

Post-Conviction Sex Offender Testing

Overview

**Summary of
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Due to the widespread and long term impact of sexual abuse on victims of sex crimes, the presence and activities of known sex offenders has become an increasing concern to communities everywhere. Because sexual abuse can generally exist only in a context of secrecy, sex offenders have often become masters at duplicity and deceit, and once developed these skills do not easily atrophy. For this reason, sex offenders' behaviors in the community, cooperation with supervision rules, and engagement in treatment have become important concerns, and the inclusion of polygraph monitoring has become a standard of care and supervision in many states.

Reasons for Post-Conviction Polygraph Testing

- **Disclosure - utility value**
 - Information gathering
 - risk assessment / treatment planning
 - reduction of denial
 - improved engagement in treatment
 - testing the limits of admitted behavior
- **Detection - accuracy value**
 - Identifying deviancy, secrecy and dishonesty
 - relieving truthful persons of unjustified suspicion or concern
- **Deterrence - monitoring value**
 - increased the likelihood of detection and consequences for misbehavior
 - improved behavioral compliance

Accuracy of the Polygraph Test

- Studies demonstrate 95 to 98 percent accuracy rates
- National Academy of Sciences (2003) set median accuracy at 89% (range 70 to 99%)
- Field studies consistently more accurate than laboratory studies
- Truthful results more accurate than deceptive results
- Accuracy affected by purpose of the test (i.e., screening or diagnostic test)
- Accuracy reduced by scope of testing – broader tests may be more sensitive to a range of concerns, with some loss of specificity

Testing Basics

- All tests are either **Screening** or **Diagnostic** in purpose
 - **Screening** tests search for the possible presence of one or more issues of concern
 - **Screening** tests biased for **sensitivity** (identify all persons who might express the issue or concern, then refer for further investigation or diagnostic testing)
 - **Diagnostic** tests investigate a single issue in response to a present concern (known incident or allegation)
 - **Diagnostic** tests biased for **specificity** (rule-out persons for whom the issue or concern does not apply)
- **Serial testing** (screening test followed by diagnostic test or other investigation) improves accuracy and is a common strategy in testing sciences

Types of Post-conviction Polygraph Tests

- **Specific Issue Testing** (instant offense / disclosure over the instant offense)
 - Reduction of denial/minimization surrounding the instant offense
 - New allegation or specific issues of concern
 - Prior to clarification or reunification with children or younger sibling
- **Sex History Disclosure Testing**
 - Other victims – other victim selection behaviors (i.e., force/violence, incest, children, sleeping/unconscious persons, age of onset)
 - Paraphilic behaviors / sexual deviancy / sexual compulsivity (among the most important risk predictor variables) – public indecency activities: exhibitionism, voyeurism, frottage, public masturbation, etc.
- **Maintenance / Monitoring Polygraph**
 - Compliance / violations (primary focus)
 - Unreported sexual contacts
 - Pornography usage
 - Unauthorized contacts with children or vulnerable individuals
 - Other unauthorized activities
 - Masturbatory deviancy issues (i.e., fantasies involving past victims, force/violence or children)
 - Reoffense Behaviors
 - Forced or violent sexual contacts
 - Underage children (statutorily defined)
 - Incest activities
 - Public indecency behaviors
 - Goal is to identify precursor/risk behaviors prior to reoffense (waiting until reoffense is too late)

Question Formulation

- Behaviorally descriptive (refers to actual behaviors vs. written summary of behaviors)
- Time delimited (date of incident, or time-bar to identify time of reference)
- Single interpretable meaning (simple and direct)
- Never presuppose guilt or deception
- Be easily answered “yes” or “no”
- Avoid legal terms and treatment jargon (i.e., victim, rape, grooming)
- Avoid mental state or motivational terminology (i.e., purposefully, knowingly, intentionally)

- **Non-testable Issues**
- Intent (future behavior)
- Fantasy
- Thoughts

Potential Benefits of Post-conviction Polygraph Testing

- Reduction of denial / avoidance / minimization –
- improved engagement in treatment
- Improved behavioral compliance
- Improved focus and concern for personal integrity
- Improved treatment outcomes (reduction of failure re non-compliance and rule violations)
- Reduction of recidivism rates
- Reduction of treatment/supervision failures (and associated costs)

Limitations of Polygraph Testing

- No such thing as a “perfect” test that will work with everyone
- False positive results more common than false negative results
- Polygraph depends upon psychological organization and physiological (autonomic) health
- Test data may be less certain for psychiatrically disorganized persons (lack of reality contact)
- Test data may be impaired by persons in poor physical (autonomic or cardiovascular) health (due to exaggerated or dampened response potential, or difficulties remaining still during testing)

Ethical and Policy Considerations

- Tests don’t make decisions, people do – the accurate role of test is to provide an information source to inform decisions that are made by persons and teams
- Judges and juries are the “finders of fact” – the polygraph (or any other test) should never be allowed to usurp this role
- Always use caution when interpreting normative testing data with exceptional individual (i.e., persons whose functional characteristics lie outside the normal distribution of individuals in the intended sample or population)
- Policies should define referral and exclusionary criteria in response to suitability for testing
- Policies should clearly delineate the types of decisions that may or may not be influenced by polygraph test results