



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Room 029 State Capitol, Denver, CO 80203-1784

Phone: (303) 866-3521 • Fax: (303) 866-3855

lcs.ga@state.co.us • leg.colorado.gov/lcs

Memorandum

November 6, 2018

TO: Interested Persons

FROM: Juliann Jenson, Research Analyst, 303-866-3264

SUBJECT: Post-Conviction Sex Offender Polygraph Testing for Adult Sex Offenders

Summary

This memorandum provides an overview of how post-conviction sex offender polygraph testing (PCSOT) is used for adult sex offenders in Colorado, as well as in other states. It also includes a summary of current research on its effectiveness.

Overview of Post-Conviction Sex Offender Polygraph Testing

Polygraphs, otherwise known as lie detector tests, measure indices such as blood pressure, pulse, respiration and skin conductivity while a person is asked a series of questions. Courts in Colorado and the United States do not recognize the reliability of polygraph testing under the rules of evidence, but polygraphs continue to be an inherent part of the treatment and supervision of sex offenders across the United States. Specifically, PCSOT is commonly administered to guide how sex offenders are supervised in prison and the community, including the level and intensity of treatment.

Testing methods and outcomes. There are a number of polygraph tests specific to sex offenders. These tests measure sexual history and the circumstances surrounding the offense of conviction, as well as monitor compliance with conditions of parole, probation, and treatment. The tests generally last about 90 minutes, and include a pre-test interview to gather background information, the administration of the test itself, and the presentation of results. Outcomes are categorized in one of three ways: no deception indicated, deception indicated, or no opinion/inconclusive.

Differing perspectives. The use of PCSOT is not without controversy. Opponents criticize it on scientific, procedural, and ethical grounds. In Colorado specifically, there has been criticism regarding the number of required tests, costs, and the inability to demonstrate impact on public safety. Proponents, on the other hand, deem its use essential to the supervision and treatment of people convicted of sex crimes. Advocates reiterate that polygraph testing is one of several methods used to monitor behavior and assist with disclosures, reducing denial, and fostering treatment success.

Post-Conviction Sex Offender Polygraph Testing in Colorado

Standards and guidelines for PCSOT are promulgated by the Sex Offender Management Board (SOMB). The SOMB, with staff support from the Division of Criminal Justice in the Department of Public Safety, was legislatively created in 1992 to establish a basis for the systemic management and treatment of sex offenders. The 25-member volunteer board and various appointed subcommittees are charged with reviewing research and best practices and incorporating these findings into standards and guidelines, with a goal of rehabilitating offenders and preventing additional crimes. Further, the SOMB has a legislative mandate to study the efficacy of polygraphs as part of its annual report.¹

SOMB standards and guidelines for PCSOT include the following components:

Community supervision team. Colorado employs a community supervision team (CST) that works together to supervise, monitor and treat an offender's behavior. Members of the team include a supervision officer, treatment provider, victim representative, polygraph examiner, and other adjunct professionals as necessary.

Mandated polygraphs. Polygraph testing is required for every individual who is receiving sex offender treatment in prison and for those on parole or probation as the result of a sex crime conviction.

Frequency. The SOMB recommends that polygraphs occur at least every six months and more frequently if deemed necessary by the treatment team. An inconclusive or deceptive finding may result in more frequent testing until a nondeceptive result is produced.

Cost. A typical polygraph exam costs \$250 for adults. For those in prison and the indigent under community supervision, the state pays for polygraphs using moneys from the Sex Offender Surcharge Fund, which is supported by court fees paid by those convicted of sex crimes. In FY 2016-17, approximately \$1.2 million in public funds was paid to polygraph examiners, as reported by the Division of Criminal Justice. Probationers and parolees are otherwise expected to pay for their own polygraph testing as a condition of supervision.

Consequences for deceptive or inconclusive polygraphs. Although a deceptive finding on a polygraph exam is not itself a violation of probation or parole, it can be considered in determining the level and conditions of supervision, including revocation.

Polygraph examiner qualifications. Colorado does not license polygraph examiners. Instead, the SOMB approves examiners based on qualifications outlined in the standards and guidelines. There are different levels of polygraph examiners, based on levels of experience and education, ranging from an associate who needs supervision to an independent (full operating) examiner. There are currently 28 approved PCSOT examiners in the state. Any complaints against a polygraph examiner must be directed to the SOMB.

¹Section 16-11.7-103 (4)(e), C.R.S.

Recent legislation. House Bill 18-1427 would have prevented members of the SOMB from having direct financial benefits from the standards and guidelines that it adopts. Governor Hickenlooper vetoed the measure, citing that it was overbroad and excluded those from serving on the board who have expertise in various treatment modalities.

Other States' Use of Post-Conviction Sex Offender Polygraph Testing

A sampling of state sex offender management laws and policies finds that PCSOT practices vary depending upon a state's supervision and treatment strategy. Most states tend to allow, but do not mandate, polygraph testing of sex offenders for treatment or supervisory purposes.

Sex offender management boards. According to the Center for Sex Offender Management, approximately a dozen states have formed a sex offender management board, or similar body, that has been granted authority to standardize evaluation, treatment, and the management of sex offenders. In the absence of a board, states will grant other agencies, such as the Department of Corrections, the responsibility, or outline requirements in state law.

Idaho and Illinois both have polygraph examiners who sit on their respective sex offender management boards. Other states with boards (California, Iowa, Massachusetts, Minnesota, Oregon, Pennsylvania, Tennessee, and Texas) do not include polygraph examiners as voting board members.

Community supervision teams. Some version of the CST, such as the one used in Colorado, is found in a handful of states. Alaska, Arizona, California, and Idaho are examples of states that have incorporated teams of professionals to supervise, monitor, and treat sex offenders. These teams include a polygraph examiner as a member. States that use a CST mandate polygraph use or encourage its use more frequently than those who do not use this model.

Permissive use of polygraphs. The majority of states reviewed do not mandate polygraphs, but instead allow clinicians or the supervising officer to request one if they feel it would be useful in better managing the sex offender. Although Tennessee explicitly discontinued polygraph tests as a supervision tool in 2012 due to legal concerns, they are allowed for treatment purposes. Georgia, Maine, and Minnesota also let treatment providers determine if they want to use a polygraph and, if so, under what circumstances. Nevada, West Virginia, and Wisconsin allow a supervising parole or probation officer to request a polygraph test.

Mandated polygraphs. States that mandate polygraphs do so for differing populations of sex offenders. Arizona and California, like Colorado, require the use of PCSOT for every individual who is on state parole or county probation as a result of a sex crime conviction. Other states, such as Maryland, require regular polygraphs only for those on lifetime supervision. Oklahoma requires polygraphs for all registered sex offenders who are currently under the supervision of the Department of Corrections.

Limitations on the number of tests. Some states place limitations on the number of tests a polygraph examiner may conduct on sex offenders. Minnesota does not allow an examiner to conduct more than four examinations per year on the same offender. West Virginia places this limit at five and, along with Idaho, further specifies the number of PCSOT that an examiner may conduct in a 24-hour period.

Frequency. For the states that mandate polygraphs, most fall into the once per year category, with the exception of a six-month schedule in Oklahoma and Colorado.

Polygraph examiner qualifications. Many states require polygraph examiners to be licensed through a state licensing board, with further training or certification in PCSOT. California and Florida, for example, require a polygraph examiner to have successfully completed a PCSOT training course approved by the American Polygraph Association and be a member of a state or national polygraph association. Continuing education is also required.

Cost. A review of state polygraph practices found that costs vary across the country, ranging from \$175 to \$700 per test, depending upon location and the type of test administered. It is common to make the offender pay while on community supervision unless the offender is indigent, in which case the state or local government pays.

Post-Conviction Sex Offender Polygraph Testing Effectiveness Research

While polygraph use has been researched extensively, there appear to be few relevant peer-reviewed studies that measure its efficacy in relation to sex offender treatment and recidivism. The Association for the Treatment of Sexual Abusers (ATSA) has identified several studies, which are summarized below, but whether using polygraphs improves either the effectiveness or efficiency of sex offender treatment has not been substantiated by research. A 2017 polygraph outcome study by the Colorado SOMB is also included in the summary listing for reference purposes.

McGrath study. This small, but widely referenced study compared a group of 104 adult male sex offenders who received cognitive-behavioral treatment, correctional supervision, and periodic polygraph compliance exams with a matched group of 104 sex offenders who received the same type of treatment and supervision services but not polygraph exams. No statistical differences were found between the polygraph and non-polygraph groups for any new offense, field violations, or prison returns. Rates were higher, however, in the polygraph group for any new offense (39 percent vs. 35 percent), field violations (54 percent vs. 47 percent), and prison returns (47 percent vs. 39 percent).²

The complete study can be found here:

<http://journals.sagepub.com/doi/abs/10.1177/107906320701900404>).

Safer Society Treatment Provider Survey. The Safer Society Foundation conducted a large-scale survey of sexual abuser treatment programs in 2009 and asked about practices in the sex offender treatment field. Survey findings indicated that almost 80 percent of adult sex offender treatment programs in the United States make use of some type of polygraph testing. The report found that providers commonly find the polygraph to be a useful management tool. Whether the polygraph induced disclosures associated with lower re-offense rates was acknowledged as needing further study.³

²McGrath, Robert, "Outcomes in a Community Sex Offender Treatment Program: A Comparison Between Polygraphed and Matched Non-polygraphed Offenders," *Sage Journals*, Volume 19, Issue 4, 2007.

³McGrath, R., Cumming, G., Burchard, B., Zeoli, S., Ellerby, L., "Current Practices and Emerging Trends in Sexual Abuser Management; The Safer Society 2009 North American Survey," *The Safer Society Press*, 2010.

The survey results and report can be found at this link:

(http://www.safersociety.org/uploads/WP141-Current_Practices_Emerging_Trends.pdf).

Rosky literature review. This report from 2012 examined claims that polygraphs are justified for use with sex offenders because they work as a treatment and supervision aid, as well as a deterrent for future offending. The author concluded that there is not enough empirical evidence to support these claims and recommended that further research be conducted to assess efficacy and effectiveness with viable outcome measures.⁴

The report in its entirety is located here:

(<http://journals.sagepub.com/doi/abs/10.1177/1079063212455668>)

Colorado SOMB reports. As discussed above, the Colorado SOMB has a legislative mandate to study the use of polygraphs. A recent report addressed concerns about the number of failed polygraphs. Five approved polygraph examiners, out of 28, provided information about initial and re-test exam results during the last quarter of 2017. Almost three-fourths of all polygraph exams were reported as “no deception indicated.”⁵ An online version of the study is located here:

(<http://cdpsdocs.state.co.us/dvomb/SOMB/Polygraph.pdf>).

Additional Resources

- The Colorado Sex Offender Management Board Home Page:
<https://www.colorado.gov/pacific/dcj/sex-offender-management-board>
- The Colorado Sex Offender Management Board Standards and Guidelines for Adults and Juveniles: <https://cdpsdocs.state.co.us/dvomb/SOMB/Standards/SAdult.pdf> and <https://cdpsdocs.state.co.us/dvomb/SOMB/Standards/SJuvenilenew.pdf>
- The Use of Polygraph in Sex Offender Treatment, Colorado Division of Criminal Justice in the Department of Public Safety:
<https://www.colorado.gov/pacific/dcj/use-polygraph-sex-offender-treatment>
- Other state examples:

Idaho Post Conviction Sex Offender Polygraph Examinations and Examiners:

(https://somb.idaho.gov/pdf/standards_documents/PCSOT_Poly_4.2017.pdf)

Minnesota Department of Corrections Polygraph Policies, Directives, and Instructions Manual:

(http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=107.030.htm)

⁴Rosky, Jeffrey, “The (F)utility of Post-Conviction Polygraph Testing,” *Sage Journals*, Volume 25, Issue 3, 2013.

⁵Hume, K. & Lobanov-Rostovsky, C., “An Exploratory Study of Post-Conviction Sex Offender Polygraph Exam Outcomes in Colorado,” Sex Offender Management Board, Office of Domestic Violence and Sex Offender Management, Division of Criminal Justice, Department of Public Safety, 2017.