

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,] NO. 5218 197
]]
Plaintiff and Respondent,] COURT OF
] APPEAL
vs.] (H039603.)
]]
IGNACIO GARCIA,] (Santa Clara No.:
] C1243927.)
Defendant and Appellant.]]

SUPREME COURT
FILED

MAY - 2 2014

APPELLANT'S MOTION FOR JUDICIAL NOTICE

Frank A. McGuire Cler
Deputy

PETITION FROM THE SUPERIOR COURT OF SANTA CLARA
COUNTY, THE HONORABLE HECTOR RAMON,
JUDGE, PRESIDING

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,]	NO. S218197
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AMENDED REQUEST FOR JUDICIAL NOTICE

Pursuant to Rules of Court, Rule 8.252 and Evidence Code section 452, subdivision (b) & (h), petitioner respectfully amends his request this court take judicial notice of the California Sex Offender Management Board (“CSOMB”) guidelines by this motion, specifically the Sex Offender Treatment Program Certification Requirements and the Post-Conviction Sex Offender Polygraph Standards. (See *People v. Friday* (2014) 225 Cal.App.4th 8, 16, fn. 6, 17, fn. 7.) CSOMB, under Penal Code section 9003, certifies and updates the “sex offender management professional and polygraph examiner standards.” (See *People v. Friday, supra*, 225 Cal.App.4th 8, 15-18; AOB 4-5.) As noted in *Friday, (Id. at p. 16, fn. 6)*

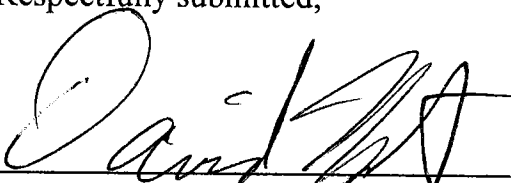
this document is “online at
<<http://www.cce.csus.edu/portal/admin/handouts/CASOMB%20Program%2010-29-13%20complete.pdf>> (as of Mar. 27, 2014).” These documents are attached hereto as designated as attachment “A” for the Sex Offender Treatment Program Certification Requirements and attachment “B” for the Post-Conviction Sex Offender Polygraph Standards.

Evidence Code section 452, subdivision (b) authorizes this court to take judicial notice of “Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.” Evidence Code section 452, subdivision (h) provides for judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

Appellant, in conjunction with the attachments “A” and “B” and the Declaration of Appellate Counsel, David D. Martin, respectfully requests that this Court take judicial notice of these related documents.

Dated: May 1, 2014

Respectfully submitted,



DAVID MARTIN, Attorney for
Appellant IGNACIO GARCIA

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DECLARATION OF APPELLATE COUNSEL

I, David D. Martin, declare:

1) I am the attorney, in association with the Sixth District Appellate Program, who was appointed on June 3, 2013, to represent Ignacio Garcia in his appeal from the terms of probation. The following facts are taken either from the record in this case or from my personal knowledge.

2) Both attachment "A," the Sex Offender Treatment Program Certification Requirements of the CASOMB and attachment "B" for the Post-Conviction Sex Offender Polygraph Standards of the CASOMB were printed verbatim on the evening of May 1, 2014, from the internet citations provided in the companion case in this matter, *People v. Friday* (2014) 225 Cal.App.4th 8, 16, fn. 6, 17, fn. 7.)

3) Just prior to oral argument, appellant counsel learned that the *Friday* court in H039404 had made the following indication which was

published in the internet record of that case:

The court proposes to take judicial notice of standards published by the California Sex Offender Management Board for the certification of sex offender management programs and professionals under Penal Code section 9003, available at <http://www.casomb.org/index.cfm?pid=232>.

4) Based upon that indication, as well as relevant briefing at pages 4 and 5 in the Opening Brief in this matter, appellant requested judicial notice of the above materials. The Court did not rule on the motion at that time and there is no mention of it in the Opinion.

5) This material was not provided to the trial court when the objections were made. However, this matter had been discussed in a “sidebar conversation” between the two parties and the lower court “with respect on how to proceed.” (2 RT 19.) The Court acknowledged that it “understands that this is going to be a hotly contested issue that will eventually find its way to the Court of Appeal, and perhaps even the Supreme Court of California. (*Ibid.*) The Court’s ruling was based upon the fact that: “[T]he statute doesn’t provide any discretion for the Court.” (2 RT 19.)

There was never any reasonable expectation that this trial court would be reviewing the constitutionality of a recent state enactment and had so informed counsel of that. Under these circumstances, with everyone assuming that this issue would be more fully, and more properly, addressed

in appellate court, the failure to show the material to the trial court should be excused. There was no indication that this material was presented in the lower court in *Friday* either. (See *People v. Friday, supra*, 225 Cal.App.4th at pp. 16-17.)

6) This material is essential to the determination of the constitutionality of the statute because it reveals how these new provisions are intended to be implemented. As *Friday* noted:

The several types of polygraph examinations include “instant offense exams,” “prior-allegation exams,” “sexual history disclosure exams,” and “sex offense monitoring exams,” as well as subcategories of these exams. (Cal. Sex Offender Management Bd., Post-Conviction Sex Offender Polygraph Standards, *supra*, at p. 10.) These exams have explicitly investigative components. Instant offense exams may be used “to test the limits of an examinee's admitted behavior and to search for other behaviors or offenses not included in the allegations made by the victim of the instant offense.” (*Id.* at p. 11.) . . . Questions about illegal conduct are not limited to sex offenses; they may include, but are not limited to, questions about the use or distribution of illegal drugs or controlled substances. (*Id.* at p. 21.)

The prior-allegation exam is used to probe prior alleged offenses, regardless of whether the probationer was charged with these alleged offenses. “Examiners should use the Prior Allegation Exam (PAE) to investigate and resolve all prior alleged sex offenses (i.e., allegations made prior to the current conviction) before attempting to investigate and resolve an examinee's history of unknown sexual offenses.” (Cal. Sex Offender Management Bd., Post-Conviction Sex Offender Polygraph Standards, *supra*, at p. 12.) Similarly, the sexual history exams should be used “to investigate the examinee's history of involvement in unknown or unreported offenses and other sexual compulsivity, sexual pre-occupation, or sexual deviancy behaviors.” (*Ibid.*) To discover “unreported

victims,” examiners should “thoroughly investigate the examinee's lifetime history of sexually victimizing others, including behaviors related to victim selection, victim access, victim impact, and sexual offenses against unreported persons.” (*Id.* at p. 13.) The sex offense monitoring exam may be used at the request of other team members “to explore the possibility the examinee may have been involved in unlawful sexual behaviors including a sexual re-offense” during the period of supervision. (Cal. Sex Offender Management Bd., Post-Conviction Sex Offender Polygraph Standards, *supra*, at p. 22.) (*People v. Friday, supra*, 225 Cal.App.4th at pp. 17-18.)

7) For all of the above, it is respectfully submitted that this Court grant the motion for judicial notice as to these two documents, both of which are publically published guidelines of the CASOMB.

I declare under penalty of perjury the forgoing is true and correct.

Executed this 1st day of May, 2014, at Alameda, California.


DAVID MARTIN

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ORDER

FOR GOOD CAUSE SHOWN, this Court takes Judicial Notice of the public documents appended to this motion, the Sex Offender Treatment Program Certification Requirements of the CASOMB and the Post-Conviction Sex Offender Polygraph Standards of the CASOMB

DATED: _____

PRESIDING JUSTICE OF THE SUPREME COURT

CALIFORNIA
SEX OFFENDER MANAGEMENT
BOARD

Sex Offender
Treatment Program
Certification
Requirements

Rev. October 2013

"A"



CASOMB SEX OFFENDER TREATMENT PROGRAM CERTIFICATION REQUIREMENTS

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Introduction:

For the safety and well-being of California's citizens, especially those most vulnerable to sexual assault, it is essential to manage known sex offenders living in the state's communities in ways that most effectively reduce the likelihood that they will commit another offense, whether such reoffending occurs while they are under the formal supervision of the criminal justice system or takes place after that period of supervision comes to an end.

Specialized sex offender treatment programs which consistently deliver state-of-the art rehabilitative services play a major role in these community protection efforts.

There is general agreement that correctional programming, properly designed and delivered, is effective in reducing criminal recidivism. And there is strong evidence that sex offender treatment, when provided correctly, significantly reduces the risk of future sexual victimizations. Current research strongly supports the view that treatment and management efforts driven by the basic principles of correctional programming, and particularly by the "Risk Principle, Need Principle and Responsivity Principle," are the best practices in the general corrections field as well as in the field of specialized sex offender treatment.

Programs must be shaped, guided and kept up-to-date by being grounded in the best available knowledge. Successful therapeutic outcomes require the administrators and clinicians operating such specialized programs to be knowledgeable about many important areas. Among the most important of these topic areas are the following:

- theoretical perspectives on sexual offending,
- characteristics of different types of sexual offenders,
- evidence-based models of treatment that have proven successful,
- effective ways to address the wide range of criminogenic issues found among adult sex offenders
- basics of how the criminal justice system responds to and manages convicted sex offenders.

Sex offender-specific treatment is an important component of the Containment Model of sex offender management. Since the California Penal Code as modified by "Chelsea's Law" has now committed the state to using the Containment Model, it is essential that all treatment programs conform to the model's expectations. Collaboration, communication and teamwork between treatment providers, parole agents, probation officers, polygraph examiners, and victim advocates and other stakeholders are key elements necessary for the effective management of sex offenders under the Containment Model.

A "program" which provides specialized sex offender treatment to PC 290 registered sexual offenders under the jurisdiction of the criminal justice system pursuant to PC Sections 1203.067 (probationers) and 3008 (parolees) must, according to those sections of the law, be Certified by the California Sex Offender Management Board (CASOMB). In order to be certified, a program must meet certain standards as identified by CASOMB and described in the following sections of this statement. Although some of the criteria are explained to a considerable extent, programs should not view the information provided here as sufficient to develop the required statements and other documents. Familiarity with the literature that has developed around the specialized field of sex offender treatment is expected and references to as well as citations from that literature should be a part of some portions of the program's documentation. Familiarity with the general standards of practice for mental health professionals must also be a major source of guidance.

When the program applies for CASOMB certification, the program representative must attest to the fact that the program has created and has on file documentation which guides and supports the program's agreement to observe the following criteria in providing specialized sex offender treatment services. Although one or more persons may have developed the required material, it is expected that all providers who work in the program will be totally familiar with the materials and use them as the program's guiding documents.

CASOMB reserves the right to revise these standards and requirements at any time.

Definitions:

Containment Team: The expression "Containment Team" refers to the collaborators who work together to provide various specialized functions and services to "contain" each identified sex offender living in the community under direct criminal justice system supervision. Although there is no specified theoretical upper limit to the number and roles of Containment Team members, the model views the minimum essential membership as consisting of three specialists: (1) the supervising probation officer or parole agent or similar representative of judicial authority; (2) the provider of specialized sex offender evaluation and treatment services; (3) the polygraph examiner. Among the sources available for further information about the Containment Model is a statement available at <http://ccoso.org/containment.php>. The Comprehensive Approach to sex offender management as developed by the Center for Sex Offender Management (www.csom.org) also provides helpful materials.

Relapse prevention: The expression "relapse-prevention," as it has been used over many years in the field of sex offender treatment, has taken on many meanings, some quite specific. In this document the expression is not intended to describe any particular techniques, strategies or interventions but is being used in its broadest sense and can be thought of as synonymous with "recidivism prevention." Any recognized intervention which attempts to lessen the risk of re-offense may legitimately be termed relapse prevention in this broad sense. The use of this expression is not intended to lend support to any particular technique used in the past or currently to accomplish the goal of reducing re-offending.

Risk, Need, and Responsivity: The expression "risk, need and responsivity" is used in this document to refer to a set of established principles in the field of offender rehabilitation and recidivism prevention. The expression is sometimes shortened to RNR. These principles were developed primarily by researchers and authors Don Andrews and James Bonta. The principles represented by the shorthand expression "risk, need and responsivity" or RNR cannot be deduced from the everyday meaning of the words themselves, each of which is shorthand for a complex concept. Information about RNR is available from many sources, among them an excellent review available at <http://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/index-eng.aspx>.

SARATSO: The acronym "SARATSO" stands for State Authorized Risk Assessment Tools for Sex Offenders. The acronym may be used to refer to the statutorily established three-member committee tasked with supporting and guiding California's sex offender risk assessment systems. It may also refer to the various risk assessment instruments authorized by the committee. More information can be found at www.SARATSO.org.

Sex Offender or Sexual Offender: The expression "sex offender" or "sexual offender," as used in the present document, means an individual who has been adjudicated or convicted of a crime that requires registration under California Penal Code Sections 290 - 290.023. The list of offenses can be found at the California Department of Justice website - www.meganslaw.ca.gov.

Sex Offender Management Program: The expression "sex offender management program" as used in this document is based upon the language used in the various parts of the California Penal Code created by Assembly Bill 1844 (2010), also known as "Chelsea's Law. The expression means exactly the same as a similar phrase used in this document: "sex offender treatment program." A "program" is an identifiable business entity with a taxpayer identification number or is a program operated directly by a public-sector agency. Such a "program" may only be designated as a "certified sex offender management program" when it has demonstrated that it meets the criteria set forth in this document and has been certified by CASOMB. As long as the criteria have been met and certification has been granted, a program, in the sense used here, may have multiple sites and many staff or, at the other end of the spectrum, may consist of one individual provider. As articulated throughout this document, a program is expected to have a comprehensive, coherent and integrated approach to the assessment and treatment of sex offenders.

REQUIRED AREAS FOR TREATMENT PROGRAM MANUALS

Treatment Program Manual

The primary method each program shall use to verify that it is meeting the conditions for certification is the documentation of program philosophy, policies, protocols, practices, forms and other matters in a Program Manual.

Each treatment program shall have a comprehensive, clearly articulated, written statement – a “Program Manual” - that informs the operations of the program and guides the delivery of sex offender specific services.

The Manual shall address, at a minimum, each of the ten program required areas specified in this document. The information that must be included in the Program Manual is described in the following pages under the headings of the ten program requirements. The statements prepared for the Program Manual should address all of the aspects of the topic as detailed in the explanations of each Requirement.

The Program Manual shall be based upon the organization of the ten requirements provided below. CASOMB reviewers need to be able to readily find the necessary information and will rely on the ten-point structure to do so. The separate sections and subsections need to be clearly labeled.

Only the essential topics which must be addressed are noted in the present document. Programs may choose to include in the Program Manual other materials. These additional statements may be included in the Program Manual in the most appropriate sections or in additional sections. The Program Manual shall provide a sufficiently detailed Table of Contents with page numbers indicated.

Some program requirements need to be supported by the use of corresponding forms. Copies of these program forms should be included in the Program Manual. **Specific forms are needed for the following:**

- **Informed Consent**
- **Waiver of Confidentiality**
- **Consent for Polygraph Testing**
- **Treatment Contract, and a**
- **Model of the Treatment Plan**

Each of these forms must include a client signature line.

The required Program Manual will also serve as an instructional guide for treatment program staff members and will articulate the program’s policies and practices which staff members are to observe. Approved programs shall utilize evidence-based and emerging best practices to the greatest extent possible.

Upon request, the Program Manual will be made available for CASOMB audit or review. The Program Manual will need to be provided to CASOMB in electronic form such as a PDF or a word processing document. Providers should be aware that Probation or Parole may request access to a Program Manual. If there are concerns regarding the use of the manual, an agreement regarding the confidentiality of this proprietary information should be reached before the manual is released.

Disclaimer regarding the Public Records Act for Program Manuals

We have been informed that the manuals should be considered exempt from disclosure under the Public Records Act, and that if any PRA request was made for them, CASOMB would be able to refuse to submit them, unless ordered by a court otherwise. CASOMB will not retain possession of any submitted materials and, for purposes of the California Public Records Act, will treat such documents as trade secrets and proprietary information of each respective treatment provider.

Requirement 1: Overview Statement of the Program's Theoretical Foundations

Each treatment program shall have, as part of its Program Manual, a thoughtfully-organized and well-supported written overview statement that describes the theoretical and philosophical bases which lay the foundation for the program's policies and practices in delivering the expected sex offender specific services.

The field of sex offender evaluation and treatment continues to move toward being based upon evidence supported through research and published resource materials. It is expected that each certified program will have a clear statement of the knowledge base – both theoretical and empirical – which it uses to guide the delivery of services and to support that they are, insofar as is possible at this point in time, evidence-based programming or based upon promising practices which have, whenever possible, research support.

The statements shall set forth the program's position regarding theories of change and rehabilitation as well as methods of intervention that facilitate change.

This section will also address the program's perspective on the importance of a victim-sensitive approach and the approach to resolution of harm to victims.

This overview statement need not be exhaustive; a two or three page summary should be sufficient.

Requirement 2: Basic Operating Policies and Practices

The Program Manual shall describe and explain the program's overarching policies and practices which guide assessment and treatment, including, but not limited to, those listed in the topic areas enumerated below.

NOTE: The program's more specific policies and practices in additional key areas are to be described in the subsequent sections of the Program Manual as described in Requirements 4 through 10. Policies and practices related to Requirements 4 through 10 should be addressed in the appropriate section and should not be duplicated in the response to Requirement 2.

This section of the Program Manual will provide and explain the program's policies and practices with respect to the following issues:

1. the program's policies with regard to being certain that sex offender services are delivered only by professionals who have been certified by CASOMB
2. procedures for maintaining documentation of current CASOMB provider certification for each provider (This documentation must be kept on file by the program.)
3. the program's role in ensuring and supporting the ongoing training of staff in accord with CASOMB Provider Certification requirements
4. policies with regard to the use of assessment instruments required by SARATSO and with regard to being certain that such assessment services are delivered by properly trained staff
5. the types of clients who will or who will not be accepted for services (e.g. child molesters, child pornography cases, rapists, female offenders, registered offenders under age 18, etc.)
6. policies and criteria for program completion and graduation
7. the availability and structure of an "aftercare" component of the program
8. the program's screening procedure
9. criteria for any rejection of clients prior to an initial intake meeting
10. sensitivity to cultural diversity and application of the Responsivity Principle
11. suspension and termination from treatment as well as readmission
12. the response to low functioning and developmentally delayed individuals
13. the program's stance toward and strategy for working with mentally ill sex offenders
14. the use of medication for clients in the program
15. the use of medications as an approach to sexual arousal or sexual compulsivity problems.
16. contact with victims and reunification criteria and procedures
17. the program's response to various types and levels of denial
18. response to referred offenders who show indications of current use of or unaddressed habitual use of alcohol or drugs.
19. how the program will monitor compliance with CASOMB and SARATSO requirements
20. the program's use of a structured treatment curriculum
21. the importance of and the limits on forming relationships with clients

Additional topics that contribute to the program's effective functioning should also be included in this section, provided that they are not addressed elsewhere in the Program Manual.

Requirement 3: Implementation of the Containment Model

Each treatment program shall have a written policy articulating the program's commitment to the Containment Model for sex offender management and describing how the program will meet the expectations of the containment approach.

Based in part upon the considered recommendations of the California Sex Offender Management Board, California has adopted, by law, the well-established and widely-recognized Containment Model, a comprehensive strategy to manage offenders in a systematic and collaborative manner. The central goal of the Containment Model is community and victim safety, a goal which is supported by adopting a victim-centered perspective on all aspects of sex offender management. The model recognizes that multiple entities play important roles in the community management of sex offenders and stresses the importance of open ongoing collaboration between these key players. Four elements form the core of the Containment Model:

- Authoritative criminal justice system supervision and monitoring is needed to exert external control over offenders. Probation and parole agencies apply pressure through clear expectations and through the use or threatened use of sanctions to ensure that the offender complies with supervision conditions, including participation in specialized treatment.
- Sex offender-specific treatment based on evidence-based principles is utilized to help offenders learn to develop internal control, and to understand and interrupt their individual offense cycles.
- Polygraph examinations are used to enhance the assessment process and to help monitor the sex offender's deviant fantasies and external behaviors, including access to potential victims.
- Victim advocacy brings a realistic, victim-responsive community safety perspective to the entire effort and works to support victims who may have questions and concerns about a sex offender's re-entry into the community. The victim advocacy perspective may be represented by an actual victim advocate participating as a member of the team or by the consistent stance of victim sensitivity and advocacy brought by the other containment team members.

On a regular basis or on an as-needed basis, the containment team may also include others who play an important role in the management of any specific offender. These may include representatives of law enforcement, members of the offender's family, employers, clergy, case workers, Circles of Support and Accountability (COSA) volunteers and others who might contribute to effective management and community safety. (Legal requirements around confidentiality must be resolved for each containment team participant.)

In particular cases, containment team members are encouraged to work with law enforcement personnel to provide community education as well as, when indicated, to build meaningful connections with victims and their support networks during an offender's period of community supervision.

The program's statement about its vision of and commitment to the Containment Model is expected to delineate the program's responsibilities regarding collaborative relationships. At a minimum, the policy shall articulate the practices of the treatment program with regard to the following:

- Per PC 290.09 "The certified sex offender management professional shall communicate with the offender's probation officer or parole agent on a regular basis, but at least once a month, about the offender's progress in the program and dynamic risk assessment issues, and shall share pertinent information with the certified polygraph examiner as required."
- Collaboration and communication with the supervising authority, including timely reports of non-compliance with the treatment program requirements, timely reports of any evidence that an offender has an increased risk to reoffend, periodic treatment updates on the offender's attendance and participation in the treatment program.
- Collaboration with polygraph examiners
- Collaboration with other members of the containment team
- Commitment to a victim-sensitive perspective on sex offender management

Requirement 4: Use of the Polygraph within the Containment Model

Each program shall have to a written protocol for the use of Post Conviction Sex Offender Testing (PCSOT) polygraph examinations as required by Penal Code sections 1203.067 and 3008.

The description of the program's approach to polygraph testing should include at least the following:

- A description of the types of polygraphy to be used
- Procedures for preparation of each client for polygraph testing
- Procedures for debriefing the client after polygraph testing
- Program policies regarding the transmission of polygraph results to the other members of the Containment Team

Unless it is included with the initial informed consent form and procedure, an informed consent process and Consent Form specific to the polygraph testing must be developed and provided to each client. Clients are expected to understand and sign these informed consent documents.

Certified programs shall use polygraph examiners who affirm that they meet the CASOMB requirements for polygraph examiners. The Program Manual must state the program's policies and practices with regard to this requirement.

Penal Code sections 1203.067 and 3008 have been construed by a court not to require a waiver of Fifth Amendment rights, but to require participation in compelled polygraph examinations. Invocation of the Fifth Amendment right to not incriminate oneself during a sexual history polygraph cannot legally result in revocation. Invocation of the Fifth during a maintenance polygraph about current terms and conditions of supervision, however, could result in revocation for failing to answer.

Requirement 5: Assessment-Based Treatment and Supervision Planning

Each treatment program shall have developed as part of the Program Manual a protocol guiding its use of assessment tools and the application of their findings to sex offender-specific treatment planning and to sex offender management by the containment team.

Sex offender specific assessments are of great value in developing supervision and treatment strategies to put in place necessary external controls and to effectively aid offenders in developing their ability to self-regulate. Programs need to describe how the program will gather and integrate that information, and how the program will use the information gathered during in the assessment process to individualize treatment and supervision. Provided below are expectations about some specific aspects of the assessment process. These should be integrated into each program's manual.

- Initial assessments should ordinarily be completed within 30 days of the offender's entry into the treatment program. In the absence of unusual circumstances, the initial evaluation period shall not exceed 90 days.
- Assessments completed in different settings and circumstances, or for different purposes, or with varying degrees of client cooperation can produce various findings and outcomes. Evaluations completed in pre-sentencing, custody, or other situations may or may not be relevant for outpatient community based treatment. If the evaluation is not relevant, a new evaluation should be undertaken.
- Assessments must be reasonably current to be meaningful and useful. Unless a previous sex offender specific assessment was completed no more than eighteen (18) months prior to the beginning date of treatment, the program shall undertake and complete a new sex offender-specific assessment.
- Assessments should ordinarily include an evaluation of the following:
 1. Risk levels for sexual reoffense and violent reoffense using the SARATSO approved risk assessment instruments. Programs shall use the SARATSO combined risk decision matrix for the static and dynamic scores. (Neither SARATSO requirements nor these criteria are intended to restrict the use of other appropriate evaluation instruments, as long as the SARATSO expectations are met.)
 2. Neurodevelopmental impairments, traumatic brain injuries, or trauma histories
 3. Cognitive functioning
 4. Presence of mental health issues
 5. Drug and alcohol use
 6. Level of denial or responsibility taking
 7. Degree of coercion and violence in sexual offense(s)
 8. Prior history of violence, e.g., domestic violence, assaults
 9. Presence of sexual deviance, interests and paraphillias
 10. Antisocial orientation
 11. Social relationship history
 12. Other factors associated with the risk to sexually reoffend (Note that the Structured Risk Assessment [SRA] selected as the dynamic risk tool by SARATSO makes no claim to include assessment of all the recognized dynamic risk factors which might be of importance in a full assessment.)
 13. Review of criminal justice information and other collateral information including the details of the current offense, documentation of impact of the offense on the victim (when available)
 14. Offender's, criminal, antisocial, or sexual behavior, other than the current offense, that may be of concern

15. Offender-specific psychological testing, when indicated. Providers are encouraged to utilize testing instruments that are accepted in the sex offender treatment field, such as those recognized by the Association for the Treatment of Sexual Abusers [ATSA].
16. Pertinent medical history
17. Motivation and amenability to treatment
18. Identify issues related to engagement and responsivity

Any other important information not specifically mentioned in the above list should be included in the assessment.

As the field of sex offender treatment develops new instruments and approaches, they should be adopted when appropriate.

Assessment should be viewed as an ongoing process that begins with the initial assessment at intake and continues as treatment proceeds. The assessment should inform the development of treatment goals, discussed in requirement nine below.

Requirement 6: Treatment Modalities

The Program Manual shall describe a set of treatment modalities utilized within the program.

The Manual shall explain how the program views the contributions each modality can make to the treatment process and indicate how different modalities are to be utilized to meet various types of treatment requirements and participant needs.

In accordance with the Responsivity Principle, programs shall implement strategies which consider the individual needs of clients. Programs will document how they will make modifications to strategies when working with individuals who have unique or special needs such as cognitive limitations, mental health issues, language or other barriers that may impede effective treatment.

Programs are generally expected to use a combination of group, individual, and, if indicated, familial therapies. While group treatment is the most commonly used modality, individual counseling may be used to augment group treatment or in lieu of group treatment in those cases where it is supported by proper assessment and treatment planning.

Group constellation and length of each session shall be based on the risk levels, cognitive functioning, and criminogenic needs of the group members. Programs are expected to adhere to the following:

- Groups shall have no more than nine participants assigned per group.
- A group made up of between five and nine clients shall not be less than ninety minutes in length per group session
- A group consisting of four or fewer clients may be a minimum of sixty minutes in length.
- Groups for individuals with low cognitive functioning or chronic mental health issues shall be limited to six participants. Such groups may be as short as sixty minutes in length, if clinically indicated.

Although more frequent meetings may be preferable for higher risk clients, group therapy meetings for moderate and high risk offenders must occur at minimum once per week during at least their first year of treatment. Any exception to this requirement must be approved in advance, in writing, by the CASOMB or its designee. Subsequently the treatment provider and supervising officer will determine frequency and duration. Justification for frequency and duration shall be clarified in the treatment plan based on individual characteristics, including risk level.

It is highly recommended that groups be led by co-therapists.

Requirement 7: Informed Consent and Waiver of Confidentiality

Each approved treatment programs shall have clearly articulated procedures and forms for obtaining **Informed Consent** to treatment from every client. In addition, the program must have a written and legally complete form to formalize and document the **Waiver of Confidentiality**.

A. Informed Consent

Clients shall have the assessment and treatment process thoroughly explained to them prior to the onset of services. Clients participating in treatment are required to give informed consent for assessment and treatment. Each offender must be helped to clearly understand that treatment may not be rejected without potential legal consequences. The program must ensure that the client has the capacity to understand and give informed consent.

The question of whether a client who is required to attend treatment under threat of criminal justice consequences if he or she refuses can really freely give "consent" is one that continues to generate debate. Each provider must come to an individual decision on that question. It is evident that the underlying assumption of this section of the program certification requirements is that offenders referred to treatment by probation or parole can make a choice about how to respond but need to be fully informed about the nature of the treatment they are agreeing to before they begin the program – or refuse to do so.

The program shall define, in written form and, if required, in another manner which makes it understandable to the client, each of the following:

1. An overview description of the assessment and treatment processes
2. A description of the frequency of meetings, length of sessions and estimated duration of treatment
3. A statement regarding the possible benefits and risks of treatment, possible adverse effects from treatment or disclosures made in treatment, and the risks of refusing participation in treatment. Alternative forms of treatment, if any, should also be noted
4. An explanation regarding the confidentiality of client information and records and exceptions to confidentiality (Such information may be provided as a part of the Waiver of Confidentiality procedures described below.)
5. A brief statement of the background and experience of the treatment provider
6. An explanation of the nature of and the limitations and boundaries of the therapeutic relationship
7. Information about client fees for assessment, treatment, polygraph examinations and other costs
8. A statement explaining client rights and responsibilities, including maintaining the privacy and confidentiality of other persons who are in the treatment program (This information may be provided in a separate document)
9. An explanation of the constitutional right to not incriminate oneself in the course of assessment, treatment, or polygraph procedures
10. A statement regarding the client's right to review the contents of his or her file
11. A brief explanation of the completion requirements of the program

NOTE: The above list is not intended to be a legal guide or a comprehensive, authoritative review of all the elements required for informed consent. Compliance with the expectations stated here does not relieve a program or professional of any of the other obligations regarding informed consent as determined by laws or by professional standards.

B. Waiver of Confidentiality

The Waiver of Confidentiality issues must be explained in the context of a larger discussion of confidentiality and privilege. A provider shall explain to clients that information disclosed in a mental health treatment context is confidential with certain exceptions and that there are some additional significant exceptions to confidentiality for persons referred by the criminal justice system.

Clients must clearly understand that they will be expected to give their written permission (*Waiver of Confidentiality or Authorization for Release of Information*) for the program to share information about them with certain individuals and agencies. It should also be explained that there are limits of confidentiality imposed on therapists by other laws so that no waiver of confidentiality signature is required. One clear example would be the mandatory child and elder abuse reporting laws. Another would involve "duty to warn" situations.

The effectiveness of the Containment Model of sex offender management depends upon open and ongoing communication between all professionals responsible for supervising, assessing, evaluating, treating, supporting, and monitoring sex offenders. The absence of open and ongoing communication between these professionals and other involved persons compromises the purpose of the containment team approach and may jeopardize the safety of the community. Consequently, prior to accepting an offender into treatment and as a condition of the individual receiving treatment services, the treatment program shall obtain a signed Authorization for Release of Information.

Waiver of confidentiality forms shall address each of the following:

- For programs using more than one provider, the form must include a statement allowing for open, two-way communication between the professional staff members within the program to facilitate communication related to supervision, consultation, case conferencing, and back-up and other interagency communications.
- The waiver shall include the supervising probation officer or parole agent and must make it clear that the release includes any involved persons in the supervising criminal justice agency, such as supervisory personnel. Ordinarily this is done by naming the agency itself on the waiver form.
- In addition, the waiver must extend to all other members of the containment team. Should additional persons later be included on the containment team, a new release of information form must be generated and signed to allow communication with them. The waiver should also include the victim's therapist, if appropriate to the case. The level of disclosure for some members of the containment team may be more restricted, as the situation requires.
- If the offender has additional therapists or treatment providers external to the certified treatment program, the waiver of the privilege shall be arranged for each of the professionals involved. External consultants or external clinical supervisors involved with the treatment program shall also be listed on the release of information forms before a case is discussed with them.
- Because CASOMB will conduct audits of certified programs, it is required that the Authorization to Release Information include CASOMB or its designee.
- Because the Level of Service/ Case Management Inventory (LS/CMI) test scores is submitted to Multi-Health Systems, the test publisher, and to the CA Department of Justice, the Authorization to Release Information must include those entities.

To avoid a situation where an offender arrives for the initial intake and refuses to sign any waiver of confidentiality forms, it is advisable for the parole agent or probation officer to have previously obtained a signed waiver of confidentiality at the time of the initial referral.

The program's waiver of confidentiality form must meet professional standards of practice and must be written so that it can be understood by the individuals who are required to sign it. In accord with the Health Insurance Portability and Accountability Act (HIPAA) regulations, the program must provide a statement of its privacy practices which addresses the handling of confidential client information and documents.

The program must state its policy on the use of file information for research and on the solicitation of client participation in research projects, whether within the agency or by outside investigators.

Requirement 8: Treatment Contract

Each program shall develop and consistently use a clear, understandable treatment contract that spells out what is expected of the individual sex offender who has been referred to the program.

Written agreements between treatment providers and their clients are standard in the sexual offender treatment field. Such agreements can be particularly useful in establishing the sexual offender's responsibility, accountability, and ownership with respect to his or her engagement in treatment. They document in writing that the offender has been informed of the conditions and requirements of the treatment program as well as of the consequences of violating these conditions. Highly specific written contracts can help mitigate the manipulation, minimization and denial that are characteristic of many sexual offenders as they begin treatment. The treatment contract requires the signature of the offender to signify willingness to participate in the ways that are stated in the contract.

At the beginning of treatment and as a condition of enrollment in a treatment program, the provider shall develop and utilize a written contract with each sex offender. The treatment contract shall describe, in language that the client understands, the responsibilities of both the provider and the client. Although the contract should not enter into specifics with regard to the possible responses of the criminal justice system, it should be made clear that client violations of the contract may be the basis of the imposition of sanctions by the criminal justice system including a return to court for revocation of probation or parole.

The treatment contract shall define the **role and responsibility of the treatment program** with respect to, at a minimum, the following areas. The treatment contract shall:

1. Describe the type, frequency, and requirements of the treatment and outline how the duration of treatment will be determined;
2. Describe and clarify program rules and behavioral expectations;
3. Define and provide statements of the costs of the assessment, evaluation, and treatment, including all psychological tests, physiological tests, and consultations;
4. Describe the right of the client to refuse treatment and describe the risks and potential consequences and outcomes of such a decision;
5. Describe the program's grievance process to address and resolve client complaints.

The treatment contract shall define the **role and responsibility of the client** (as applicable) with respect to, at a minimum, the following areas. The treatment contract shall:

1. Describe compliance with attendance policies and procedures for handling cancelations and tardiness
2. Describe expected participation in assessments, treatment sessions and treatment homework
3. Describe financial expectations including paying for the cost of evaluation and treatment for him or herself, and to his or her family, if applicable;
4. Describe providers' expectation that the client notify the treatment provider of any changes or events in the life of the client, the members of the client's family, or support system;
5. Describe any other program rules and requirements to which clients are expected to adhere.

Requirement 9: Treatment Goals and Written Treatment Plan

Each program shall develop and make consistent use of a written treatment plan for each participant that articulates treatment goals agreed upon by both the program and the participant.

A written treatment plan shall be developed for each sex offender based on the identified factors which contribute to that individual's risk to sexually reoffend as identified in sex offender specific assessments and evaluations. These factors are known as "criminogenic needs" or as "dynamic risk factors." In line with research and best practices, a program may determine that non-sexual criminogenic risk factors need to also be addressed, based in individual case characteristics. Those too should be included in the treatment plan.

Clients should participate in the development of the treatment plan and identification of goals. To show their agreement with the treatment plan, a client should be required to sign the initial plan and any subsequent updates.

The treatment plan articulates a set of achievable goals and provides a way to measure and record progress toward those goals or the lack of progress. The treatment plan should also allow a way for the program to assess the level of compliance and effort demonstrated by the participant.

The treatment plan is a living document which is updated at various points during the course of treatment. The treatment plan is designed to reflect and document progress and to be a significant resource for determining when treatment has been completed.

The program shall utilize an evidence-based approach to creating the treatment plan so that it is supported by the professional literature in the field of sex offender treatment. The treatment plan shall be designed to assist and guide offenders to address any or all of the following:

1. Accept responsibility for their behavior and offense(s)
2. Develop accountability for their behavior and relationships with others
3. Develop motivation for change and deeper engagement in the treatment process
4. Appreciate the impact of sexual offending upon victims, their families, and the community
5. Understand the relapse prevention model and how it applies to their lives
6. Develop an individualized relapse prevention plan
7. Modify thinking errors, cognitive distortions, and pro-offending attitudes and schema
8. Manage and respond to emotions and impulses in positive, prosocial ways
9. Develop healthy interpersonal skills, including communication, perspective-taking, and intimacy
10. Decrease and manage deviant sexual arousal or interests
11. Establish, maintain or expand positive support systems
12. Develop and practice self-management methods to avoid sexual reoffending
13. Identify and manage issues of anger, power and control
14. Modify an antisocial orientation to life
15. Identify and address any personality traits that are related to the potential for sexual reoffending
16. Identify and address any additional criminogenic need areas

Since information in the treatment plan can be useful in guiding supervision strategies, providers shall make a copy of the treatment plan available to the supervising officer, upon request.

Requirement 10: Other Documentation

Each program shall develop and make use of procedures and forms to maintain appropriate case documentation. These include the following: clinical records of each session, notes documenting case management activities outside of the session, periodic progress reports, a written discharge summary and any other legally-required or clinically-indicated written records.

Clinical notes for each therapeutic contact should include information such as client participation, progress towards treatment goals, topics discussed or any risk management concerns.

Written progress reports can be useful to memorialize individual client's involvement in and advancement through a program. Frequency and content of any such reports should be discussed with the supervising agency.

As each participant exits from the treatment program - whether because treatment has been completed or for any other reason - a written discharge summary shall be prepared. This summary should include information such as the offender's participation in the treatment program, progress on goals identified in the treatment plan, factors associated with the risk to sexually reoffend and strategies to manage that risk. The reason for leaving the program should also be stated. The discharge summary shall be provided to the supervising officer or agent and made available to other members of the Containment Team on their request.

CALIFORNIA SEX OFFENDER MANAGEMENT BOARD

Post-Conviction Sex Offender Polygraph Standards

June 2011

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POST-CONVICTION SEX OFFENDER POLYGRAPH CERTIFICATION STANDARDS

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STATE OF CALIFORNIA POST-CONVICTION SEX OFFENDER POLYGRAPH CERTIFICATION STANDARDS



by
California Sex Offender Management Board
(CASOMB)

Introduction:

California Penal Code Section 9003 (3) (c) requires the California Sex Offender Management Board (CASOMB) to develop and update standards for certification of polygraph examiners conducting post-conviction polygraph examinations of sex offenders. However, CASOMB is not legislatively mandated or empowered to certify polygraph examiners and therefore does not do so. All polygraphers working with certified sex offender management programs must meet the certification standards adopted by the CASOMB. These standards shall be published on the Board's internet website on or before July 1, 2011.

In addressing this task, CASOMB became aware of the "Model Policy for Post-Conviction Sex Offender Testing" developed by the American Polygraph Association (APA) in May of 2009. After reviewing the standards contained within the APA Model Policy and consulting with several expert California polygraph examiners, it was determined that these standards were well suited to meet the requirements of the Penal Code and to be adopted in their entirety for use in California as the official standards as set forth by CASOMB in response to the Penal Code mandate.

The APA Model Policy has been developed through the efforts of many polygraph professionals and experts nationwide that have worked for a number of years and struggled with many revisions to create a document which would reflect the best thinking in the field. CASOMB believes that adopting the APA Model Policy as the standards to be followed in California will serve the needs of the state quite well.

Additionally, CASOMB strongly recommends that polygraph examiners be involved members of the APA and the California Association of Polygraph Examiners.

CASOMB reserves the right to revise these standards and requirements at any time. These criteria are for those mental health practitioners who provide treatment and evaluation of all sex offenders pursuant to Penal Code section 290.09.

1. **Model Policy.** This Model Policy should be considered a description of recommended best-practices for polygraph professionals who engage in post-conviction sex offender testing (PCSOT) activities. This Model Policy is intended to provide a basis for local programs developing or updating their PCSOT regulations, and does not attempt to address all aspects of PCSOT programming or policy implementation at the local level.
 - 1.1. **Compliance and local authority.** Examiners should be responsible for knowing and adhering to all legal and regulatory requirements of their local jurisdictions. In case of any conflict between the Model Policy and any local practice requirements, the local regulations should prevail. Examiners who work in jurisdictions and programs without local regulations should refer to this Model Policy as a guide.
 - 1.1.1. **Compliance with this Model Policy.** Although this Model Policy should be considered non-binding and not enforceable by the APA or any local jurisdiction, examiners whose work varies from the recommendations of this Model Policy should be prepared to provide justification for doing so.
 - 1.1.2. **Compliance with professional standards.** Unless prohibited by law, regulation or agency policy, all members of the American Polygraph Association (APA) shall comply with the APA Standards of Practice. Additionally, all examiners should be responsible for knowing and adhering to standards of ASTM International.
 - 1.2. **Periodic review and modification.** This Model Policy should be reviewed and amended periodically in order to remain consistent with emerging information from new empirical studies.
2. **Evidence-based approach.** To the extent possible, this Model Policy relies on knowledge and principles derived from existing research pertaining to polygraph testing, risk assessment, risk management, and sex offender treatment. Examiners should be cautious of field practices based solely on a system of values or beliefs. Some elements of this Model Policy are intended to increase professionalism and reliability among field examiners through the implementation of standardized field practice recommendations in the absence of data from empirical studies.
 - 2.1. **Face-valid principles.** When an evidence-based approach is not possible, the Model Policy emphasizes face-valid principles pertaining to polygraph testing, field investigation principles and related fields of science. These include psychology, physiology, mental health treatment, forensic threat assessment, signal detection, decision theory, and inferential statistics.

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- 2.2. Evolving evidence.** In the event that evidence from future empirical studies reveals the practice recommendations of this Model Policy are inconsistent with empirically based evidence, the evidence-based information should prevail.
- 3. PCSOT program goals.** The primary goal of all PCSOT activities should be to increase public safety by adding incremental validity to risk-assessment, risk-management, and treatment-planning decisions made by professionals who provide supervision and sex-offense specific treatment to convicted sex offenders in community settings.
- 3.1. Containment approach.** Examiners who engage in PCSOT activities should emphasize a multi-disciplinary or multi-systemic containment approach to the supervision and treatment of sex offenders. This approach involves a collaborative effort among professionals from varying disciplines and systems including treatment providers, supervising officers, polygraph examiners, medical and psychiatric professionals, child-protection/family-services workers, and other professionals.
- 3.2. Operational objectives.** Any or all of the following operational objectives should be considered a reasonable and sufficient basis to engage in PCSOT activities:
- A. Increased disclosure of problem behavior that will be of interest to professionals who work with convicted sex offenders;
 - B. Deterrence of problem behavior among convicted sex offenders by increasing the likelihood that engagement in such behaviors will be brought to the attention of supervision and treatment professionals; and
 - C. Detection of involvement in or abstinence from problem behavior that would alert supervision and treatment professionals to any escalation in the level of threat to the community or potential victims of sexual abuse.
- 4. Decision-support.** Psychophysiological Detection of Deception (PDD) (polygraph) testing of convicted sex offenders should be regarded as a decision-support tool intended to assist professionals in making important decisions regarding risk and safety. Polygraph testing should not replace the need for other forms of behavioral monitoring or traditional forms of supervision and field investigation.

4.1. Professional judgment. Polygraph testing and polygraph test results should not supplant or replace the need for professional expertise and judgment. Polygraph test results should not be used as the sole basis for revocation of any individual from court supervision or termination of sex offense specific treatment.

4.2. Successive hurdles approach. Examiners should use a successive hurdles approach to testing to maximize both the informational efficiency and sensitivity of multi-issue (mixed-issue) screening polygraphs and the diagnostic efficiency and specificity of event-specific single-issue exams. The term screening, as it applies to PCSOT, is based on the fact that some exams are conducted for exploratory purposes in the absence of known allegations or known incidents. Follow-up examinations should employ a single-issue technique whenever increased validity is required to resolve an issue. Successive-hurdles may include following an unresolved mixed-issue polygraph test with additional attempts to resolve the issue(s), including posttest discussion, additional field or background investigation, or additional polygraph testing. Follow-up examinations may be completed on the same date as the initial exam, or they may be scheduled for a later date.

4.2.1. Multi-issue (mixed-issue) exams. Examiners should use multi-issue polygraph techniques only in the absence of a known incident, known allegation, or a particular reason to suspect wrongful behavior. Exploratory exams may at times be narrowed to a single target issue of concern. However, most exploratory exams involve multiple target issues in which it is conceivable that a person could lie about involvement in one or more issues while being truthful or uninvolved in the other issues of concern.

4.2.2. Single-issue exams. Examiners should use single issue polygraph techniques for follow-up exams conducted in response to a previously unresolved exploratory exam. Event specific diagnostic/investigative exams, conducted in response to known allegations or known incidents for which there is reason to suspect the involvement of the examinee, may be formulated as multi-facet tests with questions pertaining to several behavioral roles or aspects of a single known allegation.

4.2.3. Multi-facet tests. Event specific diagnostic/investigative exams, conducted in response to known allegations or known incidents for which there is reason to suspect the involvement of the examinee, may be formulated as multi-facet tests with questions pertaining to several behavioral roles or aspects of a single known allegation.

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- 4.3. Confidentiality and mandatory reporting. Except as provided by law, information from the polygraph examination and test results (outcomes) should be kept confidential and provided only to those involved in the containment approach to the supervision and treatment of sex offenders.
 - 4.3.1. Examiners are not mandated reporters. Examiners should not engage in mandatory child-abuse reporting activities except where required by law (i.e., whenever polygraph examiners are named or listed in statutes describing mandatory reporting requirements).
 - 4.3.2. Other professionals and mandatory reporting. Examiners should remain aware that other professional members of the multi-systemic containment team will likely be subject to mandatory child-abuse reporting or other mandatory disclosure requirements.
 5. General principles. Examiners who engage in PCSOT activities should adhere to all of the generally accepted principles that pertain to polygraph testing, including, but not limited to the following:
 - 5.1. Rights and dignity of all persons. Examiners should respect the rights and dignity of all persons to whom they administer polygraph examinations.
 - 5.2. Polygraph examiner as part of the supervision and treatment team. Examiners should consider themselves to be an integral part of the multi-disciplinary supervision and treatment team. Contact with supervision and treatment team should be frequent, though contact with an examinee will be periodic (i.e., the examiner will not maintain routine contact with the examinee between examinations).
 - 5.3. Non-interference with ongoing investigations. Examiners who engage in PCSOT activities should not interfere with or circumvent the efforts of any open or ongoing investigation of a new criminal allegation.
 - 5.4. Known and unknown allegations. Examiners who engage in PCSOT activities should investigate and attempt to resolve, if possible, known allegations and known incidents before attempting to investigate or resolve behavioral concerns that do not involve a known allegation or known incident.
 - 5.5. Confirmatory testing. PCSOT activities should be limited to the Psychophysiological Detection of Deception (PDD). Confirmatory testing approaches involving attempts to verify truthfulness of partial or complete statements made subsequent to the issue of concern should not be utilized in PCOST programs. Truthfulness should only be inferred when it is determined that the examinee has not attempted to engage in deception regarding the investigation targets.

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- 5.6. Ethical and professional roles. Examiners who possess multiple types of credentials (i.e., examiners who are also therapists, probation officers, or police officers) should be limited to one professional role with each examinee and should not conduct polygraph examinations on any individual whom they directly or indirectly treat or supervise.
 - 5.7. Number and length of examinations. Examiners should not conduct more than five examinations in a single day, they and should not conduct more than three sexual history disclosure examinations in a single day.
 - 5.7.1. Length of examination. Examiners should not plan to conduct examinations of less than 90 minutes in duration from the start of the pretest interview through the end of the post-test interview. Examiners should not conduct a complete polygraph examination in less than 90 minutes absent exigent circumstances such as when an examinee is not suitable for testing, an examinee refuses to continue with the examination, or when the issue under investigation is resolved prior to collection of data.
 - 5.7.2. Number of exams per examinee. Examiners should not conduct more than four separate examinations per year on the same examinee except where unavoidable or required by law or local regulation. This does not include re-testing due to a lack of resolution during an initial or earlier examination.
 - 5.8. Examination techniques. Examiners should use a recognized comparison question technique for which there is evidence of validity and reliability, including estimates of sensitivity and specificity, published in the *Polygraph* journal or a peer-reviewed scientific journal. There should not be more than four (4) relevant questions per test series.
6. Operational definitions. Examiners should ensure that every behavior of concern to the multi-disciplinary supervision and treatment team will be anchored by an operational definition that describes the behaviors of concern. Operational definitions should be common among all referring professionals, and should use language that is free of vague jargon. It should be easily understood by the examinee. Examples of operational definition include the following:

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- A. Physical sexual contact: refers to rubbing or touching another person's sexual organs (i.e., breasts, buttocks, genitalia) whether over or under clothing, if for the purpose of sexual arousal, sexual gratification, sexual stimulation or sexual "curiosity." This includes having, allowing, or causing another person to rub or touch one's own sexual organs, whether over or under clothing, for purposes of sexual arousal, sexual gratification, sexual "curiosity," or sexual stimulation. This does not include parental contact with children's private areas in the form of diapering, wiping, bathing, dressing, or changing, unless done for the purpose of sexual arousal or stimulation.
 - B. Sexual contact: includes the above definition, and also includes non-contact sexual behaviors such as exhibitionism, voyeurism, public masturbation, child-pornography, or other non-contact sexual behaviors.
 - C. Force (real or implied violence): includes any form of real or implied violence; physical restraint to prevent a victim from leaving, escaping or moving away from the assault; or threats of harm against a victim's family members or pets.
 - D. Coercion (non-violent): includes any non-violent means of gaining the compliance of a victim who expresses his or her reluctance to comply (e.g., bribery, threats to end a relationship, etc.).
 - E. Grooming (child grooming): includes any means of building trust or exploiting a relationship such that a victim tolerates an offense with a perception of complicity.
 - F. Manipulation: includes any means of trickery to gain the compliance of a victim who is unaware of the sexual motives of the offender (e.g., wrestling, horseplay, tickling or other trickery).
 - G. Relative (family member): includes aunts, uncles, nieces, nephews, children, grandchildren, parents, grandparents, brothers, sisters, cousins, or any person related by blood, marriage, or adoption, or where a relationship has a legal relationship or the appearance of a family relationship (e.g., a dating or live-in relationship with the person(s) natural, step or adoptive parent).
 - H. Minor, child, youth, underage person: refers to anyone who has not yet reached the age of majority or adulthood (usually 18). Adolescence, though it refers to older/teenage children, is included in this broad category.

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- I. Incidental contact: refers to any brief or unanticipated contact, typically concerning minors, including any greeting (e.g., waving, or smiling), interaction (i.e., verbal), or incidental physical contact (e.g., shaking hands, hugging, patting the head, bumping into, exchanging money or merchandise, etc.).
 - J. Physical contact: includes shaking hands, hugging, patting the back or head, bumping into, exchanging money or merchandise along with other forms of physical contact including sitting on one's lap, holding, wrestling or athletic activities, etc.
 - K. Alone or unsupervised with minors: refers to any contact or activity with minors in a location where one cannot be seen or heard, and where others are not aware of one's presence or activity with a minor, and in which the activity cannot be monitored or observed.
 - L. Pornography: refers to the explicit depiction of sexual subject matter for the sole purpose of sexually arousing the viewer, sometimes referred to as X-rated or XXX material, though there is no formal rating system that includes these designations. Minors cannot purchase pornographic materials in most, if not all, jurisdictions.
 - M. Sexually stimulating materials/erotica: refers to the use of sexually arousing imagery, especially for masturbation purposes.
 - N. Sexual fantasy/erotic fantasy: refers to a deliberate thought or patterns of thoughts, often in the form of mental imagery, with the goal of creating or enhancing sexual arousal or sexual feelings. Sexual fantasy can be a developed or spontaneous story, or a quick mental flash of sexual imagery, and may be voluntary or intrusive/involuntary.
 - O. Masturbation: refers to sexual stimulation of one's genitals, often, though not always, to the point of orgasm. Stimulation can be over or under clothing, either manually or through other types of bodily contact, through the use of objects or devices, or through a combination of these methods. Although masturbation with a partner is not uncommon, masturbation for the purpose of this Model Policy refers to self-masturbation.

7. **Examination questions.** Examiners should have the final authority and responsibility for the determination of test questions and question language, which must be reviewed with the examinee. Examiners should advise the supervision and treatment professionals to refrain from informing the examinee of the exact test questions and investigations targets, or coaching the examinee in the mechanics, principles or operations of the polygraph test. Technical questions about polygraph should be directed to the examiner at the time of the examination. Examiners should advise community supervision team members and treatment professionals that it is appropriate to inform the examinee of the purpose or type of each examination.

7.1. **Relevant questions.** Relevant questions should pertain to a single frame of reference, which refers to the type of PCSOT examination. (See section 8.)

7.1.1 **Content.** Relevant questions should address behaviorally descriptive topical areas that have a common time of reference, which refers to the time-period under investigation. Content should bear operational relevance to actuarial or phenomenological risk assessment, risk management and treatment planning methods. Examiners should exercise caution to ensure they do not violate any rights of examinees regarding answering questions about criminal behaviors.

7.1.2 **Structure.** Relevant question construction should be...

- A. answerable by a "NO" without unnecessary mental exercise or uncertainty; and
- B. behaviorally descriptive of the examinee's direct or possible involvement in an issue of concern and, whenever possible, not indirectly addressing that issue by targeting a subsequent denial of it;
- C. simple, direct and easily understood by the examinee;
- D. time-delimited (date of incident or time of reference);
- E. free of assumptions of guilt or deception;
- F. free of idiosyncratic jargon, legal terms; and
- G. free of references to mental state or motivational terminology except to the extent that memory or sexual motivation may be the subject of an examination following an admission of behavior.

7.2. Comparison questions. Comparison questions should meet all common requirements for the type comparison question being applied.

7.2.1. **Content.** Comparison questions should address broad categorical concerns regarding honesty and integrity and should not be likely to elicit a greater physiological response than deception to any relevant question in the same test.

7.2.2. **Structure.** Comparison questions should be structurally separated from relevant questions by either frame of reference or time of reference. Nothing in this Model Policy should be construed as favoring exclusive or non-exclusive comparison questions.

8. Types of PCSOT examinations. Examiners should utilize five basic types of PCSOT examinations: instant offense exams, prior-allegation exams, sexual history disclosure exams, maintenance exams, and sex offense monitoring exams. These basic types of examinations provide both a frame of reference and a time of reference for each examination. Examiners should not mix investigation targets from different frames of reference (examination types) or times of reference within the structure of a single examination.

8.1. Instant offense exams. Examiners should use two basic types of examinations to investigate the circumstances and details of the instant offense for which the examinee was convicted: the Instant Offense exam and the Instant Offense Investigative exam. These exams should be conducted prior to victim clarification or reunification in order to reduce offender denial and mitigate the possibility of further traumatizing a victim. These circumstances might result when an offender has attempted to conceal the most invasive or abusive aspects of an admitted offense or whenever the multi-disciplinary community supervision team determines that accountability for the circumstances and details of the instant offense represent a substantial barrier to an examinee's engagement and progress in sex offense specific treatment.

8.1.1. **Instant offense exam.** Examiners should conduct the Instant offense (IO) exam as an event-specific polygraph for examinees who deny any or all important aspects of the allegations pertaining to their present sex offense crime(s) of conviction.

8.1.1.1. **Instant offense – examination targets.** Examiners, along with the other members of the community supervision team, should select the relevant investigation targets from the circumstances of the allegation that the examinee denies.

8.1.1.2. Instant offense – testing approach. Examiners should conduct this exam either as a single-issue or multi-facet event-specific exam. However, nothing in this Model Policy should be construed as to prohibit the completion of the Instant Offense exam in a series of single-issue exams when such an approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.1.2. Instant offense investigative exam. Examiners should use the Instant Offense Investigative (IOI) exam to test the limits of an examinee's admitted behavior and to search for other behaviors or offenses not included in the allegations made by the victim of the instant offense. This examination should be completed prior to victim clarification or reunification.

8.1.2.1. Instant offense investigative – examination targets. Examiners, along with the other members of the community supervision team, should select relevant targets from their concerns regarding additional or unreported offense behaviors in the context of the instant offense. At the discretion of the examiner and the other professional members of the community supervision team, examination targets may include the following:

- A. Number of offense incidents against the victim: when the admitted number of offense incidents is very small.
- B. Invasive offense behaviors: when the examinee denies intrusive or hands-on offense behaviors against the victim of the instant offense.
- C. Degree of physical force or violence: when the examinee denies use of violence, physical restraint, threats of harm, or physical force against the victim of the instant offense.
- D. Other sexual contact behaviors: when not included in the allegations made by the victim of the instant offense, at the discretion of the community supervision team.

8.1.2.2. Instant offense investigative – testing approach. Examiners should conduct this exam as a multi-facet or multi-issue (mixed-issue) exploratory exam. However, nothing in this Model Policy should be construed as to prohibit the completion of the Instant Offense Investigative exam in a series of single-issue exams (i.e., in the absence of an allegation involving the behavioral examination targets) when that approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.2. Prior allegation exam. Examiners should use the Prior Allegation Exam (PAE) to investigate and resolve all prior alleged sex offenses (i.e., allegations made prior to the current conviction) before attempting to investigate and resolve an examinee's history of unknown sexual offenses. This exam should be considered identical in design and structure to the Instant Offense Exam, except that the details of the allegation stem not from the present crime of conviction but from an allegation prior to the conviction resulting in the current supervision and treatment, regardless of whether or not the examinee was charged with the allegation. Examiners should exercise caution to ensure they do not violate any rights of an examinee regarding answering questions about criminal behaviors.

8.3. Sexual history exams I and II. Examiners should use two basic types of Sexual History examinations to investigate the examinee's history of involvement in unknown or unreported offenses and other sexual compulsivity, sexual pre-occupation, or sexual deviancy behaviors. Information and results from these examinations should be provided to the professional members of the supervision and treatment team to add incremental validity to decisions pertaining to risk assessment, risk management and treatment planning.

8.3.1. Sex history document. Examiners should work with the community supervision team to require that examinees complete a written sexual history document prior to the conduct of a sexual history polygraph. The sexual history document should provide operational definitions that unambiguously describe each sexual behavior of concern. The purpose of the document is to help examinees review and organize their sexual behavior histories. It aids in familiarizing examinees with the conceptual vocabulary necessary to accurately discuss sexual behaviors; it can assist examinees in recognizing sexual behavior that was abusive, unlawful, unhealthy, and identify behaviors that are considered within normal limits.

8.3.1.1. Prior review of the sex history document. Examiners should request that each examinee review the sexual history document with his or her community supervision team and treatment group prior to the examination date. The examiner does not need to review this document prior to the examination date, though the content should be reviewed thoroughly during the structured or semi-structured pretest interview.

8.3.1.2. Examiner authority. It should be the examiner's discretion to administer an alternative form of PCSOT examination if an examinee has not completed and reviewed the sexual history document prior to the examination date.

8.3.2. Sexual history exam I – unreported victims. Examiners should conduct the Sex History Exam I (SHE-I) to thoroughly investigate the examinee's lifetime history of sexually victimizing others, including behaviors related to victim selection, victim access, victim impact, and sexual offenses against unreported persons. These target issues provide a summary of the most tangible signal issues that provide interpretable information about victim-age, victim-profile, victim-selection, victim-control/access, and victim-silencing behaviors. SHE-I also provides information about the offender's capacity for grooming, sneakiness, violence, relationship-building and relationship-exploiting in addition to the capacity to offend in the absence of a relationship. Gathering information in these areas is additive to forensic risk assessment and risk management efforts. Ruling out matters in these SHE-I areas is also helpful as it allows the justification of a lower assumption of risk. What a person does or does not do (is capable of doing or not doing) to others is illustrated by past behavior. The best predictor of future behavior is past behavior.

8.3.2.1. Sexual history exam I – examination targets. Examiners, along with the other members of the community supervision team, should select investigation targets that provide operational relevance to actuarial and phenomenological risk/threat assessment protocols pertaining to recidivism, victim selection, and risk management decisions. Examples include the following:

A. Sexual contact with underage persons, (refer to local statutes) including sexual contact with persons younger than age 15 while the examinee was legally adult, or sexual contact with persons 4 or more years younger than the examinee if the examinee is a juvenile.

- B. Sexual contact with relatives, whether by blood, marriage, or adoption, or where a relationship has a legal relationship or the appearance of a family relationship (e.g., a dating or live-in relationship with the person(s) natural, step or adoptive parent).
- C. Use of violence to engage in sexual contact, including physical force/physical-restraint and threats of harm or violence toward a victim or victim's family members or pets through the use of a weapon or any verbal/non-verbal means.
- D. Sexual offenses against persons who appeared to be unconscious, asleep, or incapacitated, including touching or peeping against persons who were asleep, severely intoxicated, impaired due to drugs, or who were mentally/physically helpless for other reasons.

8.3.2.2 Sexual history exam I – time of reference. The time of reference for the Sex History Exam I may be restricted to the period of time prior to the current court supervision that mandated the present treatment when there are concerns about 1) potential differences in consequences for pre-treatment or pre-conviction acts and those acts occurring post-conviction or after treatment onset, or 2) examinee rights pertaining to the behavioral targets after conviction while under the supervision of a court or in a treatment program.

8.3.2.3 Sexual history exam I - testing approach. Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Sex History I Exam in a series of more narrowly focused exams when that approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.3.3. General sexual history exam II – sexual deviancy, compulsivity, and preoccupation. Examiners should conduct this General Sex History (GSH) examination to thoroughly investigate the examinee's lifetime history of sexual deviancy, preoccupation, and compulsivity behaviors not including those behaviors described in the Sex History Exam I. This examination may be most important with examinees who substantially deny involvement in sexual deviancy,

compulsivity and preoccupation behaviors. SHE-II issues are additive to risk-assessment/risk-management/treatment-planning, but in a different way than SHE-I issues. Actuarial risk researchers tell us that sexual deviancy/compulsivity/pre-occupation is also correlated with increased rates of recidivism and increased rates of failure under supervision and failure in sex-offense-specific treatment. SHE-II adds incremental validity to risk-assessment/risk-management/treatment-planning to the extent that it gathers information about involvement in sexual behaviors that are more often compulsive (large-numbers) such as peeping/voyeurism, exhibitionism, theft of undergarments, public masturbation, and child-pornography. The forensic challenge will be to differentiate no-involvement from minimal-involvement from high-involvement. Polygraph examiners should be cautious about attempting to test the limits of admitted sexual compulsivity or sexual preoccupation behaviors with the hope of somehow knowing *everything* or *every incident* when an examinee admits to substantial involvement in the behavioral targets of concern. When an offender admits to being highly involved in these activities, there may be little to be gained from testing the limits of involvement: there is likely more, but it might not be remembered. It is not additive because the answer is already known: he or she is highly involved. Testing these behaviors is additive when an offender denies involvement or admits to only minimal involvement because confirming that will help justify an assumption of absence of compulsivity/deviancy/pre-occupation, which is correlated with an assumed lower level of risk.

8.3.3.1. General sexual history exam II - examination targets. Investigation targets for the General Sexual History exam II should bear operational relevance to actuarial and phenomenological risk/threat assessment protocols pertaining to sexual deviancy, sexual compulsivity, and sexual preoccupation behaviors. Investigation targets may include any of the following:

- A. Voyeurism/sexual peeping activities, including all attempts to look into someone's home, bedroom or bathroom without the person's knowledge or permission, in an attempt to view someone naked, undressing/dressing, or engaging in sexual acts. Voyeurism activities include attempts involving the use or creation of a hole or opening to view others for sexual arousal, including all attempts to use any optical devices (e.g., cameras, mirrors, binoculars, or telescope) to view others for sexual purposes.

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- B. Exhibitionism/indecent exposure, including all attempts to intentionally or to have appear to have "accidentally" exposed one's bare private parts to unsuspecting persons in public places. Exhibitionism includes wearing loose or baggy clothing that allows one's sexual organs to become exposed to others, and may also include mooning, streaking or flashing behaviors, and public urination while in view of others.
 - C. Theft or use of underwear/undergarments for sexual arousal or masturbation, including taking or keeping undergarments (including other personal property or "trophies") from relatives, friends, sexual partners, or strangers for masturbation or sexual arousal. It also includes all incidents of wearing or trying on another person's underwear or undergarments without that person's knowledge or permission, in addition to all incidents in which underwear, undergarments, or personal property was returned after use for masturbation or sexual arousal.
 - D. Frottage/sexual rubbing, including all attempts to sexually rub or touch others without their knowledge or permission, by standing or walking too close in public locations (e.g., work, stores, school, or other crowded places), or during any form of play, horseplay, wrestling/athletic activities, or other similar activities.

8.3.3.2. General sexual history exam II – additional investigation targets. Other possible investigation targets for the Sex History Exam include but are not limited to the following:

- A. Child pornography, including any history of ever viewing, possessing, producing, using, or distributing pornographic images of minors (i.e., infants, children or teenagers under age 18) who were engaging sexual acts.

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- B. Sexual contact with animals, refers to all sexual behaviors (including attempts) involving pets, (those belonging to the examinee or others) domesticated (farm/ranch) animals, or wild animals, whether living or deceased, and whether whole or dismembered. This target may include animal cruelty behaviors.
 - C. Prostitution activities, including ever paying anyone or being paid for sexual contact (including erotic massage activities) with either money, property, or any special favors. It also includes ever employing or managing others who were paid to engage in sexual activities.
 - D. Coerced sexual contacts, including bribing, tricking, manipulating, lying, misuse of authority, badgering/pestering, wearing-down boundaries, or not accepting "no" for an answer.
 - E. Stalking/following behaviors, including all incidents of following someone to his or her home, workplace or vehicle, or following others around a store, aisle, parking lot, workplace/school, campus, or community for sexual or aggressive/angry reasons. It also includes all other efforts to monitor or observe another person's behavior without that person's knowledge or permission,
 - F. Use of a computer to solicit minors for sexual activities, including ever using a computer, the Internet, or any electronic communication device in attempt to solicit an underage person for sexual contact. It also includes ever engaging in on-line sex-chat or cyber-sex activities via IRC, Instant Messaging, Web Chat, email or any other electronic method.
 - G. Masturbation or sexual acts in public places where one could be seen by others such as a vehicle, hiding place, standing outside someone's home or window, or anywhere one could watch others without their knowledge or permission. It also includes masturbation or sexual acts in workplace/school locations, public restrooms, or adult entertainment businesses.

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- 8.3.3.3. General sexual history exam II – time of reference. The time of reference for the Sex History Exam I may be restricted to the period of time prior to the current court supervision that mandated the present treatment when there are concerns about 1) potential differences in consequences for pre-treatment or pre-conviction acts and those acts occurring post conviction or after treatment onset, or 2) examinee rights pertaining to the behavioral targets after conviction while under the supervision of a court or in a treatment program. The time of reference should be included in the test questions unless clearly established during the pretest interview.
- 8.3.3.4. General sexual history exam II - testing approach. Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the General Sex History Exam II in a series of more narrowly focused exams when that approach will lend to more accurate or satisfactory resolution of the investigation targets. Nothing in this Model Policy should be construed as to require the investigation of all or any of the suggested investigation targets or preclude the selection of alternative targets pertaining to sexual behavior that would assist the supervision and treatment team in determining and responding to the examinee's supervision and treatment needs.
- 8.3.3.5. Testing the limits of admitted sexual compulsivity or sexual preoccupation. Examiners should attempt to prioritize the investigation of behaviors in which the examinee denies any involvement. It may not be realistic to hope to know *everything* when an examinee admits to substantial involvement in sexual behaviors that may include elements of sexual compulsivity or sexual preoccupation. In these cases community supervision team members should be informed of the examinee's admission of substantial involvement.
- 8.4. Maintenance exam. Examiners should conduct the Maintenance Examination (ME) to thoroughly investigate, either periodically or randomly, the examinee's compliance with any of the designated terms and conditions of probation, parole, and treatment rules.

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- 8.4.1 Maintenance exam - scheduling. It is recommended that Maintenance Exams be completed every four to six months, or every 12 months at a minimum. Community supervision team members should consider the possible deterrent benefits of randomly scheduled maintenance exams for some examinees.
- 8.4.2. Maintenance exam - examination targets. Investigation targets for the Maintenance Exam should bear operational relevance to an examinee's stability of functioning and any changes in dynamic risk level as indicated by compliance or non-compliance with the terms and conditions of the supervision and treatment contracts. Any of the terms and conditions of the probation or treatment may be selected as examination targets. Investigation targets for Maintenance Exams should emphasize the development or verification of information that would add incremental validity to the early detection of an escalating level of threat or to the community or to potential victims.
- 8.4.2.1. Unknown allegations. Maintenance Exams should not address known allegations or known incidents, which are properly investigated in the context of an event-specific polygraph exam.
- 8.4.2.2. Compliance focus. Maintenance Exams should be limited to questions about compliance or non-compliance with supervision and treatment rules. Questions about unlawful sex acts or re-offense behaviors may be included in the examination as long as circumstances related to rights against self incrimination as listed in the section dealing with Sex Offense Monitoring examinations do not exist. An elevated level of concern regarding re-offense would warrant a Sex Offense Monitoring Exam (SOME) – not a Maintenance Exam. Examiners should exercise caution to ensure they do not violate any rights of an examinee regarding the answering of questions about new criminal behaviors.

8.4.2.3. Examination targets. Examination targets should include, but are not limited to the following:

- A. Sexual contact with unreported persons of any age, including any form of rubbing or touching of the sexual organs (i.e., breasts, buttocks, or genitalia) of any person not already known or reported to the supervision and treatment team, either over or under clothing, for the purpose of sexual arousal/stimulation, sexual gratification, or sexual "curiosity." It also includes causing or allowing others to touch or rub one's own private parts either over or under clothing, for the purpose of sexual arousal/stimulation, sexual gratification, or sexual "curiosity"; and sexual hugging and kissing activities.
- B. Use of pornography, refers to viewing or using X-rated (or "XXX"), nude, or pornographic images or materials (e.g., pornographic magazines, pornographic movies on cable television, including scrambled television programming, pornographic movie theaters, pornographic video arcades, videotape, CD/DVD, or other recorded media including pornographic images or materials via computer or the Internet, iPod, cell phone, video games, or any electronic messaging system). It may also include using non-pornographic erotica (nude or non-nude) images or materials for sexual stimulation or masturbation purposes (e.g., sexually objectifying entertainment magazines, bikini or car magazines, nudity or erotic scenes in non-pornographic movies, sexually oriented stories in magazines, novels, or Internet/computer resources, and/or anything at all on television). This target may be restricted to using pornographic or sexually stimulating materials for masturbation purposes when the examinee admits to incidental contact with pornographic images.

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- C. Masturbation activities and masturbatory fantasies, which may refer to any involvement in masturbation activities when the examinee is prohibited from those activities, or it may refer to problematic forms of masturbation such as masturbating in a public location or where one could view or be viewed by others. It may also include voluntary or involuntary/intrusive thoughts or fantasies of a minor or past victim while masturbating or masturbation due to stress, boredom, anger, or other negative mood.
 - D. Unauthorized contact with underage persons, which refers to prohibited physical or other contact with underage persons, or to being completely alone or unsupervised with underage persons if the examinee has reported or admitted to incidental contact.
 - E. Sexual offenses while under supervision, including forced, coerced or violent sexual offenses, sexual offenses against underage persons, incest offenses, or sexual contact with unconscious persons. It may also include sexual deviancy/compulsivity/preoccupation behaviors such as voyeurism, exhibitionism, theft of undergarments, public masturbation or other behaviors.
 - F. Use of alcohol, illegal drugs or controlled substances, including tasting or consuming any beverage containing alcohol (if prohibited), or consuming any product containing alcohol for the purpose of becoming intoxicated, inebriated, drunk, "buzzed," or "relaxed." It also includes any use of marijuana (whether inhaled or not) or any other illegal drugs. This target also includes any misuse of controlled prescription medications, whether borrowing, sharing, trading, loaning, giving away, or selling one's own or another person's prescription medications or using any medication in a manner that is inconsistent with the directions of the prescribing physician.

8.4.3. Maintenance exam - time of reference. Maintenance Exams should address a time of reference subsequent to the date of conviction or the previous Maintenance Exam, generally not exceeding one year

and only exceeding two years in rare circumstances. The time of reference may be described generally as the six-month period preceding the examination; although, there may be reasons for lengthening or shortening the time of reference for some exams. All investigation targets in a test series should have a common time of reference.

8.4.4. Maintenance exam - testing approach. Examiners should conduct this examination as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Maintenance Exam in a series of more narrowly focused exams when that approach will lend to more accurate or satisfactory resolution of the investigation targets.

8.5. Sex offense monitoring exam. Examiners should conduct the Sex Offense Monitoring Exam to explore the possibility the examinee may have been involved in unlawful sexual behaviors including a sexual re-offense during a specified period of time. Other relevant questions dealing with behaviors related to probation and treatment compliance should not be included.

8.5.1. Sex offense monitoring exam - scheduling. Sex Offense Monitoring Exams should be completed whenever there is a specific request from a supervision or treatment professional to investigate the possibility of a new offense while under supervision. Alternatively, this exam may be used when 1) the likelihood of sexual offense or other sexual crime is elevated because of information received by any member of the team to include the examiner, or 2) following a previously unresolved maintenance examination that included a relevant question about sexual offense behavior. Whenever the results of a maintenance exam indicated the need for further testing to obtain a more diagnostic conclusion, a single-issue test format will be utilized. A single-issue Sex Offense Monitoring Exam can be expected to have improved diagnostic accuracy over a multi-issue (mixed issue) exam. However, this approach is still an exploratory exam, which should not be regarded as a sole basis for action (such as probable cause for arrest, revocation or removal from a treatment program).

8.5.2. Sex offense monitoring exam - examination targets. Examiners should select investigation targets for the Sex Offense Monitoring Examination that pertain to new sex crimes while under supervision based on concerns expressed by the supervision and treatment team.

8.5.3. Sex offense monitoring exam - time of reference. Sex Offense Monitoring Exams should refer to a time of reference generally following the date of conviction or a previous Monitoring Examination. The time of reference should be clearly stated in the test questions and may include all or any part of the time that the examinee is under supervision or in treatment, including a specific date or restricted period of time. The time of reference should emphasize the investigation of possible unlawful sexual acts or sexual re-offense during the most recent period of months prior to the Sex Offense Monitoring Exam.

8.5.4. Sex offense monitoring exam - testing approach. Examiners should conduct the Sex Offense Monitoring Exam as a multi-issue (mixed-issue) exploratory examination. However, nothing in this Model Policy should be construed as to prohibit the completion of the Sex Offense Monitoring Exam as a narrowly focused exam when that approach will lend to more accurate or satisfactory resolution of the investigation targets. Examiners should use a single-issue technique when the Sex Offense Monitoring Exam is used to follow-up on a previously unresolved Maintenance Exam.

9. **Suitability for testing.** Suitable examinees should, at a minimum, be expected to have a capacity for...

- A. Abstract thinking;
- B. Insight into their own and others' motivation;
- C. Understand right from wrong;
- D. Tell the basic difference between truth and lies;
- E. Anticipate rewards and consequences for behavior; *and*
- F. Maintain consistent orientation to date, time, and location.

9.1. Medications. Examiners should obtain and note in the examination report a list of the examinee's prescription medication(s), any medical or psychiatric conditions, and any diagnosed acute or chronic medical health conditions.

9.2. Unsuitable examinees. Examiners should not test examinees who present as clearly unsuitable for polygraph testing at the time of the examination.

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- 9.2.1. **Psychosis.** Persons who are acutely psychotic, suicidal, or have un-stabilized or severe mental health conditions, including dementia, should not be tested.
 - 9.2.2. **Age.** Persons whose chronological age is 12 years or greater should be considered suitable for polygraph testing unless they are substantially impaired. Polygraph testing should not be attempted with persons whose Mean Age Equivalency (MAE) or Standard Age Score (SAS) is below 12 years as determined by standardized psychometric testing (e.g., IQ testing, and adaptive functioning).
 - 9.2.3. **Level of functioning.** Persons whose level of functioning is deemed profoundly impaired and warranting continuous supervision or assistance may not be suitable for polygraph testing.
 - 9.2.4. **Acute injury or illness.** Persons suffering from an acute serious injury or illness involving acute pain or distress should not be tested.
 - 9.2.5. **Controlled substances.** Persons whose functioning is observably impaired due to the influence of non-prescribed or controlled substances should not be tested.
 - 9.3. **Team approach.** Examiners should consult with other professional members of the multi-systemic containment team, prior to the examination, when there is doubt about an examinee's suitability for polygraph testing.
 - 9.4. **Incremental validity.** When there are concerns about an examinee's marginal suitability for testing, examiners should proceed with testing only when multi-disciplinary team determines that such testing would add incremental validity to risk assessment, risk management, and treatment planning decisions through the disclosure, detection, or deterrence of problem behaviors.
 10. **Testing procedures.** Examiners who engage in PCSOT activities should adhere to all generally accepted polygraph testing protocols and validated principles.
 - 10.1. **Case background information.** The examiner should request and review all pertinent and available case facts within a time frame sufficient to prepare for the examination.

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- 10.2.** Audio-visual or audio recording. Examiners should record all PCSOT polygraph examinations. The recording should include the entire examination from the beginning of the pretest interview to the completion of the posttest review. The recording should be maintained for a minimum of three years. The recording documents the quality of the conduct of the testing protocol; documents the content and authenticity of the content of the information provided by the examinee, thus precluding possible future denials; and facilitates a comprehensive quality assurance review when necessary.
- 10.3.** Pre-test phase. Examiners should conduct a thorough pre-test interview before proceeding to the test phase of any examination. A thorough pretest interview will consist of the following:
- 10.3.1. Greeting and introduction. Examiners should introduce themselves by their names and orient examinee to the examination room.
 - 10.3.2. Brief explanation of procedure. Examiners should ensure examinees have some information about the ensuing procedure and scope of testing prior to obtaining the authorization and release to complete the exam.
 - 10.3.3. Authorization and release. Examiners should obtain an examinee's agreement, in writing and/or on the audio/video recording, to a waiver/release statement. The language of the statement should minimally include 1) the examinee's voluntary consent to take the test, 2) that the examination may be terminated at any time, 3) a statement regarding the examinee's assessment of his or her mental and physical health at the time of the examination, 4) that all information and results will be released to professional members of the community supervision team, 5) an advisement that admission of involvement in unlawful activities will not be concealed from the referring professionals and 6) a statement regarding the requirement for audio/video recording of each examination.
 - 10.3.4. Biographical data/determination of suitability for testing. Examiners should obtain information about the examinee's background including marital/family status, children, employment, and current living situation in addition to a brief review of the reason for conviction and length/type of sentence. Examiners should obtain, prior to and at the time of the examination, information pertaining to the examinee's suitability for polygraph testing.

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- 10.3.5. Explanation of polygraph instrumentation and testing procedures. The testing process should be explained to the examinee, including an explanation of the instrumentation used and the physiological and psychological basis of response. Nothing in this Model Policy should be construed as favoring a particular explanation of polygraph science. In general, an integrated explanation involving emotional attributions, cognitive theory and behavioral learning theory may be the best approach.
 - 10.3.6. Structured interview. The examiner should conduct a thorough structured or semi-structured pre-test interview, including a detailed review of the examinee's background and personal information, any applicable case facts and background, a detailed review of each issue of concern, and an opportunity for the examinee to provide his or her version of all issues under investigation. For event-specific diagnostic/investigative polygraphs of known allegations or known incidents, a free-narrative interview is used instead of a structured or semi-structured interview.
 - 10.3.7. Review of test questions. Before proceeding to the test phase of an examination, the examiner should review and explain all test questions to the examinee. The examiner should not proceed until satisfied with the examinee's understanding of and response to each issue of concern.
- 10.4 In-test operations.** Examiners should adhere to all generally accepted standards and protocols for test operations.
- 10.4.1 Environment. All examinations should be administered in an environment that is free from distractions that would interfere with the examinee's ability to adequately focus on the issues being addressed.
 - 10.4.2 Instrumentation. Examiners should use an instrument that is properly functioning in accordance with the manufacturer's specifications.

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- 10.4.2.1. **Component sensors.** The instrument should continuously record the following during the test: thoracic and abdominal movement associated with respiratory activity by using two pneumograph components; electrodermal activity reflecting relative changes in the conductance or resistance of current by the epidermal tissue; and cardiovascular activity to record relative changes in pulse rate and blood pressure. A channel that detects vasomotor responses or other validated data channels may also be recorded.
- 10.4.2.2. **Activity sensors.** A motion sensor is recommended and will be required for use by APA members effective January 1, 2012.
- 10.4.3 **Data acquisition.** The conduct of testing should conform to all professional standards concerning the data quality and quantity.
- 10.4.3.1. **Number of presentations.** Examiners employing a comparison question technique should conduct a minimum of three presentations of each relevant question. It is acceptable to conduct a fourth or fifth presentation in order to obtain a sufficient volume of interpretable test data.
- 10.4.3.2. **Question intervals.** Question intervals should allow a reasonable time for recovery. For comparison question techniques, question intervals from stimulus onset to stimulus onset should not be less than 20 seconds. It is suggested that a time period between 25 and 30 seconds would be superior to the minimum time of 20 seconds.
- 10.4.3.3. **Acquaintance test.** An acquaintance test should be administered during the first examination of each examinee by each examiner. Examiners are encouraged to use an acquaintance test during the conduct of other tests as appropriate.
- 10.5. Test data analysis.** The examiner should render an empirically-based interpretation of the examinee's responses to the relevant questions based on all information gathered during the examination process.
- 10.5.1. **Scoring methods.** Examiners should employ quantitative or numerical scoring for each examination using a scoring method for which there is known validity and reliability, which has been published and replicated.

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- 10.5.2. Results – diagnostic exams. Test results for event-specific diagnostic/investigative tests should be reported as Deception Indicated (DI), No Deception Indicated (NDI) or Inconclusive (INC) / No Opinion (NO).
 - 10.5.3. Results – exploratory exams. Test results of exploratory tests should be reported as Significant Response (SR), No Significant Response (NSR) or No Opinion (NO).
 - 10.5.4. No opinion/inconclusive. Examiners should render No Opinion (NO) whenever test results produce inconclusive numerical scores or whenever the overall set of test data do not allow the examiner to render an empirically-based opinion regarding the relevant test questions. (i.e., when test results are “inconclusive,” an examiner should render “no opinion” concerning the truthfulness of the examinee.) “No opinion” concerning the truthfulness of the examinee should be reported when an examination was stopped prior to collection of sufficient data to arrive at an empirically-based opinion.
 - 10.5.5. Professional opinions and test results. Examiners should render an opinion that the examinee was deceptive when the test results are SR or DI for any of the investigation targets. Examiners should render an opinion that the examinee was truthful when the test results are NSR or NDI for all of the investigation targets. Examiners should not render an opinion that the examinee was truthful when the test results are SR or DI for any of the investigation targets. Examiners should not conclude an examinee is deceptive in responses to one or more investigation targets and non-deceptive in responses to other investigation targets within the same examination.
 - 10.5.6. Non-cooperation. Examiners should note in the examination report whenever there is evidence that an examinee has attempted to falsify or manipulate the test results and whether the examinee was forthcoming in explaining his or her behavior during the test. An opinion that the examinee was Purposefully Non-Cooperative (PNC) is appropriate when there is evidence that an examinee was attempting to alter his or her physiological response data. Examiners reporting an examinee was PNC are not precluded from rendering an opinion that the examinee was deceptive (SR/DI) when the numerical scores support a conclusion that there were significant reactions to one or more relevant questions. Examiners should not render an opinion of truthfulness (NSR/NDI) when there is evidence that an examinee has attempted to falsify or manipulate the test results.

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- 10.5.7. Data quality. Examiners should not render a conclusive opinion when there is insufficient data of adequate quality and clarity to allow a minimum of three interpretable presentations of each of the investigation targets.
 - 10.5.8. Computer algorithms. Computer scoring algorithms should not be used to score examination data that is of insufficient quality for manual scoring, and computer algorithms should never be the sole determining factor in any examination decision.
 - 10.6. Posttest review. The examiner should review the test results with the examinee, advise the examinee of any significant responses to any of the test questions, and provide the examinee an opportunity to explain or resolve any reactions or inconsistencies.
 - 11. Examination report. Examiners should issue a written report containing factual and objective accounts of all pertinent information developed during the examination, including case background information, test questions, answers, results, and statements made by the examinee during the pre-test and post-test interviews.
 - 11.1. Dissemination of test results and information. The polygraph examination report should be provided to the professional members of the community supervision team who are involved in risk assessment, risk management, and treatment/intervention planning activities.
 - 11.1.1. Dissemination to other authorities. Reports and related work products should be released to the court, parole board or other releasing agency, or other professionals at the discretion of the community supervision team or as required by law.
 - 11.1.2. Communication after the exam. Following the completion of the posttest review, examiners should not communicate with the examinee or examinee's family members regarding the examination results except in the context of a formal case staffing.
 - 11.2. Scope of expertise. Examiners should not attempt to render any opinion concerning the truthfulness of the examinee prior to the completing the test phase and test-data-analysis. Examiners should not attempt to render any opinion regarding the medical or psychological condition of the examinee beyond the requirement to determine suitability for testing at the time of the examination. Post-test recommendations should be limited to needs for further polygraph testing and the resolution of the behavioral targets of the examination.

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12. **Records retention.** Examiners should retain all documentation, data, and the recording of each examination for a period of at least three years or as required by law.
 13. **Quality control.** To ensure examiner compliance with these recommendations and other field practice requirements and to sustain the quality of the testing process, an independent quality control peer-review of a portion of each examiner's work product should take place annually.
 14. **Examiner qualifications.** Examiners whose work is to be considered consistent with the requirements of this Model Policy shall have completed a basic course of polygraph training at a polygraph school accredited by the APA or meet other training, experience and competency requirements for professional membership in the APA.
 - 14.1. **Specialized training.** Examiners shall have successfully completed a minimum of forty (40) hours of specialized post-conviction sex offender training that adheres to the standards established by the APA.
 - 14.2. **Continuing education.** Examiners shall successfully complete a minimum of thirty (30) continuing education hours every two (2) years. Fifteen of those hours shall pertain to specialized sex offender polygraph training.
 - 14.3. **Professional experience.** Examiners shall complete a minimum number of examinations in accordance with APA standards prior to undertaking PCSOT examinations unsupervised. Examiners who have conducted fewer than 10 PCSOT exams shall conduct PCSOT exams under the supervision of an APA recognized PCSOT examiner until 10 exams have been completed in accordance with APA standards. Supervision shall include a thorough review of the examination including target selection, question construction, data quality, test data evaluation, record keeping and reporting procedures.

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within above entitled action. My business address is 622 Lagunaria Lane, Alameda, CA 94502. On May 1, 2014, I served the **AMENDED REQUEST FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid and placed in the United States mail addressed as follows:

Superior Court, Appeals Clerk
191 First Street
San Jose, CA 95110

Office of the Attorney General
Kamala Harris
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102-3664

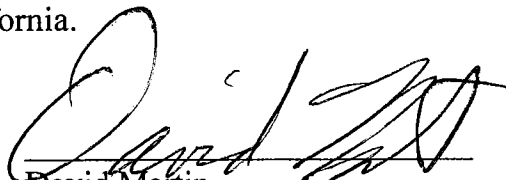
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Ignacio Garcia
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San Jose, CA 95111

I declare under penalty of perjury under the laws of the United States of California that the forgoing is true and correct and that this was executed on April 29, 2014, Alameda, California.


David Martin