain information about the offender that he or she would otherwise likely keep secret. Preparation for the polygraph actually begins when the treatment provider and the supervising officer emphasize the need for complete truth as a first step toward offender responsibility, accountability, and community safety. Offenders are encouraged to disclose complete and accurate information so that a viable treatment plan can be developed. Age of onset of sexually abusive behaviors, scope and frequency of deviant activity, the offender's thinking and assault planning strategies—all these pieces of information are necessary to assess each individual's risk and treatment needs. Effective treatment and surveillance activities require interventions that are relevant to each offender's patterns of assaultive behavior, or *modus operandi*.

*Therapists evaluating and/or treating sexual assaulters need valid, reliable information from the sex offender. Without this, the therapist is less able to identify the precise treatment needs of the patient, to evaluate precisely the impact of treatment interventions, and to quantify treatment's long-term effects. Since much valuable information is frequently unobservable by the therapist, steps must be taken to insure valid, reliable offender reports (Abel and Rouleau, 1990:10).*

The polygraph exam is integrated into these treatment and supervision practices to verify that the offender is being truthful about his or her past and present harmful behaviors. This research identified three types of polygraph examinations that are most commonly used to obtain information on offender behaviors and verification of offender truthfulness:

1. **Sexual history disclosure polygraph exams.** Sexual history disclosure polygraph examinations are used to verify the accuracy and completeness of the sexual history information a sex offender provides during treatment. This information is obtained using a very specific treatment tool: sexual history documentation. This treatment task requires the offender to record the gender, age, and method of assault for every past victim. The sex history document—to be completed within six months of commencing treatment—is then provided to the polygraph examiner who, after reading it carefully along with other case file information, asks the offender very specific questions about the accuracy of parts of his or her sex history. In most cases, the completed sex history document is long, with disclosures of many prior assaults and attempted assaults, and many different types of assaults as well. The clear expectation that the offender will be

accurate and truthful on the sex history assignment, coupled with the ability to verify truthfulness through polygraph exams, increases the offender's incentive to disclose this potentially embarrassing and illegal information to the treatment provider.<sup>11</sup>

2. **Denial and other specific-issue exams.** Denial exams verify the details of the conviction offense. These tests are usually given when the offender's version of the crime varies from the victim's version, or the offender continues to deny committing the crime of conviction. Specific-issue exams are also used to address a single concern or suspicion that arises during an offender's probation or parole, such as suspected contact with children. Specific-issue tests are also recommended as a follow-up to deceptive results on previous exams to clarify the nature of the deception.
3. **Maintenance or monitoring exams.** Maintenance or monitoring exams are used to verify whether a probationer or parolee is complying with the terms and conditions of community supervision and cooperating with treatment expectations. These exams require the polygraph examiner, the treatment provider, and the supervising officer to work together to identify questions that target high-risk behavior related to the assault patterns described in the offender's sexual history document.

Table 1 presents the proportion of probation and parole supervisors who responded to the national telephone survey and indicated that their officers regularly used the post-conviction polygraph examination for each of the three purposes described above. Please see Appendix A for a summary of findings from the telephone survey.

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<sup>11</sup> Because the information is usually incriminating, agreements regarding prosecution for past crimes, or instances of limited immunity, are discussed. Most commonly, the prosecution makes the decision to prosecute past crimes on a case-by-case basis, and frequently there is insufficient information to prosecute. Victim's organizations must make recommendations about the value of contacting past and recent victims, from whom there has been no outcry, and offering services, weighing privacy rights against the value of intervention.

**TABLE 1. HOW IS THE POST-CONVICTION POLYGRAPH EXAMINATION REGULARLY USED?** (n=155)<sup>12</sup>

OBTAIN SEXUAL HISTORY INFORMATION	52.2%
OBTAIN SPECIFIC-ISSUE INFORMATION ABOUT THE CURRENT CRIME, AN ALLEGATION OF A NEW CRIME, OR TO ASSIST THE OFFENDER BREAK THROUGH DENIAL	45.8%
MONITOR THE OFFENDER FOR COMPLIANCE WITH TREATMENT/SUPERVISION	63.9%

The information gained from post-conviction polygraphs—whether sex history, denial, or maintenance exams—is then used to develop or modify treatment and supervision plans so that these are congruent with the offender’s risk and need areas. These examinations, however, do not stand alone in a sex offender management program. Rather, the use of the polygraph occurs in the context of a very important synergistic process that results from close, consistent collaboration among the polygraph examiner, the treatment provider and the supervising officer. The three professionals, and the activities they undertake, are interdependent in fully functioning containment teams, with each professional reinforcing the work of the other. When this interdependency does not occur, as we observed in some jurisdictions, the team suffers from diminished capacity.<sup>13</sup>

The telephone survey also confirmed that other containment strategies accompany the use of the post-conviction polygraph in most jurisdictions. Agencies that incorporated the post-conviction polygraph in the management of sex offenders, according to phone survey respondents, were significantly ( $p < .05$ ) more likely to have specialized sex offender caseloads (79 percent<sup>14</sup> compared to 46 percent). These agencies were also more likely ( $p < .05$ ) to use a risk assessment instrument for sex offenders under supervision (39 percent compared to 19 percent). All agencies using the post-conviction polygraph with sex offenders required offenders to undergo

<sup>12</sup> The sampling frame of 732 for the 1998 study represents the total number of probation and parole agencies participating in a telephone survey conducted by the Colorado Division of Criminal Justice in 1994. The intent was to re-contact all 1994 survey participants, focusing on a number of questions related specifically to the use of the polygraph with sex offenders. The 1994 sample was designed to represent probation and parole agencies across the nation and was stratified based on geographic location and population density. Specifically, each state was divided into four (generally equal) geographic quadrants and, using population figures from the 1990 census, one respondent was selected for every 500,000 or fewer people in each quadrant. In 1998, 146 parole and probation agencies responded that their office used the post-conviction polygraph with convicted sex offenders “sometimes,” “often,” or “always.” These surveys were weighted to reflect offices that had consolidated resulting in a weighted n of 155.

<sup>13</sup> Evidence of diminished capacity included the following: infrequent communication and sharing of information among team members; significant delays in scheduling the polygraph examination; lack of adequate preparation of the offender for the examination; insufficient contact and planning by team members before the examination; and team members who felt frustrated with each other or whose relationship with the offender was stronger than with each other.

<sup>14</sup> In the 1994 study, we found that 30 percent of probation agencies surveyed and 32 percent of parole agencies surveyed had specialized caseloads. Agencies with specialized sex offender caseloads were significantly ( $p < .05$ ) more likely to report the use of policies, practices or procedures that included the use of polygraph data, special supervision conditions (i.e., no contact with victim or children was a condition in 81 percent of probation offices and 77 percent of parole offices), an approved list of treatment providers, emphasized after-hours monitoring of offenders and included the use of jail as an intermediate sanction. Agencies with specialized caseloads in 1994 were also more likely to have received officer training on sex offender management within the last year (English, Colling-Chadwick, Pullen, Jones, 1995).

mental health treatment, compared to 93 percent of agencies that did not use the polygraph (this difference, while small proportionally, was statistically significant).

Almost half (45 percent) of the respondents using the polygraph reported using it for five or more years: 28 percent of respondents reported using the polygraph for five to nine years, and 17 percent of respondents had been using the polygraph for more than nine years.

## Is the Polygraph's Use with Convicted Sex Offenders Legal and Ethical?<sup>15</sup>

Legal and ethical concerns about the polygraph center on issues of self-incrimination, invasion of privacy, questions about the accuracy and reliability of polygraphs, and the admissibility of polygraph evidence in court. Officials using sex offense-specific treatment and the post-conviction polygraph must formally address, in particular, how to handle evidence or confessions of prior sex offenses. These decisions are at the heart of the legal and ethical considerations surrounding use of the polygraph in community-based sex offender management. Legal and ethical issues varied by geographic region, according to telephone survey results (see *Ethical/Legal Considerations* section of Table 2 below).

**TABLE 2. BARRIERS TO USING THE POLYGRAPH BY GEOGRAPHIC REGION<sup>16</sup>**

REGION (b)	LACK OF RESOURCES			NO POLYGRAPH EXAMINERS (a)			ETHICAL/LEGAL CONSIDERATIONS (a)			OTHER CONSIDERATIONS
	% YES	% NO	TOTAL	% YES	% NO	TOTAL	% YES	% NO	TOTAL	% YES
Northeast	46.0%	54.0%	100%	22.1%	77.9%	100%	24.5%	75.5%	100%	18.4%
South	41.1%	58.9%	100%	15.5%	84.5%	100%	10.1%	89.9%	100%	28.7%
Central	51.5%	48.5%	100%	27.2%	72.8%	100%	21.4%	78.6%	100%	35.9%
West	43.0%	57.0%	100%	10.7%	89.3%	100%	16.1%	83.9%	100%	36.9%

(a) Chi-Square table significant at  $< .05$ .

(b) Percentages for each region based on the following *weighted n*: Northeast 163, South 129, Central 103, West 149.

(c) Other Considerations (*e.g.*, lack of knowledge, confidence, familiarity, accessibility, policies, support regarding polygraph; no perceived need or utility; controversial and individual rights issues)

15 Almost one in five (18.2 percent) survey respondents replied that barriers to using the polygraph included legal and ethical issues. Significantly more respondents from the Northeast (24.5 percent) and Central (21.4 percent) sections of the country identified this concern as a barrier to implementing the post-conviction polygraph. According to survey respondents, a lack of resources was most frequently reported as a barrier to using the polygraph with sex offenders.

16 Northeast (CT,DC,DE,MA,MD,ME,NH,NJ,NY,OH,PA,RI,VT); South (AL,AR,FL,GA,KY,LA,MS,NC,SC,TN,VA,WV); Central (IA,IL,IN,KS,MI,MN,MO,ND,NE,WI); West (AK,AZ,CA,CO,HI,MT,NM,NV,OK,TX,UT,WY)

The Northeast and Central regions were more likely to report ethical and legal considerations as barriers to implementation, according to telephone survey results.

## SELF-INCRIMINATION ISSUES

The Fifth Amendment of the U.S. Constitution protects citizens against compelled or forced self-incrimination. The issue is important in the context of post-conviction polygraphs because of the expectation and requirement that the offender will waive confidentiality and make a full disclosure of his or her sexual history, including prior victims. The question about self-incrimination thus arises because an offender who discloses prior (or current) victims may be at risk of further prosecution or revocation.

Case law has established many of the conditions for claiming one's Fifth Amendment rights. Generally, Fifth Amendment rights are automatic when a person is in custody and temporarily deprived of liberty (hence the Miranda warning). If a person is not in custody, courts have generally found that he or she must actively invoke his or her Fifth Amendment rights. In *Marcum v. State*, 983 S.W.2d 762 (Tex. App. 14<sup>th</sup> Dist., Sept. 17, 1998), the court found that a polygraph examination administered as part of a court-ordered condition of probation is not considered an in-custody interrogation for purposes of triggering the need to give a Miranda warning. The court ruled that a parolee's confession to additional crimes during a polygraph post-examination interview was admissible in a parole revocation hearing.

In *Minnesota v. Murphy*, 465 U.S. 420 (1983), the court found no Fifth Amendment violation in questioning sex offenders on probation. However, statements made cannot be compelled. Compulsion pertains to the consequences to an offender for failure to admit responsibility for undetected sex crimes, and if these constitute substantial penalties that are too coercive. A complete review of court decisions reflects the need for local officials to include the polygraph examination as a documented supervision condition. Since the polygraph and sex offender treatment are intertwined, we recommend its use as a treatment tool be clearly stated.

Obtaining additional information about past victims and about a sex offender's pattern of offending is of significant value to many criminal justice officials we interviewed in the field, who believe that this knowledge protects victims by increasing the likelihood of managing sex offenders safely in the community. Therefore, policy makers in many jurisdictions have found a variety of ways to respond to this sensitive information. We documented the following three "solutions" in our field research:

### 1. Limited Immunity for Prior Crimes

In some jurisdictions that use post-conviction polygraphs, prosecutors provide limited or even full immunity from prosecution for *prior* crimes uncovered as a result of the treatment/polygraph process.<sup>17</sup> Usually, an offender

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<sup>17</sup> When an offender reports or is suspected of a new crime while under probation or parole supervision, the issues are very different. In this case, the offender's Fifth Amendment rights may be in effect, or may be invoked if a new case is under investigation. When disclosure occurs as a result of the treatment/polygraph process, the supervising officer or

is given immunity from prosecution for specific types of crimes, for example, only for crimes similar to the crime of conviction. Typically, limited immunity agreements stay in effect only as long as the offender complies with treatment and supervision conditions and does not reoffend. Of course, immunity agreements do not cover any new crimes committed while the offender is under probation or parole supervision.

Officials who support granting limited immunity argue that learning about prior victims is more important for treatment and public safety than prosecuting individual offenders for prior crimes that, without this containment strategy, would never be known. According to many probation and parole officers we interviewed, when sex offenders have limited immunity, they are more likely to disclose prior victims and assault activity. Officials in some jurisdictions also believe that identifying prior victims allows these victims to be contacted and offered services.

Understandably, many prosecutors are reluctant to go on record as supporting limited immunity agreements. Nonetheless, some prosecuting attorneys we interviewed supported the concept of immunity agreements because they believe that the information about additional victims that is gained through the treatment/polygraph process is, in effect, coerced and therefore could not be used to prosecute the offender. Others said that, with or without immunity agreements, an offender's disclosure of prior criminal sexual behavior does not mean there will be sufficient evidence to prosecute a case. In Jackson County, Oregon, the prosecutor agreed to grant immunity for prior crimes of a similar nature: "Although not all prosecutors would agree, our community has concluded that to prosecute all reported offenses would infringe on the offender's Fifth Amendment rights and thus would prohibit the therapeutic use of the polygraph" (Knapp, 1996:13-9).

## **2. Individual Case Review**

On the other hand, some prosecutors consider it professionally unpalatable and politically unwise to extend any immunity from prosecution for past crimes to sex offenders. These attorneys worry about uncovering a prior heinous sexual crime that will elude prosecution as a result of limited immunity agreements. In such jurisdictions, there may instead be a formal (or informal) agreement between the prosecutor's office and the probation/parole agency to make decisions on a case-by-case basis. In these jurisdictions, the prosecutor exercises his or her broad statutory discretion about whether to initiate further investigation and file a criminal case on prior sexual crimes. Often, the offender's compliance with treatment and supervision requirements is likely to have an effect on such decisions.

If a prosecutor determines that enough evidence exists to prosecute a case, but the offender is complying with treatment and supervision requirements, the

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local law enforcement officials must further investigate the suspicion or allegation. Coordination with local law enforcement should precede any additional polygraph testing, so that a post-conviction polygraph does not inadvertently interfere with a law enforcement investigation of the alleged new crime.

attorney may request a sentence that allows the offender to remain in the community, perhaps extending the probation or parole period. This option may work best in jurisdictions that are small enough to maintain consistent informal agreements.

### 3. Don't Ask, Don't Tell (Names, That Is)

In the absence of formal or informal immunity agreements with the prosecutor's office, the containment team at several sites noted that they manage information on past victims by asking the sex offender to omit identifying names or other information when disclosing prior sexual victims. For example, instead of using a victim's name, the offender might list Victim #1, Victim #2, etc., when he or she reports sexual history information. Using this approach minimizes or eliminates the risk for the offender of being prosecuted for past sexual crimes.

If this technique of non-identification of the victim name is used, both treatment providers and criminal justice supervisors should take extra precautions to ensure that the unidentified victims are not relatives or acquaintances with whom the offender may currently be having contact. Because most victims know or are acquainted with their offender (Kilpatrick et al., 1992), care must be taken to be sure that a current or recent victim is not missed as a result of an offender's non-disclosure of names.

Opinions are mixed on the "don't ask, don't tell" approach to handling criminal sexual history information. In some jurisdictions, the containment team believes that using this policy is the only way to ensure that sex offenders will provide information. To some professionals we interviewed, however, concealing specific victim information was seen as unacceptable, as it undermines the philosophy and the practice of full disclosure, reinforces the idea that certain secrets are required, and continues the offender's objectification of victims. On the other hand, many jurisdictions that require full identification of prior victims have not found a clear way to approach identified victims, or their parents, from whom there has been no outcry.<sup>18</sup>

Whatever the policy regarding prosecution of new crimes, nothing eliminates the legal responsibility of treatment providers and others in most states to report child abuse when they learn of it. However, reports of prior victims made to child protection agencies often result in minimal consequences to the offender. The small amount of information generally available, the lack of knowledge about a victim's current location, the lack of outcry by the victim or family, and the high caseloads common to most child protection agencies combine to make it unlikely that these cases will receive much priority in the system. Resolving these concerns in a manner that is congruent with local community values has generated useful discussions and conversations among prosecutors, victim organizations, supervising agencies,

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<sup>18</sup> One exception to this is Ontario, Oregon, where Jan Hindmann and her colleagues at *It's About Childhood* work to ensure that victims identified by sex offenders in treatment receive services.

treatment providers, and other stakeholders. In fact, it is a necessary activity in the planning phase of polygraph implementation.

## PRIVACY CONCERNS

Privacy concerns surrounding the use of post-conviction polygraphs are an important part of a broader philosophical discussion about the role of government and the justice system in our lives. Some people are disturbed by the expectation that an offender will be coerced into sharing his or her entire sexual history as well as current deviant criminal and non-criminal behaviors and fantasies during the treatment/polygraph process. Indeed, sex offenders taking post-conviction polygraph examinations are subject to practices that considerably reduce their privacy rights. Sex offenders are required to waive confidentiality, and treatment contracts and conditions of probation or parole set the expectation for an offender's full disclosure of his or her sexual history, at-risk behaviors, and new crime information.

Further, current theories about the role secrecy plays in the lives of sex offenders and the power and control issues that appear to plague most offenders' lives have led risk-focused professionals to believe that it is therapeutic—rather than unethical—to encourage sex offenders to give up all secrets related to sexual deviance. Some sex offenders display characteristics of antisocial personality disorder and/or psychopathy. According to Harris, Rice, and Quinsey, “Because pathological lying and use of deceit are among the distinguishing characteristics of antisocial personality disorder and psychopathy, great care will have to be taken by those charged with supervision to ensure that conditions of supervision are being followed” (Harris, Rice and Quinsey, 1998:104). When the offender does not disclose every sexual assault, then he or she remains in control of what the treatment provider and other containment professionals know. Allowing this control impedes the therapeutic process.

Most convicted sex offenders have organized their lives around deception, since their crimes are committed in secret. Past and present offenses are not easily detected, and sex offenders are certainly not forthcoming with shameful information about illegal acts (Carnes, 1983). Information about past and present deviant behavior—information that is essential to assessing risk and treatment needs—is extremely difficult to obtain.<sup>19</sup> Offending patterns are thought to be ingrained, compulsive, and lifelong (Marshall, 1990; Prentky et al., 1997). According to practitioners, sex offenders are often highly functioning people who use their social skills to gain access to victims. Prentky et al. (1990:62) assert that, for many sex offenders, “the victims are their social and sexual companions; the offenses are their social and sexual life.”

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<sup>19</sup> Sex offenders rarely get caught because the likelihood of victims reporting this crime is quite low. Kilpatrick et al. (1992) found only 16% of female victims reported the rape to law enforcement. Dupre et al. (1993) estimated that fewer than 10% of rapes are reported. Finkelhor et al. (1990) studied rape victims and found 33% of women and 42% of men never disclosed the rape to anyone until the researcher asked about it. Russell (1984) found fewer than 5% of sex crimes were reported to the police. Not surprisingly, the American Medical Association (1995) called sexual abuse the “violent silent epidemic.” Secrecy is essential to this level of sexual assault activity.

Another question related to the issue of privacy is whether the polygraph examination is more intrusive than other forms of community supervision of convicted offenders. For example, conditions of probation or parole commonly restrict associations (e.g., with other felons) and often require drug tests or prohibit the use of drugs and alcohol. Frequently, conditions of community supervision prohibit sex offenders from having unsupervised contact with children, even the offender's own children. In addition, the supervision contract (conditions of probation or parole) presumes that the offender will honestly answer questions posed by the supervising officer. The focus on sex, arousal, and assault patterns in sex offender management seems consistent with the focus on drugs and alcohol for substance abusing offenders, or on lifestyle and medication management for mentally ill offenders.

In sum, the post-conviction polygraph exam is to sex offenders what the urinalysis test is to drug offenders: a verification of information the offender self-reports to the treatment provider and supervising officer. The post-conviction polygraph, like the UA, is a case management tool that targets the high-risk lifestyle associated with this crime type. The post-conviction polygraph emphasizes the need for sex offenders to be honest about the parts of their lives that have been secretive and dangerous to others. The polygraph's use should be combined with many other tools that encourage supervision compliance (such as urinalysis, electronic monitoring, curfews, and employment and leisure time restrictions).

## ACCURACY AND RELIABILITY OF THE POLYGRAPH

One of the ethical considerations in the use of the polygraph exam with convicted sex offenders is the degree to which it is accurate and reliable in its findings. The research team spent considerable effort understanding the strengths and weaknesses of the research on polygraph accuracy and reliability. Research after 1980 is particularly valuable because it reflects advances in the technology, such as numerical scoring and development of more refined control question methods.

The most recent published review of polygraph reliability and validity studies was conducted by Forensic Research, Inc., of Severna Park, Maryland for the American Polygraph Association in 1997.<sup>20</sup> Reviews of field studies<sup>21</sup> indicate that between 96 and 98 percent of exams correctly identified deception. The test-retest reliability of field examination charts has averaged 92 percent; reliability of lab studies<sup>22</sup> has averaged 81 percent. Using studies of mock crimes conducted in laboratory settings, 82 percent of exams resulted in correctly identifying deception.

Note a few cautions when considering accuracy rates: 1) for nearly all studies, inconclusive results—meaning insufficient information was available to score the

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20 Copies of this paper may be purchased from the American Polygraph Association National Office, 951 Eastgate Loop, Suite 800, Chattanooga, Tennessee, 37411-5608.

21 Field studies involve determining accuracy by following up on real cases where the examination results were confirmed by confession.

22 Lab studies are mock crime scenarios. Critics of mock crime research say that detecting deception is difficult because the polygraph client has nothing significant at stake, and physiological measures are less reactive because fear of detection is difficult to manufacture. Hence, the error rate will be higher in these studies compared to field studies.

exam—are excluded from the averages, and this may overstate accuracy rates; however, calculating these inconclusive findings as deceptive would understate accuracy rates; 2) studies that *did not* use numerical scoring (mostly before 1980) have somewhat subjective findings.<sup>23</sup>

One of the challenges to polygraph research is that many variables can affect the accuracy of polygraph examinations. To conduct a valid examination, a polygraph examiner must use an accepted testing procedure and scoring system (Ansley, 1997). Examiners must also follow established practices to maximize accuracy and reliability. The American Polygraph Association has published standards of practice for examiners conducting post-conviction sex offender examinations, and these standards are intended to limit variation in practice across examiners (Dutton, 2000).

A valid exam also requires that the relevant test questions be clear to the examinee and narrow in scope. In addition, accuracy depends in part on the extent to which the examiner prepares for the examination. This means that the treatment provider and the supervising officer must work with the examiner prior to the exam. A thorough review of written case material is required to maximize accuracy. Without sufficient knowledge of the case, examiners might unknowingly develop questions that tap into outside issues, evoking a physiological response that is unrelated to the exam topic. Lack of preparation may result in the examiner letting the offender’s story dictate the examination questions. The problem is confounded if a deceptive examinee gains confidence (and worries less) because he or she believes the examiner has insufficient knowledge about the case. On the other hand, a non-deceptive examinee will worry more if the examiner appears unprepared.<sup>24</sup>

### ADMISSIBILITY OF POLYGRAPH EVIDENCE IN COURT

Often during the exam process—or during a treatment session prior to the exam—the offender will reveal that he or she has recently engaged in high-risk behavior. Such behavior reflects a lack of internal control on the offender’s part, and so external controls (i.e., sanctions that restrict activity) must be applied. When polygraph exams reveal a *prior* crime, courts vary in their willingness to accept this information as sufficient for revocation—whether the offender has confessed to a new crime or fails a question targeting a new crime. Since the standard of proof is “a preponderance of the evidence” in revocation hearings, rather than “beyond a reasonable doubt” required at a criminal trial, and since probation and parole are usually considered privileges, not rights, polygraph information is sometimes provided to the court or parole authorities. In general, it appears that written conditions of supervision that require a post-conviction polygraph examination offer criminal justice officials the greatest range of responses.

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<sup>23</sup> For more information on concerns about polygraph accuracy and the quality of polygraph research, see Lykken’s *Tremor in the Blood* (1998).

<sup>24</sup> One study found that the accuracy of the test score may decrease by up to 8 to 10 percent if the examiner does not have a sufficient understanding of the case facts (Blackwell, 1994).

Concerns about the use of polygraph information in court typically pertain to explicit standards governing evidence presented in criminal or civil proceedings. State statutes vary regarding the admissibility of polygraph information as evidence in a court of law.<sup>25</sup> These concerns tend to fall into the following categories:

1. The lack of agreement about whether polygraphy is a scientifically valid technique;
2. The lack of a known (certain) error rate;
3. The lack of *controlling* standards of practice in the polygraph professions; and
4. Questions about juries giving polygraph findings excessive weight in the decision- making process and weakening their role as determiners of truth.

Most case law pertains to the admission of polygraph evidence for a determination of guilt or innocence. For 70 years, federal and state courts were uniform in ruling polygraph evidence to be inadmissible under the criteria for scientific evidence described in the 1923 case *Frye v. United States* (293 F. 1013, CDAC 1923). *Frye* held that scientific evidence, to be admissible in court, must be based on scientific methods that have the general acceptance of the relevant expert community. In 1993, the Supreme Court held that certain Federal Rules of Evidence should govern the admissibility of scientific evidence and required the judge to make a preliminary assessment of the relevance and reliability<sup>26</sup> of the evidence (*Daubert v. Merrell Dow Pharmaceuticals, Inc.* [509 U.S. 579, 1993]).

The *Daubert* case opened the door for the admissibility of polygraph data in post-conviction sex offender management in part because it gives district courts the authority to determine if evidence is relevant and reliable. In *Kansas v. Lumley* (WL 218704, 1999), for example, the defendant appealed a prison sentence that resulted from his untruthful answer to a polygraph question regarding contact with a child. Upon appeal, the judge found that polygraph reliability was sufficiently robust to be acceptable for a parole or probation revocation hearing that requires a lesser standard of proof than a finding of guilt. Further, the judge indicated that without the polygraph examinations and the admission of the results of the examination *as a condition of probation*,<sup>27</sup> the sex offender community supervision program could not be maintained.

In *State v. Travis* (125 Idaho 1, 867 P.2d 234, 1994), the court found that, while the defendant's agreement to a probation condition requiring him to submit to a polygraph examination did not establish admissibility of the results, Travis was uncooperative and resisted supervision. His probation was revoked. But *Patton v.*

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<sup>25</sup> Most commonly, states consider polygraph evidence *per se* inadmissible in courts of law. A few states admit polygraph evidence in some limited circumstances, by stipulation of both parties. A recent challenge to the *per se* inadmissibility statutes of many states was not held up by the Supreme Court case *United State v. Scheffer*, WL141151, 1998.

<sup>26</sup> In the context of the admissibility of evidence, reliability means scientific validity.

<sup>27</sup> As a condition of the defendant=s 60 month probation sentence, the district judge stated, AMr. Lumley will submit to a polygraph examination not less often than every six months at his expense@ (*Polygraph 29*, 117: 2000).

*State* (580 NE.2d 693, Ind. App. 1992) found “...the rehabilitative benefits of the polygraph examination condition must be obtained without the examination results being admissible in any subsequent court proceeding” (*Polygraph 29*, 121:2000).

Additionally, our field research found that polygraph information is best used to inform treatment and enhance risk-focused supervision of offenders in the community. As one containment professional noted, “We never use the P-word in court.” From the telephone survey we learned from over half (56.1 percent) of the respondents<sup>28</sup> that probation and parole officers increased surveillance when violations of supervision were disclosed during a polygraph exam. One in four respondents said that a deceptive finding on a polygraph test could result in treatment termination.

Indeed, a deceptive polygraph exam should result in significantly increased surveillance along with other efforts to obtain additional information about the offender, including interviews with potential victims, the victim’s therapist, employers, and discussions with law enforcement officers. At a minimum, a deceptive finding on the examination reflects the offender’s lack of cooperation with the containment approach and his or her lack of commitment to the honesty necessary to make the life changes expected by the containment team.

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<sup>28</sup> This is the percentage of the weighted (n=155) agencies that used the polygraph at least sometimes.

# METHODS

## The Sample

The following findings resulted from the analysis of the case file review of a sample of 232 adult sex offenders being supervised in the community at the time of the study. We collected data to compare the amount of information available to the containment team before and after polygraph testing (this is discussed in greater detail below). The sample was selected from four states to specifically include varying levels of post-conviction polygraph implementation. In two states (A and B) the post-conviction polygraph had been implemented for a number of years as part of the sex offender treatment program. In state C, polygraph testing was newly implemented. In this state, half of the sex offenders had received at least one post-conviction polygraph examination, and half had not. The latter cases were considered to be "under the threat" of the polygraph test; these offenders knew that polygraph exams would eventually be administered to them as part of their treatment and supervision programs. Because the polygraph was eminent and offenders in the sample were in group therapy with those who had taken the polygraph test, these cases were also included in the analyses of the impact of the post-conviction polygraph. In state D, the post-conviction polygraph had not yet been introduced.<sup>29</sup> (See Appendix B for a description of other state differences.)

**TABLE 3. SAMPLE SIZES FOR THE CASE FILE REVIEWS**

STATE AND STAGE OF POLYGRAPH IMPLEMENTATION	n	USED IN BEFORE AND AFTER COMPARISONS
State A - the post-conviction polygraph used for a number of years.	62	Yes
State B - the post-conviction polygraph used for a number of years.	57	Yes
State C - the post-conviction polygraph was new implemented (31 cases received at least one polygraph; 30 cases were "under the threat" of the polygraph).	61	Yes
TOTAL CASES INCLUDED IN BEFORE AND AFTER ANALYSES	180	
State D - the post-conviction polygraph was not yet implemented.	52	No
TOTAL CASES	232	

<sup>29</sup> This state had not yet implemented the post-conviction polygraph. Data for this state included what was learned through the Abel Screen (questionnaire only) and self-reported, written sex histories. Data from the state were excluded from analyses requiring polygraph data.

## Data Collection

A complex data collection instrument was designed to gather demographics, criminal history, current crime, placements and sentencing information, victim information (number, age group, gender, and relationship to offender), type and frequency of paraphilia and/or risk behavior, a profile of perpetrator early behaviors, and information regarding polygraph tests. The data collection tool is available in Appendix C, and definitions of behaviors and relationships are included in Appendix D.

For this study, a “victim” was defined as someone who was sexually assaulted without their consent or knowledge (e.g., they were asleep). For minors, the definition of a victim required a four-year age difference between the age of the perpetrator and the victim, force, or the perpetrator was an adult and the minor victim had not reached the age of consent in that state.<sup>30</sup>

The data collection instrument contained two major sections:

1. The first section (pages 1 and 2) of the data collection instrument described offending information known to the criminal justice system *before* the treatment/polygraph process. It included all information regarding the offender's current crime, along with the sex offending history that was known to the criminal justice system from sources prior to the beginning of treatment. Data sources for the first section included pre-sentence investigation reports, police reports of the instant offense, and case notes of the supervising officer regarding information learned independent of the treatment/ polygraph process. Information about the offender's juvenile sexual offense history was recorded separately from the offender's adult sexual offense history.
2. The second section (pages 3 and 4) of the data collection instrument contained all information about the offender resulting from elements of treatment relating to preparation for the polygraph examination, as well as admissions made during the exam itself. Second section data sources were the self-reported sex history document, homework assignments relating to polygraph exam information, polygraph examination reports, and case management notes pertaining to the treatment/polygraph process.<sup>31</sup> The second section of the collection form separately gathered information for sexual offenses and paraphilias committed as a juvenile and as an adult.

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<sup>30</sup> The age of consent varied across the states we visited. In fewer than five cases we found minimal age differences between the offender and the victim for the conviction crime, and the documentation included a victim statement reporting consent. Nevertheless, a decision had been made to prosecute the case, and these cases were coded as victims.

<sup>31</sup> All files were extensively examined, and data were extracted to the collection form. Decisions on how to record data were made with a data collection supervisor available to develop consistent protocols. Every effort was made to separate data known to the criminal justice system without the post-conviction/treatment polygraph process from that known as a result of this process. For instance, if a risk behavior was detected after sentencing through the normal supervision process, this information was not attributed the polygraph/treatment process.

## Comparison Analysis: Before and After

We compared the information known *before the treatment/polygraph process* (data gathered on pages 1 and 2 of the data collection instrument) to all that was known *after the treatment/polygraph process* (data gathered on pages 1 through 4 of the data collection instrument). Although data were gathered separately for the juvenile and adult histories of offenders, these data were combined in the analyses presented here. Initially, we attempted to extract information from the self-report sex history and compare this to what was reported separately in the polygraph examinations. However, when we gained further understanding of how the self-report disclosure was directly tied to the polygraph test, we determined that the two processes were synergistic. *When we refer to the "treatment/polygraph process," we primarily describe the interdependence between the self-report disclosure that occurs in treatment and the use of the post-conviction polygraph to verify this information.* A self-report sex history disclosure form or journal assignment, administered as part of the treatment process, is validated (or not) during a sex history polygraph exam. The offender prepares the sex history assignment with the knowledge that it is inextricably tied to the post-conviction polygraph examination. It is through the self-reported sex history, and subsequent verification with a post-conviction sex history polygraph examination, that a lifetime of secrets can be uncovered and a more complete understanding of the offender's behavior and patterns of sexual abuse emerge, as reflected in the data presented below. Because these two processes—the self-report disclosure element of treatment and the post-conviction polygraph exam—are deeply intertwined, we use the phrases *"post-conviction treatment/polygraph or treatment/polygraph process"* to more accurately reflect the process through which information about the offender is learned.

The use of the term "treatment," however, does not imply that information from other aspects of treatment was included or identified for the analysis. For instance, information revealed through group treatment sessions was not included unless it was specifically related to information also revealed through the treatment element of self-disclosure or through a polygraph examination. For these analyses we were interested in information gathered as a result of implementing the post-conviction polygraph examination as a management tool.

These analyses, of course, did not include victims whom the offender never admitted or those who were never documented in the file. Because of this, *the findings probably underestimate both the number of victims and the range of deviant behaviors for the sample*, particularly since approximately one-third of the polygraph examinations were scored as deceptive by the examiner.

Because before and after comparisons included agencies at different stages of implementing the post-conviction treatment/polygraph process, the findings are unlikely to represent the information that would be obtained from any single agency. The aggregate data are presented to make the point that, in general, more information is gained about sex offenders when the post-conviction treatment/polygraph process is used as a management and supervision tool. The

following findings provide quantitative evidence of the benefits of the post-conviction treatment/polygraph process.<sup>32</sup>

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<sup>32</sup> Also, Ahlmeyer et al. (2000) found polygraph disclosures to increase when the offender was engaged in intense treatment.

## FINDINGS FROM THE CASE FILE REVIEW

The findings presented below focus on (1) risk management and criminal career research, (2) the disclosures of additional victims, (3) high risk behaviors and assault patterns, and (4) what we learned about incest offenders.

### What Does the Post-Conviction Polygraph Exam Add to the Risk Management of Sex Offenders?

*If one seeks to control crime behavior, one needs first to be able to predict it. Much of our behavior is guided by the principle that relations observed in the past will hold in the future even though we believe there can be no guarantee of it. Change may be expected, but science requires that we assume that nature, subject to change, will change slowly. Thus we assume that some consistency will be found over time.... Any prediction method can merely provide a way to summarize previous experience to guide future decisions.*  
(Gottfredson, 1987:6)

In criminology, we have known for nearly 30 years that frequency, seriousness, and variety of offending are highly correlated (Wolfgang, Figlio and Sellin, 1972; Farrington, 1973; Barnett and Lofaso, 1985; Barnett, Blumstein, and Farrington, 1987; Chaiken and Chaiken, 1982; English and Mande, 1992). In *Aggression and Violence through the Life Span*, Quinsey and Walker (1992:246-247) review the literature and conclude “[e]nough work has been completed to establish a general consensus within the research community about the classes of variables that are valid predictors of recidivism.... Previous criminal history emerges as the single variable predictor of subsequent recidivism and violent recidivism.”

Risk prediction research on sex offenders supports these criminal career factors. Serin (1994) and Rice et al., (1991) and others (Barbaree and Marshall, 1988; Brown and Forth, 1997; Hart et al., 1998; English, 1999) found *deviant arousal* or *versatility of sexual offending* to predict poor case outcomes. *Victim injury* (Harris et al., 1993), *boy victims* (Hanson and Bussiere, 1996; Hanson, 1998), *diverse victim types* (Hanson and Harris, 1998), *young age of victims* (Barbaree and Marshall, 1988; Quinsey et al., 1995; Hanson, 1997), *any stranger victim* (Hanson 1998), *past violence* (Karson and Bigelow, 1987; McNeil, Bender and Greenfield, 1988; Palmstrierna and Wistedt, 1989), and *young age of offender* (Harris et al., 1998; Quinsey et al., 1995; Hanson, 1997) are linked to negative outcome. *Deviant sexual arousal*, identified by phallometric measures of sexual preference, was found to predict new sex crime convictions in both rapists (Rice, Harris, and Quinsey, 1990) and child molesters (Rice, Quinsey, and Harris, 1991). *Prior sexual offending history* (Hall, 1995; Hansen et al., 1992; Marshall and Barbaree, 1988; Rice et al., 1991; Rice and Harris, 1997)



remains one of the strongest predictors of subsequent sex crime arrests and convictions.

The need for complete information about the offender's current and past sexual offending history becomes clear when the research is reviewed. Additionally, the purpose of sex offender treatment is to teach offenders how to live without abuse and secrecy. Being truthful in treatment and supervision is key to this process. Obtaining verified data from a sex offender's sexual history polygraph exam is the first step in sex offender risk management. The aggregate data presented below reflect the extent of additional information that became available as a result of the treatment/polygraph process. The value of the polygraph examination, when appropriately integrated with sex offender treatment, lies in its ability to generate significantly more information on *individual* offenders.

**Crossover** is the term used to describe the fact that many adult sex offenders have a history of victimizing across genders and age categories. Our study findings support other research (Abel and Rouleau, 1990; Ahlmeyer et al., 2000; Weinrott and Saylor, 1991; Faller, 1990; Becker and Coleman, 1988; Freund, 1990; Abel, Mittleman and Becker, 1985) by confirming that crossover is alarmingly common among sex offenders.

At the case management level, accurate and complete case history information is necessary to intervene in meaningful ways. In the following data tables, we present additional findings derived from information about the group of offenders known *before* and *after* the treatment/polygraph process.

## Finding: Additional Types of Victims Were at Risk

Table 4 below shows several fundamental differences in the sample description when group profiles of 180 sex offenders were compared *before* and *after* the post-conviction polygraph/treatment process.

**TABLE 4. THE POLYGRAPH/TREATMENT PROCESS FINDS MORE SEX OFFENDERS HAVE PERPETRATED (a) AGAINST MORE VICTIM TYPES**

VICTIMIZATION PROFILE OF OFFENDERS FROM THREE STATES (n=180)	BEFORE POST-CONVICTION POLYGRAPH/TREATMENT PROCESS	AFTER POST-CONVICTION POLYGRAPH/TREATMENT PROCESS
Had male victims	20%	36%
Had female victims	90%	94%
Had both male and female victims	10%	29%
Had juvenile victims	91%	95%
Had adult victims (b)	19%	44%
Had both juvenile and adult victims	10%	33%
Committed hands-on offenses (c)	93%	98%
Committed more than one type of hands-on offense	64%	82%

Committed hands-off offenses	22%	67%
Committed more than one type of hand-off offense	3%	35%
Have high risk behaviors	58%	93%
Commit more than one type of high risk behavior	27%	80%

(a) Does not necessarily mean sexual assault. Includes fondling, frottage, voyeurism, any hands-on offense, any hands-off offense, or high risk behavior.

(b) Includes individuals 18 years and older and elderly or at-risk individuals.

(c) **Hands-on** offenses include vaginal, anal, or attempted penetration, oral sex, fondling/frottage, excess aggression, and assault including domestic violence with deviant sex. **Hands-off** offenses include exhibitionism, voyeurism and stalking. **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 contact, masturbation to deviant fantasy, excessive masturbation, preparation for assaults (e.g., driving around), and other.

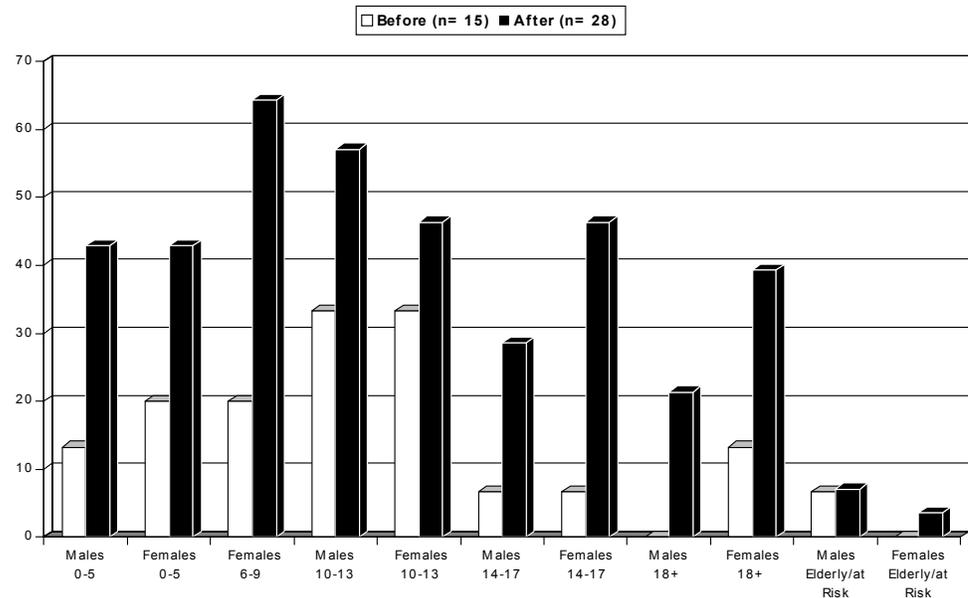
If these sex offenders were characterized on the basis of information in the files that *did not* include the post-conviction treatment/polygraph process, professionals might make several errors. For example, it would be quite easy to conclude that this group presents a relatively low risk to males and adults; only one in five offenders seemed to have victims in each of these categories. When information from the post-conviction polygraph/treatment process was included, however, one in three offenders, rather than one in five, were identified as having male victims. Likewise, nearly half (44 percent) of the sample were found to have victimized adults, compared to the 19 percent of offenders identified from information obtained before the treatment/polygraph process.

The more than ten-fold increase (from 3 percent to 35 percent) in the disclosures of hands-off offenses suggests that information about exhibitionism, voyeurism, and obscene phone calls or internet use was rarely obtained without the treatment/polygraph process. Reviews of the sex history documents suggest that these offenses are sometimes part of an offender's assault pattern, i.e., these behaviors often precede an assault. Obtaining this information is crucial for containment professionals who intend to interrupt the assault pattern and prevent new victimizations by sex offenders they treat and supervise.

It is important to consider how crossover information from the post-conviction polygraph/treatment process might impact a specific supervision decision. For example, a parole board member might need to determine whether, after serving his prison sentence, an offender who victimized adult females should be allowed to live with young children. Likewise, in many jurisdictions nationwide, judges often allow sex offenders to live with children. Decisions of this nature are made regularly, and because of decision makers' lack of understanding of crossover behavior, offenders may be given sanctioned access to potential victims. As therapist Anna Salter points out, "...the easiest way to get access to children is to live with one" (Salter, 1995:60). The analysis presented in Figure 2 below demonstrates why, based on information gained after the post-conviction polygraph process, criminal justice officials should exercise caution in allowing sex offenders to reside with children without ongoing polygraph verification. For this analysis, we identified offenders with male victims between the ages of six and nine before and after the post-conviction

treatment/polygraph process, and the additional age and gender groups victimized by these offenders.

**FIGURE 2. OFFENDERS WITH IDENTIFIED MALE VICTIMS BETWEEN THE AGES OF 6 AND 9, COMPARISON OF AGE AND GENDER VICTIM CROSSOVER BEFORE AND AFTER THE POST-CONVICTION POLYGRAPH/TREATMENT PROCESS**



After the treatment/polygraph information was added to the analysis, the number of offenders with boy victims between the ages of six and nine nearly doubled from 15 to 28 of the 180 offenders studied (8 percent to 15 percent of the sample). The data *before* the post-conviction treatment/polygraph process suggest that both male and female adults were at relatively low risk of victimization by this particular sex offender group. When disclosures from the post-conviction treatment/polygraph process are added, a different picture of this offender group unfolds. The proportion of this subsample victimizing other gender and age categories climbs. For example, the proportion offending against adult women tripled from 13 percent to 39 percent. The proportion of offenders with girl victims ages six to nine more than tripled, from 20 percent to 64 percent. Just over 42 percent of this group with boy victims aged six to nine reported abusing boys aged zero to five. Since these figures represent lifetime offending patterns, some offenders may have been young when these offenses occurred—indicating a longer deviant history than official records or self-report alone would reflect.

## Finding: Offenders Crossover between Adult and Child Victims

The risk that an offender with adult victims may also have child victims appears to be extremely high. In our community-based sample of 180 offenders in states where the polygraph was implemented, 28 offenders were identified with adult female victims (age 18 or over), according to information before the treatment/polygraph process. Approximately half (15 of 28) of these offenders were also

identified with either female or male victims under the age of 18. After the data obtained from the treatment/polygraph process were analyzed, the size of the group of offenders with adult female victims increased in size from 28 to 71 offenders. The risk to children posed by these offenders was even more alarming when information from the post-conviction

polygraph/treatment process

was added: *nearly nine out of 10 offenders with adult female victims also had juvenile victims under the age of 18* (63 of the 71 offenders with adult female victims, or 88.7 percent).

This information is important because, at the individual level, it guides the treatment and the supervision plans. These interventions need to incorporate very specific information about ages and genders of past victims. The key to adequately managing the risk of sex offenders in the community is to understand the types of situations that offenders must avoid. Relapse plans must incorporate the new information gained from polygraph information.<sup>33</sup> For example, given the crossover between adult and child victims described above and in previous studies, treatment providers and supervising officers cannot assume that an offender with a known history of assaulting adults will have no interest in children.

It is not uncommon, as discussed above, for decision makers to allow convicted sex offenders to live with children because they have extremely limited information

### RAPE VICTIMS SELDOM REPORT THE CRIME

Recent research confirms what many clinicians long expected: victims with close relationships with the perpetrators are least likely to report sexual abuse (Finkelhor et al., 1990; Springs and Friedrich, 1992; Russell, 1984). Smith et al. (2000) found rape victims were 3.7 times more likely to tell if the abuser was a stranger. Hanson et al. (1999) and Arata (1998) also found victims were significantly more likely to report abuse by strangers. Wyatt and Newcomb (1990) reported that “close proximity” was associated with fewer disclosures, as measured by the relationship with the perpetrator, location of the abuse, and the effect of abuse on the family. This may explain why, in two studies, convicted offenders reported 13 to 16 years of committing sex crimes before they were caught (Freeman-Longo, 1985; Ahlmeyer et al., 2000).

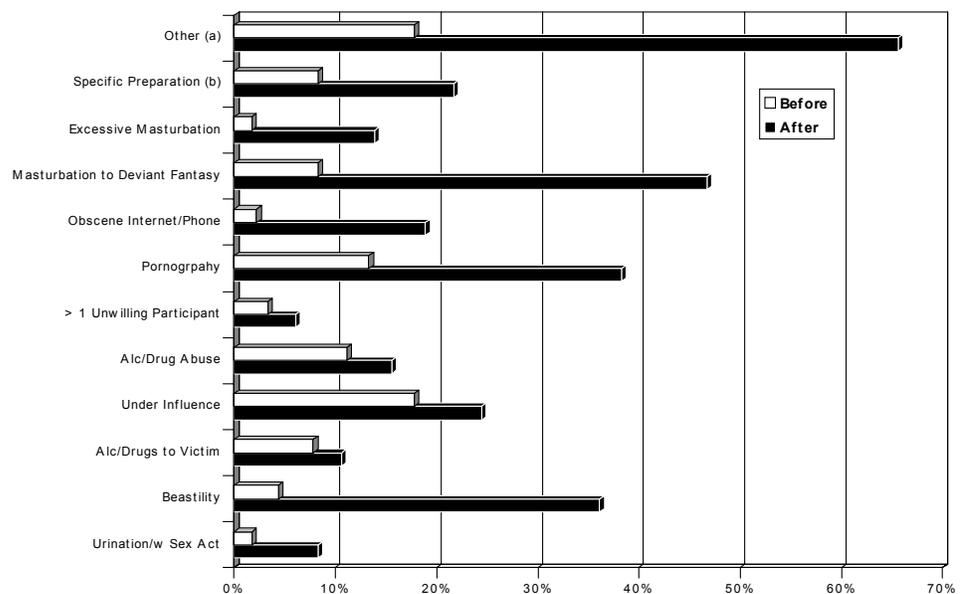
<sup>33</sup> Relapse Prevention is a model of intervention first designed for substance abusers (Marlatt, 1982; Marlatt and Gordon, 1985) and reinterpreted for application to sex offenders (Laws, 1989; Pithers, 1990; Laws, Hudson and Ward, 2000). It is based on the theory that treatment focuses on teaching the offender internal controls, i.e., building a person's sense of control over behavior related to his or her assaultive patterns and awareness concerning high-risk external situations to avoid. The containment approach integrates these ideas, but presumes that public safety requires vigilance on the part of the criminal justice system to require the offender to proactively avoid high risk situations via no contact orders, employment restrictions, etc., and when inappropriate contact occurs, that this be immediately reported to a member of the containment team.

about the offender's past deviant behavior. Also, many professionals assume that if the crime of conviction involves molesting a child outside the home, then that offender will not be a threat to his or her own children. Criminal justice officials can use polygraph examination data to inform decisions regarding requests that involve access to children (visitation, residential arrangements, family reunification). When polygraph data are not available on individual cases, aggregate data used in research studies about offender crossover, sex offender recidivism (Prentky et al., 1997), and the low probability that a victim who is close to the perpetrator will report the abuse (see sidebar previous page) can assist parole board members, judges, and other criminal justice officials in making decisions about allowing sex offenders contact with children.

## Finding: High Risk Behaviors Inform Our Understanding of Assault Patterns

Figure 3, below, presents additional information that was obtained from three states regarding what we called "high risk behaviors." More than one-third (150) of the 416 polygraph examinations administered to the offenders in this sample had deceptive results.<sup>34</sup>

**FIGURE 3. COMPARISON OF PERCENT OF IDENTIFIED PARAPHILIAS AND HIGH RISK BEHAVIORS BEFORE AND AFTER THE POST-CONVICTION POLYGRAPH/TREATMENT PROCESS (n=180)**



<sup>34</sup> Alhmeyer et al. (2000) found reports of deviant activity increased over time as sex offenders took additional polygraph examinations. There may have been instances in this study where the offender was re-tested and no deception was found. It was not possible, however, to determine if the offender was re-tested on the same issues or questions.

(a) Other include: Prostitution-visiting or being a prostitute, cruelty to animals, childhood firesetting, childhood long-term bedwetting, violations of probation conditions, visiting peep shows, strip clubs, or topless bars, unsupervised contact with children, group sex, fantasies, cross dressing, fetishism.

(b) Specific preparation includes certain types of activities that may indicate the offender is preparing for a sexual assault, such as driving around looking for victims, wearing items of clothing that attract children, spending lots of time in places that attract children such as parks and video arcades, etc.

This information is gathered at the individual level to obtain *modus operandi* patterns and also to identify the variety of deviant behavior the offender has engaged in. Overall, risk behaviors increase from the “before” information to the “after.”

## **Finding: Polygraph Examinations Identified New Crimes and Problem Behaviors**

The treatment/polygraph process identified 20 sex offenders with a post-sentence victim. Of the 147 sex offenders who received polygraph examinations across the three states,<sup>35</sup> 14 percent (21 out of 147) reported sexually abusing victims while under community supervision through the treatment/polygraph process. Fourteen of the offenders engaged in fondling or frottage; one offender had sex with a child, five disclosed voyeurism activity, and six engaged in exhibitionism (excluding the arrest noted above).<sup>36</sup> No sanctions were noted in the file for seven of these offenders; two received electronic monitoring; one was sent to the Department of Corrections; five received short-term jail sentences; one was placed in a residential setting and two had a “residential adjustment”; and two received increased supervision and/or therapy group confrontation.

Over 3-24 months of supervision,<sup>37</sup> only one offender was arrested (for exhibitionism) because of information obtained outside the treatment/polygraph process.

## **Finding: Polygraph Exams Detected High-Risk Behaviors**

Maintenance polygraph exams were useful in obtaining information about the offenders’ risk behaviors. Of the 147 offenders in the case study sample who received polygraphs,<sup>38</sup> 122 received at least one maintenance polygraph. Of these 122 offenders, 44 (36 percent) disclosed high-risk behavior through the maintenance polygraph examination.<sup>39</sup>

A total of 111 high-risk behaviors were disclosed by the 44 offenders. Use of pornography, masturbating to deviant fantasies, and use of obscene phone calls or

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35 Of the 150 cases that had received a polygraph, three were missing data regarding the exam.

36 Some offenders reported more than one type of deviant behavior.

37 The original study design required that we allow time for each offender in the sample to have been under supervision long enough to have multiple polygraph reports for us to examine. In the first site, we were able to pull approximately 60 cases that had been under supervision for 24 months prior to our visit, and multiple polygraph examination reports were available to us for each case. In subsequent sites, we had to pull cases that had only six months of community supervision. One of these sites was just starting to integrate the polygraph test with treatment, so reports were available for only six months. In another site, the supervision time was six months because the sex history and/or the polygraph report had not been completed for many offenders. In the site that did not use the polygraph, the cases in the sample had been in treatment for at least three months and sex history questionnaire data were collected.

38 Although three additional cases were in the polygraph group, data regarding the examinations was missing.

39 Nearly one in four exams (62 of the 260 maintenance exams administered) resulted in detection of an offender’s high-risk behavior.

internet activity were the most common at-risk behaviors. Two instances of stalking, one instance of bestiality, and two instances of giving alcohol/drugs to a potential victim were reported. Although data collectors had 22 choices for coding behaviors and paraphilias, these categories proved inadequate to describe the variety of behaviors in which offenders were involved. Half of the behaviors fell in the “other” category.

## **Finding: Incest Offenders Crossover between Types of Victims**

A common myth is that incest offenders perpetrate their crimes only against family members. Abel and Rouleau (1990) found that 23 percent of their sample had committed incest and *also* abused individuals outside the family. In Weinrott and Saylor’s (1991) study of 99 incarcerated offenders, 50 percent of the incest offenders admitted to assaulting children outside the home (none of these crimes was detected). Becker and Coleman’s (1988) study of incest reported that 44 percent of their sample who committed incest against female children also sexually abused females outside home; 11 percent of this group also assaulted males outside the home; and 18 percent raped adult females. Faller (1990) studied 65 biological fathers in intact families who committed incest. One-third of these incest offenders molested children outside the home, and 80 percent molested more than one child.

Incest victims are incredibly accessible to the perpetrator, and research shows that trauma to the victim increases with the frequency and duration of the victimization. Many incest victims report enduring rapes over periods of many years. Lamb and Edgar-Smith (1994) studied 60 sexual assault victims; 42 percent had been assaulted by a parent or parent figure; and 17.5 percent had been assaulted by a sibling. Twenty percent of the sample had been abused for over five years, and half of this group had been assaulted on a weekly basis. This group did not disclose the abuse for, on average, ten years after the assaults began.

In this study, incest cases were identified in two ways: those where the current offense involved incest and those where incest was identified from past behaviors or offenses, or while the offender was under supervision. The following table summarizes additional information learned about incest perpetrators defined both ways. Decision makers often assume that incest offenders exhibit less crossover and so may be the least likely offenders to amass a significant number of victim types (though most professionals recognize that a single incest victim may be assaulted dozens or hundreds of times). The following table reflects crossover and other assault activity 1) by offenders identified as incest perpetrators by the crime of conviction, and 2) the larger incest group that also includes offenders who were convicted of non-incest crimes but reported committing incest in the past. The table below allows readers to review the results based on these two definitions of incest.

**TABLE 5. SEXUAL ASSAULT HISTORIES OF INCEST OFFENDERS**

Comparison of two definitions of incest: 1) sex offenders with incest as the current offense and 2) incest identified through the current offense, past behavior, or while the offender was under supervision.

PROFILE OF BEHAVIORS OF INCEST PERPETRATORS  DATA FROM THREE STATES WHERE THE POLYGRAPH HAD BEEN IMPLEMENTED, AT LEAST TO SOME DEGREE	INCEST CURRENT OFFENSE		INCEST CURRENT OFFENSE, PAST BEHAVIOR OR OFFENSE, OR IDENTIFIED WHILE OFFENDER UNDER SUPERVISION	
	Before polygraph Process (n=80)	After polygraph process (n=80)	Before polygraph process (n=104)	After polygraph process (n=104) (a)
Had male victims	16%	35%	20%	39%
Had female victims	94%	96%	89%	95%
Had both male and female victims	10%	31%	9%	35%
Had child victims	98%	99%	95%	99%
Had adult victims (b)	9%	36%	14%	44%
Had both child and adult victims	6%	29%	10%	38%
Committed hands-on offenses (c)	100%	100%	97%	100%
Committed more than one type of hands-on offense	70%	83%	69%	86%
Committed hands-off offenses (d)	19%	71%	21%	76%
Committed more than one type of hands-off offense	3%	39%	2%	45%
Had high risk behaviors (e)	61%	93%	64%	94%
Committed more than one type of high risk behavior	29%	85%	31%	88%
Perpetrated against more than one age/gender group (f)	50%	81%	52%	84%

(a) Of the 180 cases in states where the polygraph had been implemented at least to some degree, 104 cases were identified as incest offenders, 60 were not identified as incest offenders, and in 16 cases this identification could not be made.

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

(c) **Hands-on** offenses include vaginal, anal, or attempted penetration, oral sex, fondling/frottage, excess aggression, and assault including domestic violence with deviant 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) This analysis includes 14 age and gender categories. Victims with unknown age or gender were not included.

Regardless of how incest offenders were identified, the treatment/polygraph process provides more information about their sexual assault histories. For example, the percent of incest perpetrators known to have both male and female victims *triples* after information from the treatment/polygraph process. Incest offenders identified with both child and adult victims *increases by a factor of four* with information from the treatment/polygraph process.

Table 6 below shows the increase in the percent of incest perpetrators (as defined in Table 5, definition two) identified with victims outside the family as a result of the treatment/polygraph process.

**TABLE 6. INCEST PERPETRATORS AND RELATIONSHIPS TO VICTIMS OUTSIDE THE FAMILY BEFORE AND AFTER THE TREATMENT/POLYGRAPH PROCESS**

Data from four jurisdictions in three states. (n=104) (a)  
 Definition of incest: Incest identified through current offense, past behavior, or while the offender was under supervision.

	POSITION OF TRUST	STRANGER/ACQUAINTANCE	EITHER OR BOTH
BEFORE	32.1%	4.8%	25.0%
AFTER	56.7%	34.6%	64.4%

Note: Acquaintance means someone known to the victim for more than 24 hours or a person with whom the victim had regular, if not intensive, contact, e.g., a store clerk.

(a) Of the 180 cases in states where the polygraph had been implemented at least to some degree, 104 cases were identified as incest offenders, 60 were not identified as incest offenders, and in 16 cases, this identification could not be made.

Before the treatment/polygraph process, one in three (34.5 percent) of incest offenders also were found to have perpetrated crimes against victims with whom they were in a position of trust; this increased to more than one in two (56.6 percent) after the treatment/polygraph process. Fewer than one in twenty (4.8 percent) incest perpetrators were identified with strangers or acquaintances as victims before the polygraph/treatment process; this increased seven-fold afterwards (4.8 percent to 34.5 percent).

When available, we gathered information on the age of the offender at the time of his or her first paraphilia.

**TABLE 7. AGE OF OFFENDER AT FIRST KNOWN PARAPHILIA<sup>40</sup>**

Case study data from all sites. (n=174) (a)  
 Definition of incest: Incest identified through current offense, past behavior, or while the offender was under supervision.

AGE AT 1 <sup>ST</sup> KNOWN PARAPHILIA (b)	INCEST PERPETRATOR (c)		NON-INCEST PERPETRATOR		TOTAL	
	%	n	%	n	%	n
AGE 8 OR LESS	32.6	31	17.7	14	25.9	45
AGE 9 TO 11	25.3	24	20.3	16	23.0	40
AGE 12 TO 13	23.2	22	25.3	20	24.1	42
AGE 14 OR OLDER	18.9	18	36.7	29	27.0	47
TOTAL	100%	95	100%	79	100%	174 (c)

(a) Data for this analysis were missing for 58 of the 232 offenders in the case study sample.  
 (b) Age categories were determined by first dividing, as nearly as possible, the distribution of age data into quadrants, i.e., approximately 25% of the data fell into ages 8 or less, and so on.  
 (c) The offender was identified as an incest perpetrator by any of the information gathered, included past offenses and behaviors, current offense or behaviors after sentencing.

<sup>40</sup> Please see Appendix D for definitions of paraphilia and high-risk behavior.

In general, we found that sex offenders display paraphilic behaviors early in life. We found that nearly three out of four sex offenders in the case study were identified with a paraphilic behavior before age 14, and incest perpetrators engaged in paraphilic behaviors at an earlier age than non-incest offenders ( $p=.026$ ). For example, nearly one in three (26.0 percent) incest offenders had disclosed paraphilic behavior before age nine, compared to fewer than one in five (17.7 percent) of non-incest offenders.

Table 8 below shows that incest offenders were significantly more likely than non-incest offenders to be engaged in various offenses and high-risk behaviors. For instance, they are more likely to have attempted penetration, and engaged in exhibitionism and voyeurism.

**TABLE 8. COMPARISON OF HANDS ON OFFENSES, HANDS OFF OFFENSES, AND RISK BEHAVIORS FOR INCEST AND NON-INCEST PERPETRATORS**

Case study data from all sites. (n=209) (a)

Definition of incest: Incest identified through current offense, past behavior, or while the offender was under supervision.

<b>HANDS-ON OFFENSES</b>	<b>INCEST PERPETRATORS (n=119) (% with behavior)</b>	<b>NON-INCEST PERPETRATORS (n=90) (% with behavior)</b>	<b>CHISQUARE SIGNIFICANCE LEVELS (levels &lt;.05 are highlighted)</b>
Vaginal penetration	66.4%	62.2%	.533
Attempted penetration	20.2%	4.4%	.001
Anal penetration	21.0%	13.3%	.150
Oral sex	64.7%	37.8%	.000
Fondling/frottage	94.1%	71.1%	.000
Excessive aggression	6.7%	10.0%	.391
Assault, including domestic violence	16.8%	15.6%	.808
<b>HANDS-OFF OFFENSES</b>			
Exhibitionism	57.1%	35.6%	.002
Voyeurism	64.7%	42.2%	.001
Stalking	1.7%	4.4%	(*) .236
<b>RISK BEHAVIORS</b>			
Urination with sex act	9.2%	6.7%	.500
Bestiality/ritual behavior/bondage	44.5%	22.2%	.001
Alcohol/drugs to victim	7.6%	20.0%	.008
Offender under influence	21.0%	33.3%	.045
Substance abuse in time periods when offenses occur	16.8%	13.3%	.490
>1 unwilling participant	8.4%	1.1%	.019
Pornography	42.0%	45.6%	.609
Obscene internet/phone	21.8%	28.9%	.244
Masturbate to deviant fantasy	56.3%	42.2%	.044
Excessive masturbation	16.8%	7.8%	.054
Specific preparation (e.g., driving around)	26.1%	15.6%	.068
Other	69.7%	62.2%	.254

(a) Of the 232 cases in four states, 119 were identified as incest offenders, 90 were not identified as incest offenders, and in 23 cases identification of incest could not be determined.

Additionally, in this sample of 180 sex offenders who underwent polygraph exams, 37 incest perpetrators (21 percent) had no known victims outside the family (data not presented).

Although some proportion of incest offenders—like any sex offender—may be low risk (that is, have no history of harming any other person and are unlikely to harm anyone again), without the proper use of the post-conviction polygraph, the ability to confidently identify *who* is lower risk among a group of offenders is significantly diminished. It is important that decision makers understand the offending patterns of groups of incest offenders and use the polygraph to discern the risk of *individual* offenders. When individual polygraph data is unavailable, professionals should consider incorporating sex offender research that includes polygraph data into their knowledge of offending patterns. For example, in this research: one-third (36 percent) of this sample of incest perpetrators had a history of assaulting adult victims and, as mentioned above, over half (58 percent) reported assaulting victims with whom the offender was in a position of trust.

In sum, the data suggest that incest offenders, whether convicted of incest or not, have been considerably more active than official records—or many of our assumptions—would indicate. This is the reason polygraph examiners, working together with supervising officers and treatment examiners, play an essential role in the containment and risk management of convicted sex offenders. Polygraph-generated data supports the fundamental premise underlying the containment approach. That is, progressive sex offender management practices require that offenders not be defined by their conviction crime because potential victims may be overlooked and placed at risk.

## Summary

A few years ago, anecdotal and qualitative field information led us to recommend the use of the post-conviction polygraph in the supervision of sex offenders within the larger context of the containment approach (English et al., 1996). During interviews with professionals, we were consistently told that the information necessary to manage the ongoing risk of sex offenders was available only from the combination of treatment, supervision, and polygraph examinations. Because this finding was controversial, it warranted further investigation.

In our telephone survey, three out of four (76 percent) of the phone survey respondents reported that the use of the post-conviction polygraph enhances knowledge of the offender, and two out of three (67 percent) said that its use leads to better case management and supervision. One respondent remarked, “It helps find out their true behaviors and not just what they tell us.” Another said that the use of the polygraph “provides more security, more control, more restrictions for those who need them.” Over half of the respondents (58 percent) said they believe the polygraph helps prevent new crimes: “They are less likely to reoffend because we catch them earlier” and “we can detect recidivism patterns.” And as one respondent noted, “They know we are watching them.” Just over 40 percent of the probation and parole

supervisors we spoke with said the polygraph helped provide better and more appropriate treatment.

For this study, one of our objectives was to determine if empirical data supported the anecdotal and telephone survey information. Based on the data presented here, we conclude that managing the risk of sex offenders in the community is greatly enhanced by the post-conviction polygraph/treatment process. Using the polygraph exam in sex offender management provides better information about each offender's frequency, seriousness, variety, and age of onset of deviant behavior. Knowledge of these dimensions of a criminal career is necessary to understand the risk posed by sex offenders.

#### **SO, HOW MUCH CAN WE BEAR TO KNOW?**

**The information presented in this report may be shocking, but it is not new. Data about sex offender crossover and the frequency of deviant activity was first published by Abel et al. in 1985, and victim studies have confirmed this level of activity since the mid-1980s. Whether or not we can bear to know this information is irrelevant. Sexual abusers will continue to assault children and adults until policy makers, treatment providers, probation and parole officers, and administrators grapple with what it means to have this information and how we can use it to make our communities safer. The five-part containment approach, including the polygraph examination, offers an important method for holding sex offenders accountable in the community while prioritizing victim safety.**

**During our site visits, some criminal justice officials who do not endorse the use of the polygraph explained that its use increases liability of the government agency. In other words, as we were told during interviews, having this information requires officials to act on it. Options and resources are so limited that "not knowing" was a form of protection (for the government, not for potential victims).**

**"Not knowing" protects the sex offender from taking responsibility for the totality of the harm he or she has caused, and it might give the sex offender free reign to continue his or her abusive lifestyle. "Not knowing" gives criminal justice officials the blindfolds they need to avoid the hard discussions about caseload size, intermediate sanctions, offender family services, the value of actuarial tools, and officer training. These things take time and resources, and these are finite commodities.**

**Whether we can bear to have this information or not, sex offenders will continue their activity. So...lock 'em up? This is not a realistic option. Most victims are not empowered or are too ashamed to report the crime, so we cannot prosecute the majority of sex abusers. For those we can lock up, 98 percent will return untreated to the community after they serve their sentences (Greenfeld, 1997).**

**Known offenders are best managed by obtaining detailed information about their crime patterns through specialized treatment, polygraph examinations, criminal justice supervision, and close collaboration with law enforcement. Working as a community in multi-disciplinary teams to develop and implement risk management programs is a key component of sex offender management. We must educate the public, care for the families of sex offenders, prioritize the safety and well-being of children, educate high school and college age adolescents about date rape, and place the responsibility for sexual assault on the perpetrator and not the victim. These activities will promote lasting change.**

Integrating the polygraph into a containment approach can be difficult, and the use of the polygraph is sometimes considered controversial. But for those who seek the best practices for supervising and treating sex offenders, implementation challenges can be overcome. The polygraph must be implemented within the five-

part containment approach we described in English, Pullen, and Jones (1996) and summarize here. The victim orientation, multi-disciplinary collaboration, containment tools (including the polygraph), informed and research-based policies, and quality control efforts will yield the best solutions to sex offender management in your jurisdiction.

## Study Limitations

We intended to differentiate between the amount of information obtained by treatment providers and the *additional* information obtained from the polygraph, but the data in the files were not conducive to demarcation, particularly in jurisdictions where the treatment program and the polygraph program were highly integrated. (We support this strong integration from a program implementation point of view.)

There were significant variations across states (see Appendix B). Differences included criminal justice policies and supervision practices, treatment programs and providers, the experience of the containment professionals, and the level of integration among the containment team members. Two states had used the post-conviction polygraph with sex offenders for a number of years. One state had recently implemented polygraph examinations with sex offenders. Half the offenders at this state had not yet received their first polygraph exam, so we considered them under the “threat” of the polygraph exam, as it was a known treatment component.

Differences existed in the types of data collected at each site. In general, we attempted to obtain the same data elements across states, but the extent to which files and documents were complete varied by state. Programmatic differences across states affected data availability so, for example, when the sex history document was highly integrated in the program, more information was available in the file. Further, we were not permitted access to the criminal justice files at the state where the polygraph was not yet implemented. We did, however, have access to a document summarizing this information.

Another limitation to this study is the fact that 36 percent of the polygraph examinations had deceptive results. Since Ahlmeyer et al. (2000) found disclosures to increase with subsequent exams, we can assume that the frequency and scope of deviant behavior presented here underestimates actual offending activity. Since disclosed information was not collected in a manner that allowed the analysis of data obtained only from non-deceptive exams, we cannot explore this issue empirically.

## CONCLUSIONS AND RECOMMENDATIONS

The findings presented here have attempted to answer the common questions that surface during discussions about using the post-conviction polygraph in sex offender management. We have described the ways the tool is used and reviewed the research concerning its reliability and validity. We have presented an overview of the court admissibility issues and concluded that the issue will continue to be the subject of case law, primarily at the state level. The empirical analyses support our findings that use of the post-conviction polygraph is a vital component of the risk management of individual sex offenders for the following reasons:

1. Additional victims—of different genders and different age groups, and with different relationships with the offender—were disclosed when offenders participated in the treatment/polygraph process. A complete and accurate picture of the offender’s lifestyle and sexual assault activity is necessary to effectively treat and safely manage the case.
2. Additional high-risk behaviors, necessary for the ongoing assessment of danger to the public, were disclosed using the post-conviction polygraph. One-third of the offenders under supervision in this sample admitted engaging in problem behaviors while under supervision. One offender was arrested for a new crime during the 3 to 24 month study period, and another 20 disclosed new sex crimes to the polygraph examiner.
3. The analysis of incest offenders underscores the value of the polygraph exam in obtaining additional information about individual offenders before making risk determinations, and reminds us that a sex offender’s conviction crime is a snapshot in time and does not necessarily reflect all the types of victims the offender is willing to harm.
4. Our field research and telephone survey data indicate that many jurisdictions are addressing the challenges associated with the disclosure of additional crimes and victims, often through informal, interagency agreements. This barrier can be overcome using data (such as those presented in this report) and educating decision makers about the specific uses of post-conviction polygraph testing of sex offenders.

Based on the information presented in this report, we make the following recommendations:

- Stakeholders, including victim organization representatives, prosecuting attorneys, polygraph examiners, treatment providers, criminal justice and court personnel, and others must work together to develop policies and procedures for managing sex offenders who disclose new information.

- Information must flow freely and frequently among containment team members. Waivers of confidentiality must be obtained to ensure open communication. The free transfer of information prevents the sex offender from using communication gaps to his or her advantage and obtaining access to potential victims.
- Polygraph testing required in the conditions of probation may offer the most options to the court in cases of noncompliance.
- Judicial and parole authorities are important sources of support for containment professionals who manage day-to-day caseload activity. These authorities must understand the potential risk that sex offenders may pose to children with whom they are granted access.
- The disclosure of additional information and the imposition of sanctions should be well documented in the file. Careful case and risk management documentation is a fundamental component of good program management.
- Characterizing incest offenders as less dangerous than other sex offenders may create serious public safety risks.
- Agencies currently excluding the sex history post-conviction polygraph should consider the risk to public safety created by not obtaining and verifying information about each sex offender's risk and offending patterns.
- It is erroneous and dangerous to characterize sex offenders by their arrest crime or according to one type of victim or offense. Doing so ignores crossover data presented in multiple studies over the past decade. Crossover among sex offenders is common, and adequate sex offender management requires protecting potential victims rather than placing them in harm's way by minimizing the risk of contact with known sex offenders.
- Officials who believe sex offenders exaggerate past deviance during the treatment/ polygraph process must recognize that such behavior, if it exists, is also lying, so these offenders are not cooperating with treatment and supervision.
- Understanding the criminal offending patterns of convicted sex offenders requires that we obtain significant amounts of information about each offender's past crimes to assess risk and provide meaningful treatment and supervision.
- Use of the post-conviction polygraph in sex offender management clearly emphasizes the expectation of honesty and cooperation on the part of the offender.

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## **APPENDIX A:**

### **How Is the Post-Conviction Polygraph Examination Used in Adult Sex Offender Management Activities?: The Second National Telephone Survey of Probation and Parole Supervisors**



## **APPENDIX B:**

### **Differences Among Five Jurisdictions in Four States Where File Data Were Collected**



# **APPENDIX C:**

## **File Data Collection Instrument**



## **APPENDIX D:**

### **File Data Collection Instrument Coding and Definitions**

