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The Use of the Polygraph with Sex Offenders in the UK

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Introduction

For more than ten years the polygraph has been the subject of research and increased application with sex offenders in the United Kingdom. However, it is not without its detractors (Ben-Shakhar, 2008; Lykken, 1998; Meijer, Verschuere, Merckelbach and Crombez, 2008). Indeed, Craig (2011), described it as “a lightning rod for controversy” (p. 59), principally because of ongoing disputes with regard to its scientific acceptability (Grubin, 2008), its accuracy/validity (Madsen, 2009) and its ethical standing (Vess, 2010). Nonetheless, largely due to its widely accepted utility, post-conviction sex offender

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polygraph testing (PCSOT) is “now increasingly viewed by its users as an invaluable tool” (Holden, 2009: xxiv).

Early Applications of Polygraph to Sex Offender Work in the USA

Wilcox (2000) explored the clinical application of the polygraph to post-conviction assessment, supervision and monitoring of sex offenders, noting that in the United States the polygraph’s use with sex offenders dated back to the early 1970s. However, it was not until the 1980s that practitioners and researchers such as Abrams (1991) began to systematically examine the polygraph’s potential in post-conviction sex offender work. Subsequent research (Ahlmeier, Heil, McKee and English, 2002; English, Jones, Patrick, Pasini-Hill and Gonzales, 2000; and O’Connell, 2000) continued to demonstrate increased offence-related disclosures when employing the polygraph (in addition to other intervention and assessment techniques).

However, the use of polygraph testing to inform risk assessment and management of sex offenders in the UK is still relatively new (Gannon, Beech and Ward, 2008, 2009; Grubin, 2008, 2010; and Wilcox and Buschman, 2011). On the other hand, in the US polygraph testing is used as part of almost 80% of adult sex offender treatment programs and 50% of those for adolescents (McGrath, Cumming, Burchard, Zeoli and Ellerby, 2010). Holden (2009) also noted that a 2007 survey conducted by the American Polygraph Association revealed that 46 out of 50 American states “employ PCSOT for the treatment and oversight of sexual offenders”, whilst the other four are currently reviewing its applicability to their needs and circumstances (p. xxiv).

Polygraph, Risk Assessment and Public Protection

To put polygraph employment into context, the authors note that there has been an emphasis on risk management and public protection in recent UK legislation and penal policy. However, whilst the terms of sentences for “serious” offences have increased (e.g. note “Preventative” sentencing under the Criminal Justice Act 1991 and the introduction of Indeterminate Sentences for Public Protection under the Criminal Justice Act, 2003), the reality is that there are only a minority of incarcerated offenders who will not be released from custody (on license) at some point in the future. Further, many

convicted offenders will receive community rather than custodial sentences. Therefore, the accurate assessment and safe management of risk posed by sex offenders in the community is of paramount importance (Beech, Craig and Browne, 2009; Hanson and Morton-Bourgon, 2009; Hanson and Thornton, 2000; and Wilcox, Beech, Markall and Blacker, 2009) and whilst perhaps sometimes inflated by the media, recidivism rates are a valid concern. In a comprehensive meta-analysis of existing research studies, Hanson and Morton-Bourgon (2005) observed an average sexual recidivism rate of 13.7% and general recidivism rate amongst these sexual offenders (for any offence) of 36.2% over an average follow-up period of five to six years. Further, research demonstrates that the rate of occurrence for both sexual and violent offences greatly exceeds that of conviction (e.g. Pilkington and Kremer, 1995; Taylor, 1999). Indeed, some research suggests that sexual recidivism can be up to 5.3 times that indicated by official reconviction rates (Falshaw, Friendship and Bates, 2003). This data gives some insight into the challenges faced by community criminal justice practitioners, who are tasked with accurately assessing, safely managing and effectively treating such individuals.

UK criminal justice initiatives have included the sharing of information through Multi-Agency Public Protection Arrangements (MAPPA) (Criminal Justice and Court Services Act, 2000) and the development of evidence-based sexual offending treatment programs (see Beech, Craig and Browne, 2009 for overview).

Early UK Polygraph Review

Historically, the UK government investigated the use of the polygraph to improve employment vetting and security largely in response to espionage at a high national level during the period of the famous Geoffrey Prime spy case. In relation to this, the British Psychological Society (BPS, 1986) was instructed to prepare a formal appraisal of the polygraph in relation to its proposed use in safeguarding sensitive government information. However, the BPS committee concluded that, in their opinion, employment of the polygraph did not meet the standards required for acceptance within the scientific community. In response to this report and other advice obtained by the government, a decision was taken to abandon the proposal to use the polygraph at that time for this purpose.

Revisiting the Use of Polygraphy in Sex Offender Work

Subsequently, at the end of the 1990s, practitioners in the UK's sex offender field began to explore the post-conviction application of polygraphy after reported positive outcomes from its use in the United States (Salter, 1997; Wilcox, 1999). This led to polygraph trials being introduced within the National Probation Service with progressive increases in design complexity and participant numbers (Ramsey and Farmer, 2008). Further to the introduction of initial polygraph trials (Grubin, Madsen, Parsons, Sosnowski and Warberg, 2004; Wilcox, Sosnowski and Middleton, 1999; Wilcox, Sosnowski, Warberg and Beech, 2005), the polygraph was reviewed once again by the British Psychological Society (BPS, 2004), though similar conclusions were drawn to those in their earlier report.

The BPS review continued to hold that there was limited evidence of the effectiveness of polygraphy in general or in the specific area of PCSOT. However, the BPS did note that there is a developing body of evidence to suggest that the polygraph can encourage sex offenders to disclose their deviant thoughts and behaviors in ways that may assist those responsible for their supervision and treatment. Further, the BPS review body considered that the polygraph may assist offenders in developing more effective self-control. Whilst this report concluded that the validity of the polygraph in its use with sex offenders has not been scientifically established, it is notable that these conclusions did not this time serve to dissuade the UK government from investigating its further use.

Indeed, by the mid-2000s the government had agreed to assess the utility of the polygraph in work with sex offenders, and relatedly, it supported the training of British professionals in the specific area of PCSOT. Ramsey and Farmer (2008) noted that "since 2005, the government has been committed to testing the use of compulsory lie detector tests in the management of convicted sex offenders" (p. 15). Continuing, they reported that "this was followed in 2007 by the Government's 'Review of the Protection of Children from Sex Offenders,' which contained an action to pilot mandatory polygraph tests as a management tool for child sex offenders, and the Offender Management Act 2007 which contained the legislative provision for this" (ibid).

The first investigations based on study probation involving convicted male sex offenders produced only qualitative information that was subsequently shared with treatment facilitators and probation supervisors. These was con-

ducted in September 1999, when five men on probation for sexual offences volunteered to be polygraphed on a single occasion (Middleton, Wilcox and Sosnowski, 1999). "The results suggested that workers were able to obtain more detailed information about index offences, further disclosures of past sexual offending, and more information about short-term risk and non-compliance with conditions of probation orders (Wilcox, Sosnowski and Middleton, 1999) (p. 234)".

A further quantitative study (N=14) was supported by the West Midlands Probation Service and carried out in the spring of 2000 (Wilcox, 2002; Wilcox and Sosnowski, 2005). It produced statically significant indications of wide-ranging paraphilic interests and behaviors amongst these men, as well as earlier onset and a greater prevalence of offence-related behaviors than had been known by Probation Services prior to employment of a single polygraph examination with each of these men. Specifically, the average age of sexual offending onset determined through a review of official records was 28 years prior to polygraph examination, whilst further to the administration of a single sexual history disclosure polygraph examination the age of onset given by these offenders reduced to 13.5 years. Excluding admissions of non-contact offences such as voyeuristic behavior and public masturbation, age of onset acknowledged by these offenders was 16 years following PCSOT. The numbers of reported paraphilic interests further to a single polygraph examination also increased from between two and four paraphilic interests to an average of six per offender. Lastly, evidence of significant offence crossover and increased numbers of victims and incidents of offending were also reported further to polygraph examination with reporting of non-contact sex offences increasing by a factor of 4.7 and that of contact offence victims increasing by a factor of 3.5. Prior to polygraph examination the mean number of sexual offence victims known to probation amongst these offenders was 48.1 and the mean number of sexual offence episodes was 92; however, following a single sexual history disclosure polygraph examination, the mean number of victims acknowledged by these offenders was 185.6 and the mean number of sexual offence episodes reported was 418, reflecting increases by factors of 3.9 and 4.5 respectively (Wilcox, Sosnowski, Middleton & Grubin, 2002). Notably, these men had previously engaged in an average of 141 hours of probation-based sex offender group work treatment at the time that they were polygraphed and so there was a general perception that their offending history was quite well understood by this time.

More Comprehensive Polygraph Trials

The Home Office subsequently commissioned two pilot studies on the use of the polygraph, beginning in 2002 (Grubin et al., 2004) and ending in late 2005 (Grubin, 2006; 2010). This research gave rise to further associated studies exploring the usefulness of PCSOT (Grubin, Madsen and Parsons, 2004; Wilcox and Donathy, 2008).

Grubin et al. (2004) polygraphed 32 sex offenders participating in community-based treatment programs. 97% of the sample (n=31) disclosed a total of 76 high risk behaviors by the point of the first test, of which probation staff had previously been unaware. Most disclosures were made at the pre-examination stage; either to the researcher or during the pre-test interview. Notably however, 78% (n=25) of the men “failed” the polygraph test (i.e. deception was indicated), and of those, 80% (n=20) then made further disclosures relating to high-risk behavior. The disclosures made included one man having had unsupervised contact with the child victim of his offence; another man having committed frottage against young girls on more than one occasion; and a man having visited public toilets in order to seek potential child victims. Twenty-one of the 32 participants underwent second polygraph tests at a later stage of the research. On this occasion, 71% (n=15) disclosed a total of 34 further high-risk behaviors, though 60% of these men (n=9) had already advised their supervising officers of this information in advance of testing, suggesting that the polygraph promoted greater openness about risk-related issues during supervision/treatment. Further, far fewer offenders “failed” the polygraph (i.e. gave indications of deception) at the point of the second test (29%, n=6). These results supported Grubin’s earlier assertions that “polygraphy can contribute substantially to treatment programs, as well as assisting offenders to avoid the sorts of behaviors that increase their risk of re-offending: it encourages offenders to disclose information that is relevant to their treatment and supervision” (2002: 48). Grubin further argued that, in the context of PCSOT, the polygraph might be better viewed as a “truth facilitator” as opposed to a “lie detector” (p. 51) and that concerns in relation to reliability and validity were less pertinent in this context than when it is used in other settings.

In a further, more extensive study (Grubin, 2006; 2010), 347 convicted sex offenders, who were completing community treatment programs in selected probation areas in England, undertook polygraph testing on a voluntary basis. Outcome data was compared to a sample of sex offenders under supervi-

sion in probation areas not involved in the research who had not been asked to participate in or had undergone polygraph testing. Supervising officers of the polygraph sample reported that new disclosures relating to risk were made in 70% of first polygraph tests. In comparison, only 14% of supervising officers reported new disclosures amongst the non-polygraphed sample. In terms of the nature of disclosures made by the polygraph group, 27% of these were rated as being of “medium” severity (“potential preludes to offending, such as going to places where there are potential victims”) and 10% were deemed to be “high” in seriousness (“specific breaches or actual offending”). Out of the 180 supervising officers of the polygraph group, 93% rated PCSOT as “somewhat helpful” or “very helpful” in their work with those particular clients. Grubin (2010) concluded that “polygraphy is associated with marked increases in the quantity, and an enhancement in the quality, of new disclosures made by offenders. The odds were 14 times greater that a polygraphed offender would make disclosures relevant to their treatment or supervision as opposed to a non-polygraphed one” (p. 274).

Legislation Changes and Continuing Professional Debate

The Offender Management Act 2007 (pp. 28–30) introduced the polygraph testing of convicted sex offenders in order to inform risk assessment/management during their license period (where the offender received a custodial sentence of 12 months or more, for a specified sexual offence). The Act was drafted so that this compulsory testing would firstly be piloted in selected probation areas.

Some researchers have suggested that individuals who voluntarily agree to be polygraphed might naturally be more disposed towards making disclosures (e.g. Meijer, Verschuere, Merkelbach and Crombez, 2008). However, Grubin (2002) expressed the opinion that “those offenders who are motivated to not re-offend found the procedure (polygraphy) beneficial, while those who are not motivated, avoided it” (p. 51). As such, the introduction of a mandatory polygraph testing offer was considered to an opportunity to compare results between voluntary and mandatory participants, as well as exploring the different theoretical perspectives of Meijer et al. (2008) and Grubin (2010). The key focus of this, most recent pilot has been to demonstrate whether mandatory polygraph tests provide probation workers with increased disclosures, and crucially, to examine whether those sex offenders subject to PCSOT requirements disclose more information about their behavior, attitudes and

thinking than those who are not subject to regular polygraph testing (West Midlands MAPPA; Annual report, 2009-2010). The pilot was also intended to further explore exactly how PCSOT informs risk management. A preliminary research report for the Ministry of Justice recommended that, within the pilot, “the impact of disclosures triggered by polygraph testing should be measured in terms of the impact on risk management. This should include recording all actions taken by offender managers in response to disclosures and not just changes in assessed levels of risk” (Wood, Kemshall, Westwood, Fenton and Logue, 2010: 4). The pilot commenced in April 2009 and was planned to run for three years. The authors note that this further trial was concluded on 1 July 2011, reportedly because the number of tested offenders required to complete this study had been met nine months earlier than anticipated.

Conclusions

The results of this latest polygraph trial have not yet been published, though the UK government clearly has a strong interest in exploring best practices in sex offender treatment, assessment and supervision, as evidenced by prominent managers and researchers within the Ministry of Justice and the National Probation Service Public Protection Unit (Ramsay and Farmer, 2008; Wood et al., 2010). However, within the popular press there have been accusations raised that the plan to employ the polygraph has been abandoned, with a claim that the early cessation of the current three-year trial occurred due to government financial constraints (Dunn, 2011). Nevertheless, in this same article, the Ministry of Justice spokesperson reported “we are now evaluating the results (of the study) and (will) consider our options”. While in America a number of states have provision for mandatory polygraph testing of convicted sex offenders, to our knowledge the legislation introduced by the UK government (The Offender Management Act, 2007) represents the only legislation supporting the national adoption of PCSOT. Further, although no one, prior to the formal reporting of the results of this study, has committed to making a public statement about this most recent pilot, the informal opinions we have gained have continued to be positive and supportive of its further employment within the field of sex offender work in the UK.

Of interest, *The Times* newspaper dated 31 December 2011 ran an article entitled “Suspects to face police lie detector for first time” (Hamilton, 2011). The piece reflected that police had begun using polygraphs on suspected sex

offenders in advance of bringing charges, describing that the tests had been used in 25 recent investigations “to speed up the risk assessment process”. Tests were carried out on first-time suspected offenders who volunteered to cooperate with the police, though any evidence elicited during the examinations was not admissible in court. The Hertfordshire Police Head of the Child Protection Unit said that polygraph testing should be regarded as an additional tool that significantly reduces investigation time and has also often provided information relating to additional unreported offences. This pilot, focusing on the use of polygraphy to make decisions as to whether or not suspects should be charged, has been reported upon positively, and a further 12-month trial is expected to begin in April 2012.

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