

# Polygraph Questions and Questionable Questions

## POST-CONVICTION SEX OFFENDER TESTING

February 19, 2008  
Colorado State Court Administrator's Office  
Division of Probation Services

Introduction to Sex Offender Management

Raymond Nelson, MA, NCC

# In Test - Questions

- All test formats include 8 to 12 questions
- Examinee must “pass” all test questions
- Two to four target issues for comparison
- Personally relevant questions regarding honesty and integrity
- Known truth questions to gage truthful response baseline
- Other questions to conduct the test and condition the examinee

# Question Formulation

- Describes the *examinee's behavior*
- Time delimited (date or time-frame)
- Simple (yes/no) direct and easily understood
  - Does not presuppose guilt or deception
  - Avoid legal terms and treatment jargon
  - Avoid mental state or motivational terminology

# Questions

- On or about that date, did you do it?
- On or about that date, did you do it at that location?
- (Do you know for sure, who did it on or about that date)?

- *On or about January 1, 2006, did you take those four missing diamonds?*
- *On or about January 1, 2006, did you take those four diamonds from the Zales Jewellers?*
- *Do you know for sure who took those four diamonds from Zales on or about January 1, 2006?*

# Non-testable Issues

- Intent
- Fantasy (not connected with behavior)
- Thoughts
- Beliefs
- State of mind
- Future behavior
- Other individual's behavior

# Questionable Questions

- Do you still beat your children?
- Are you now or have you ever been...
- Did you deliberately strike your wife?
- Are you planning to harm that child?
- Did you illegally take that money?
- Did you mean to keep that money?
- Did you knowingly steal that car?
- Did you intentionally harm your wife?

# Linguistics and Vocabulary

*From now on, ending a sentence with a preposition is something up with which I will not put.  
--Winston Churchill*

# Linguistics – Events and Things

- Things and events are NOT defined by human behavior – they are what they are

*If a tree falls in the forest and no-one is there to hear it, does it make a sound?*

- Chairs
- Hammers
- Pornography

# Linguistics - Behavior

- Human behavior is not defined by intent but by the event
  - Hitting
  - Falling

- *Sexual contact and Lying are among the exceptions to this rule*
  - *Lying = attempting to deceive*
  - *Sexual contact = touching private parts for sexual arousal*

# Polygraph Examination Results

- **No Significant Reactions**  
*(No Deception Indicated)*
- **Significant Reactions**  
*(Deception Indicated)*
- **No opinion**  
*(Inconclusive)*
- **Purposeful Non-Cooperation**  
*(Intentional Distortion)*

*Examinees must “pass” all test questions to achieve a completely resolved test result*

# Mixed Results

Cannot render opinions with mixed deceptive and non-deceptive results

– ***Single Issue Tests***

- Inconceivable to lie to some questions while being truthful to others
- Either deceptive or truthful to all

– ***Mixed Issues Tests***

- Possible to lie to some questions while being truthful to others
- Results can be deceptive and inconclusive
- Results can be non-deceptive and inconclusive

# PCSOT - Objectives

- **Disclosure**
  - risk assessment / treatment planning
  - reduction of denial / improved engagement in treatment
- **Detection**
  - determining dishonesty and deviancy
  - relieving truthful persons of unnecessary suspicion
- **Deterrence**
  - increased likelihood of consequences
  - improved behavior compliance

# PCSOT - Types of Tests (cannot mix types of tests)

- **Instant Offense**
  - Nature and extent of the extent offense
  - Victim clarification
- **Sexual History Disclosure**
  - Part I - victims and victim selection
  - Part II - sexual compulsivity and sexual deviancy
- **Maintenance / Monitoring**
  - Non-compliance, violations, dishonesty
  - Unreported sexual contact / sexual behaviors
  - New offenses (without allegation or known incident)
- **Parental Risk Assessment (no allegation)**
  - Sexual assaults against relatives and children (non-siblings)
  - Sexual assaults against an offender's own child

# Operational Definition - Sexual contact or Physical Sexual contact

- **Sexual Contact** – rubbing or touching another persons sexual organs (i.e., breasts, buttocks, vagina or penis) whether over or under clothing, if for the purpose of sexual arousal, sexual gratification, sexual stimulation or “sexual curiosity.”
  - Includes having, allowing, or causing another person to rub or touching one's own sexual organs, whether over or under clothing, for purposes of sexual arousal, sexual gratification, sexual curiosity, or sexual stimulation.
- **Physical Sexual Contact** – does not include non-contact behaviors such as telephone sex, cyber-sex, exposing, and voyeurism

# Vocabulary

- Force = Violence = Physical Force
  - Attempts to physically restrain others
  - Prevent escape
  - Prevent resistance
- Threats = Threat of Harm = Real or Implied
  - Words, Gestures, Weapons
  - Threats of harm to family or pets
  - Threats of harm to prevent disclosure (silencing behaviors)

# More Vocabulary – Broader Concepts

- Coercion = non-violent
  - Overt non-violent attempt to manipulate a victim's compliance by overcoming protest, resistance, or reluctance
- Grooming = non-violent
  - Promoting rapport to manipulate a victim to feel as if he or she made the choice
- Other Trickery = non-violent
  - Setting up any situation in which a victim does not consent to sexual contact

# Still More Vocabulary

- Sexual Organs = private parts
  - Breast / Chest Area
  - Vagina / Vaginal Area
  - Buttocks
  - Penis

# Instant Offense Polygraph

- Specific to date, location, and alleged incident/s,
- Details of allegations which the offender denies
- Use of violence to gain compliance or silence
  - Physical force
  - Physical restraint
  - Threats of harm
- Testing the limits of behavior (more speculative)
  - Number of offenses (if small number)
  - Range of behavior
  - Very important when offender reports few incidents
- Penetrative / intrusive behaviors

# Instant Offense Polygraph - Referral

- Scheduled upon direction from supervision and treatment team
- When necessary should be completed within the first 90 days of treatment
  - Discrepancies that stand as a barrier to progress in treatment
  - Substantial denial of offense
  - Significant discrepancy between the offender's and victim's account of the offense
  - To explore specific allegations or concerns
- May also be completed prior to victim clarification

# Instant Offense - Sample Questions

## Mixed (multi-facet) - Full Denial

- On or about January 1, 2006, did you engage in sexual contact with Jane Doe?
- On or about January 1, 2006, did you sexually touch Jane Doe's bare private parts?
- On or about January 1, 2006, did you physically force or threaten to harm Jane Doe for sexual contact?

# Instant Offense - Sample Questions

## Single Issue – Full Denial

- On or about January 1, 2006, did you engage in sexual contact with Jane Doe?
- On or about January 1, 2006, did you engage in sexual contact with Jane Doe' in any way?  
Or (broader time period)
- At any time from January 1, 2004 to January 1, 2006, did you engage in sexual contact with Jane Doe?
- At any time from January 1, 2004 to January 1, 2006, did you engage in sexual contact with Jane Doe's private parts?

# Instant Offense - Sample Questions

## Mixed Issue – Discrepancy

- Did you ever sexually touch your daughter Judy's chest area (breasts)?
- Did you ever sexually touch Judy's bare private parts?
- Did you ever touch Judy's bare sexual organs (breasts / chest area / vaginal area)?

# Instant Offense - Sample Questions Intrusive Behaviors

- Did you ever touch or rub Judy with your (bare) private parts (sexual organs / penis)?
- Did you ever touch or rub Judy's sexual organs (vagina) with your bare private parts (penis)?
- Did you ever attempt to insert your penis (finger) into Jane Doe's vagina?
- Did you ever put your mouth on Jane Doe's private parts?

# Instant Offense - Sample Questions

## Mixed Issue – Use of Violence

- On or about January 1, 2006, did you physically restrain Jane Doe for sexual contact?
- On or about January 1, 2006, did you threaten to harm Jane Doe to engage in sexual contact with you?

Or (much broader)

- Did you ever force Jane Doe to engage in sexual contact with you?
- Did you ever coerce Jane Doe into sexual contact with you?

# Instant Offense - Sample Questions Testing the Limits of Behavior

- Besides that one time, did you engage in sexual contact with Jane Doe at any other time?
  - Besides what you reported, did you engage in any other sexual contact with Jane Doe?
  - Besides those three times, did you touch Jane Doe's bare private parts any other times?
  - Besides what you told me, did you force or coerce Jane Doe for sexual contact in any other ways (at any other time)?
- **“Did you ever...”** - any involvement - most accurate
  - Testing the limits of behavior may be troublesome for examinees with compulsivity
  - We will never know “everything”
  - Consider impact victims to assume we know “everything”

# Instant Offense

## – Questionable Questions

- On or about January 1, 2006, did you rape (sexually assault) Jane Doe?
- Did Jane Doe put her mouth on your private parts?
- Did you mean to...
- Did Thomas ever sexually assault your children?
- Was she asleep or unconscious?
- Did she tell you 'no' or 'stop'?
- Did she want to...
- Did she initiate (start) that sexual contact?
- Have you withheld any detail...
- Have you told me everything...?

# Sex History Part 1 - Victim Selection

- **Statutorily underage persons**
  - Under age 15 as adult
  - Four years younger as juvenile
- **Incest behaviors (legal family relationships)**
  - Blood relation
  - Relative by marriage
  - Relative by adoption
- **Violent sexual offenses**
  - Physical restraint
  - Physical force
  - Threats of harm (including threats to family or pets)
- **Mentally / physically incapacitated victims**
  - Drugs / Alcohol
  - Asleep
  - Other (medical)

# Sexual History Disclosure Written Preparation

- Serves to:
  - Instill an adequate conceptual vocabulary to discuss sexual behavior
  - Help identify sexual behavior that was unlawful and abuse, unhealthy, dangerous, exploitative, or within normal limits
  - Organize and review the examinee's history prior to the examination date

*The sexual history polygraph should not be the first time the examinee reviews his or her history of sexual behavior*

# Sex History Part 1

## – Legal Considerations

- Probation / Parole Officers, Therapists, and Social Services Workers are mandatory child abuse reporters
  - Polygraph examiners are not
- Some examinee's have been instructed to provide only initials or anonymous identifiers for each victim
- Some examinee's elect not to disclose information about jurisdiction or their exact relationship with victim

# Referral for Polygraph – Sex History

- Offender should contact examiner at team's direction
- Supervision team should contact examiner regarding any issues of concern
  - Evaluation and prior polygraph reports to examiner (especially if complex diagnostic consideration or previously unresolved test results)
- Part 1 complete (passed) within 6 to 12 months
- Staff case if sex hx remains unresolved after one year
- Use Part 2 to investigate or rule-out compulsivity or other problem sexual behavior
- Do Not wait years to gather information pertinent to risk prediction, risk management and treatment needs

# Sex History – Part 1 Adults

## Sample Questions

- Since you turned age 18, did you ever engage in sexual contact with anyone under age 15?
- Besides whom you reported, did you engage in sexual contact with anyone else who was related to you?
- Besides that one person, did you physically restrain or threaten to harm anyone for sexual contact?
- Besides those three people, did you ever engage in sexual contact with anyone who was asleep or unconscious?

*Examiner will also explore a range of problem behaviors including honesty and compliance with supervision and treatment team members*

# Sex History – Part 1 Juveniles

## Sample Questions

- Did you ever engage in sexual contact with anyone who was four or more years younger than you?
- Besides whom you reported, did you engage in sexual contact with anyone else who was related to you?
- Besides that one person, did you physically restrain or threaten to harm anyone for sexual contact?
- Besides those three people, did you ever engage in sexual contact with anyone who was asleep or unconscious?

*Examiner will also explore a range of problem behaviors including honesty and compliance with supervision and treatment team members*

# Sex History 1 – Questionable Questions

- Do you have any other victims that you have not reported?
- Did you sexually assault anyone that you have not disclosed in your written sexual history?
- Did you have sexual contact with anyone else who did not consent?

# Sexual History Part 2

## Compulsivity / Deviancy / Crossover

- Other sexual offenses
- Public indecency behaviors
  - Peeping
  - Voyeurism
  - Frottage
  - Public masturbation
- Sexual contact with animals
- Stealing or use of underwear or undergarments
- Use of non-human objects
- Child pornography

# Sex History - Part 2

## Sexual Offenses

- (Besides those three people) Did you (ever) rub your sexual organs against any (other) unsuspecting person?
- Since you turned age 25, did you engage in sexual contact with a minor who was 10 or more years younger than you?
- Before you became an adult, did you ever engage in sexual contact with anyone who was four or more years younger than you?
- Did you ever rub your sexual organs against an unsuspecting person?
- Did you ever engage in sexual contact with an (non-human) animal?

# Sex History - Part 2

## Sexual Behavior Patterns

- Did you ever show your bare sexual organs to an unsuspecting person in the community?
- Did you ever look through someone's window in attempt to see their bare sexual organs?
- Did you ever masturbate while watching someone in the community (someone who didn't know)?
- Did you ever steal or use another person's underwear or undergarment for sexual purposes?

# Sex History 2 – Questionable Questions

- Did you see anyone's private parts that you have not reported?
- Did you show your private parts to anyone else?
- Besides what you reported, did you engage in any other sexually deviant behavior?
- Besides what you told me, did you masturbate any other times?
- Have you left out any detail from your written sexual history disclosure?

# Maintenance Polygraph

- Unreported (secretive) sexual contacts
- Unauthorized contacts with vulnerable persons (physical contact, games, or being alone / unsupervised with underage persons)
- Use of pornography (sexually stimulating or sexually explicit materials)
- Masturbatory deviance (excessive or compulsive masturbation; thoughts of victims, young children, or violence)

- *Maintenance polygraphs target non-compliance behaviors that reveal the early onset of an escalating risk level*
- *Waiting to catch offenders after reoffending is too late to prevent another victim*

# Pornography

- X-Rated (XXX) magazines, movies (including cable, satellite, theaters, arcades, videotape, DVD), and other digital media), and Internet / computer images which minors cannot purchase

– Gratuitous displays of nudity or sexual acts, for the primary purpose of causing sexual arousal

# Incidental Contact

- Greetings
- Interactions
- Incidental physical contact

- *Visual contact may be so commonly occurring that testing the limits may not be meaningful*
- *Proximity contact concerns may be difficult to operationally (behaviorally) define*

# Completely Alone or Unsupervised

- Completely alone or unsupervised with a minor (young child) where the offender cannot be observed by anyone
  - No-one can see
  - No-one can hear
  - No-one is aware of presence with child
  - No-one knows what is occurring
  - No-one can check on or observe what is occurring

*Operational definitions underlie the empirical meaning of polygraph test results*

# Other Concerns

- Visual Contact (very broad)
- Unauthorized contact with victims
- Unauthorized contact with offender's children
- Unauthorized contact with sexual partners
- Objectifying behaviors
  - Verbal – jokes, conversation
  - Non-verbal

# Maintenance Polygraph - Sample Questions

- Since your last polygraph, did you have sexual contact with anyone that you have not reported (anyone besides your wife)?
- Since your last polygraph, have you been completely alone with anyone under age 18?
- Since your last polygraph, did you view or use any X-rated or pornographic images?

(All questions must use the same time-bar)

# Maintenance Polygraph Sample Questions - Juvenile

- During the last six months, besides that one person, did you have sexual contact with anyone else?
- During the last six months, did you view or use any X-rated pornographic images?
- During the last six months, did you have physical contact with anyone who was four or more years younger than you?

Or

- During the last six months, have you been completely alone (unsupervised) with anyone under age X?

# Maintenance Polygraph Sample Questions – Deviancy

- During the last six months, did you engage in physical sexual contact with a non-human animal?
- During the last six months, have you become sexually aroused while having any (physical) contact with a minor?
- During the last six months, did you masturbate to a thought or fantasy about a minor?

Or

- During the last six months, masturbate to a thought or fantasy about Judy?

# Maintenance Polygraph Sample Questions – Testing the Limits

- During the last six months, besides those three people did you engage in sexual contact with anyone else?
- During the last six months, besides those two times did you have physical contact with anyone else who was under age 12?
- During the last six months, did you masturbate while looking at any nude or pornographic images?  
Or
- During the last six months, besides those two times did you view or use any other pornographic images?

# Maintenance / Monitoring - Special Considerations

- **Maintenance Polygraph**
  - **High risk** and **non-compliance behaviors**
  - Investigate behaviors that signal the early phases of escalating risk level
  - Intentionally **broader than reoffense** questions
  - Allows intervention before reoffense
  - Waiting to catch an offender after **reoffense is too late**
- **Monitoring polygraphs**
  - **Unknown / unreported reoffenses** (without allegations)
  - Other specific concerns
  - Differences in base-rates compared with non-compliance behaviors means differences in error estimation

# Maintenance Polygraph Sample Questions 1 - Adult

- During the last six months, did you have sexual contact with anyone besides your wife (girlfriend / anyone that you have not reported)?
  - During the last six months, did you view or use any X-rated pornographic images?
  - During the last six months, did you have physical contact with anyone under age 18?
- Or
- During the last six months, have you been completely alone (unsupervised) with anyone under age 18?

# Maintenance – Questionable Questions

- Since your last polygraph, besides what you reported, did you have contact with any other minors?
- During the last six months, did you objectify anyone that you have not reported?
- Since your last polygraph, did you even once look at anyone under age 18? (did you talk to anyone under age 18)

# Monitoring Polygraph

- Investigate the offender's possible involvement in reoffense behaviors since the time of sentencing
  - *New Violent Sexual Offenses*
  - *New Incest Offenses*
  - *Child-molestation Offenses*
  - *Recent unlawful public indecency behavior*
  - *Any Return to Past Offending Behaviors*
- Investigate other suspected problems

# Monitoring Polygraph Targets

- Forced sexual contacts
  - Physical force
  - Threat of force or violence
  - Coerced sexual contacts
    - Verbal or social pressure
    - Manipulation, bribery, trickery
- Sexual contact with underage persons
- Sexual contact with relatives / family members
- Sex contact with unconscious / incapacitated persons
- Public indecency behaviors
  - Exhibitionism
  - Voyeurism
  - Frottage

# Monitoring Polygraph Sample Questions

- During the last six months, did you have sexual contact with anyone besides your wife (girlfriend / fiancée)? (anyone that you have not reported)
  - During the last six months, did you force or coerce anyone to have sexual contact with you?
  - During the last six months, did you have sexual contact with anyone who was under age X?
- or
- During the last six months, did you have sexual contact with anyone who was related to you?

# Monitoring Polygraph Sample Questions 2

- Since your last polygraph, besides those four people did you have sexual contact with anyone else?
- Since your last polygraph, did you physically restrain or threaten to harm anyone for sexual contact?

Or

- Since your last polygraph, did you engage in sexual contact with anyone that you have not reported
- Since your last polygraph, force or coerce anyone to have sexual contact with you?

# Monitoring Polygraph Sample Questions – Indecency Bx

- Since your last polygraph, did you show your bare sexual organs to anyone in the community?
- Since your last polygraph, did you attempt to seen the bare sexual organs of an unsuspecting persons?
- Since your last polygraph, did you touch the sexual organs of any unsuspecting person?

Or

- Since your last polygraph, did you rub your sexual organs against any unsuspecting person?

# Monitoring Polygraph Sample Questions – Compulsivity Bx

- Since your last polygraph, did you show your bare private parts to anyone in the community?
- Since your last polygraph, did you enter anyone's private property to see someone's bare private parts?
- Since your last polygraph, did you masturbate anywhere outside your own home?
- Since your last polygraph, did you keep or use another persons underwear or undergarments?

# Monitoring Polygraph Sample Questions – Compulsivity

- Since your last polygraph, did you use or masturbate with anyone's underwear or undergarments?
- Since your last polygraph, did you masturbate using anyone else's undergarments or personal property?
- Since your last polygraph, did you masturbate anywhere outside your own home (anywhere in the community)?

Or

- Since your last polygraph, did you leave your semen or ejaculate anywhere that others would contact it?

# Monitoring Polygraph Sample Questions – Frottage

- Since your last polygraph, did you engage in (physical) sexual contact with another person?
- Since your last polygraph, did you touch the sexual organs of anyone that you have not reported?
- Since your last polygraph, did you touch or rub your private parts against any unsuspecting person?

Or

- Since your last polygraph, did you rub your sexual organs against anyone in the community?

# Monitoring Polygraph – Legal Considerations

- PCSOT examinee's have 5<sup>th</sup> amendment rights pertaining to questions about new crimes
- PCSOT examinee's do not have 5<sup>th</sup> amendment rights pertaining to violations of probation / parole conditions
- It is acceptable for examiners to allow an examinee to withhold information that would result in legal charges, while eliciting descriptive information about behaviors

# Monitoring – Questionable Questions

- Do you have any new victims?
- During the last six months did you sexually assault anyone?
- Since your last polygraph did anyone under age 18 touch your bare private parts?

# Random Vs. Periodic Testing

- Experience with drug testing in the U.S. suggests that random testing provides a more effective deterrent than scheduled periodic testing
- Consideration might be given to allowing supervision and treatment team discretion on the scheduling of maintenance/monitoring polygraphs for some sexual offenders

# Parental Risk Assessment

- PRA is intended to allow contact with children, for offenders who present a low risk to their children
- PRA polygraph is intended to assist in the determination of an offender's risk to his or her own children
  - Children who are not known to be victims and are not siblings of victims
- Two objectives:
  - Prevent any further traumatization of an unreported victim that would result from ongoing contact
  - Investigate the offender's history of sexual assaults against underage persons and family members

# Referral for Polygraph – PRA

- Completed during the course of the Parental Risk Assessment
- Normally completed early in treatment
- May not be necessary if PRA is later in treatment if sex history is already resolved

# PRA - Target Selection

- Mixed-issue (partial sexual history) regarding any unreported child-molestation offenses and any incest offenses
  - Provides evaluator with information on offense patterns
  - Undisclosed history with non-child relatives could become a factor
- 
- Specific Issue polygraph regarding the offenders child/ren
  - Internal consistency offers greater diagnostic accuracy regarding a single issue of concern
  - Does not provide evaluator with info about offending behavior patterns

# Parental Risk Assessment - Sample Targets

- Besides that one person, did you engage in sexual contact with anyone else who was under age (15)?
- Did you ever engage in sexual contact with anyone who was related to you?

Or

- Did you ever engage in sexual contact with your son Johnny?
- Did you ever engage in sexual contact with your son Johnny at any time?

# PRA – Questionable Questions

- Did you ever sexually assault your daughter Judy?
- Did you ever touch your son John's private parts?
- Did you ever show your private parts to your children?
- Did your daughter Judy ever touch your sexual organs?
- Did you ever have sexual thoughts about your daughter Judy?

# PCSOT - Take Home Points

- Instant offense polygraphs can reduce denial, improve engagement in Tx and help with victim clarification
- Sexual history polygraphs are intended to assist with risk assessment and treatment planning
  - Sexual history polygraph requirement should be completed within the first year of treatment
  - Staff all cases and manage as high-risk all offenders for whom the sexual history remains unresolved after 1st year
- Maintenance polygraphs are intended to assist with ongoing risk assessment and risk management
  - Waiting to detect a reoffense is too late
- Parental Risk Assessment reg non-victim children
- We will never know everything

# Professional Judgment

- *Tests Do Not Make Decisions*
- Tests provide information
- Decisions are made by professionals and teams

*Do Not surrender professional judgement to the polygraph instrument or any other single test*

# Professional Judgment -Standard 7.161

“Information and results obtained from the polygraph test shall be considered, but shall not become the sole basis for decisions regarding, transition, progress, and completion of treatment...” [p.100]

Colorado Sex Offender Management Board (2003)

# Self Incrimination

- Pino (1973, 1974) advocated Use and Derivative Use Immunity to safeguard against self-incrimination when investigating non-adjudicated offenses in dispositional polygraph usage
- Colorado's Juvenile Standards (appendix) indicate the use of protective orders for non-adjudicated youths
  - Copies of the Protective Order should be given to examiner and all named referring agents

# Immunity Options and Jurisdictional Response

- Complete immunity
  - Potentially damaging to victims
- Limited immunity until a victim (victim's family) requests a criminal filing
  - Places responsibility on victim to hold the offender accountable
- Limited immunity for crimes similar to instant offense
  - Could motivate concealing of crossover behavior
  - Might negatively impact victim's of abuse for whom offender is not charged
- No immunity
  - Could motivate withholding and secrecy
  - Might necessitate incomplete disclosure of information

# Mandatory Child Abuse Reporting

- Probation / Parole Officers, Therapists, and Social Services Workers are mandatory child abuse reporters
  - Polygraph examiners are not
- Some examinee's have been instructed to provide only initials or anonymous identifiers for each victim
- Some examinee's elect not to disclose information about jurisdiction or their exact relationship with victim

# Thank You

Raymond Nelson

P.O. Box 213

Denver, CO 80201

303 587-0599

720 554-7677 fax

[raymond@raymondnelson.us](mailto:raymond@raymondnelson.us)

[www.raymondnelson.us](http://www.raymondnelson.us)