

# Module 5

## Treatment: An Essential Supervision Tool



## **Synopsis**

The goal of this module is to provide information about how treatment can be used as a tool of supervision for sex offenders under community supervision. This module will focus on how probation and parole officers can use information from treatment providers to inform their supervision strategies and how treatment, polygraph testing, and probation/parole can create a flow of information surrounding the offender that makes up English's "containment triangle".

## **Learning Objectives**

After completing this module, participants should be able to:

1. Describe why treatment is essential to the supervision of sex offenders
2. Identify ways in which probation and parole offices can utilize information from treatment providers
3. Describe the information officers should provide victims regarding treatment
4. Describe how the polygraph improves sex offender case management

## **Participants Materials**

Participant Manual  
Handouts

## **Facilitate the Module**

LCD projector and laptop

## **Handouts**

Handout E1                      Treatment Provider Perspectives on Collaboration  
Handout E2                      Treatment/Polygraph Process: Potential to Inform  
Handout E3 to E6              Exercise Case Studies

## **Resources**

Resource A2 Managing Adult Sex Offenders in the Community article (from Module 1)

## **Time Frame**

Total 1 hour, 30 minutes

## **Module 5 At A Glance**

<u>Time</u>	<u>Description</u>
5 minutes	Goals and Objectives
10 minutes	Treatment: A Tool of Supervision
10 minutes	Why Use Treatment
10 minutes	Treatment Providers
10 minutes	Role of Treatment
15 minutes	Polygraph as Supervision Tool
10 minutes	Measuring Arousal or Deviant Sexual Interest
5 minutes	Management Resources
15 minutes	<b>EXERCISE</b>

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Treatment: An Essential Supervision Tool

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**Trainer's Note:** Simple welcome participants back for the final module on treatment.



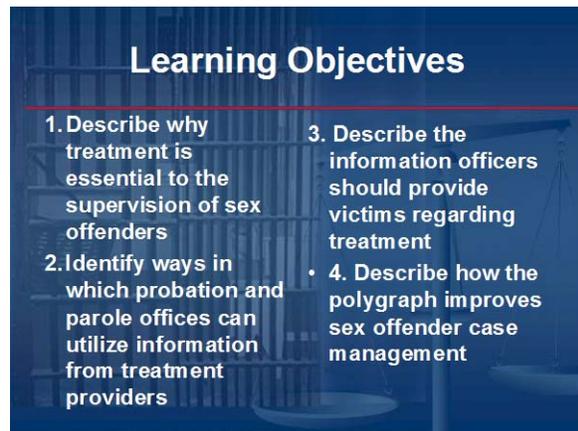
Learning Objectives

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**Trainer's Note:** Introduce participants to the four learning objectives.

After completing this module, participants should be able to:

1. Describe why treatment is essential to the supervision of sex offenders
2. Identify ways in which probation and parole offices can utilize information from treatment providers
3. Describe the information officers should provide victims regarding treatment
4. Describe how the polygraph improves sex offender case management



Treatment: A Tool of Supervision

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**Trainer says about:**

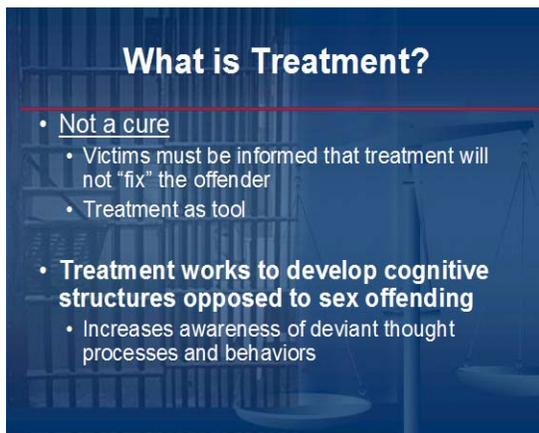
The idea of treating sex offenders is nearly as unpopular as sex offenders themselves. It is an idea that can conjure up incredible emotional opposition. Not only is there a great deal of skepticism about whether or not sex offenders can be treated, but even

beyond that, there is often an emotional opposition to treating this class of offenders even if doing so was proven somehow beneficial. Public and political opinion is increasingly focused on harsher punishment with less tolerance of sex offenders.

This module will demonstrate why it is important to shift our thinking away from treatment as a tool that promotes only the well-being of sex offenders – which is something that, somewhat unsurprisingly, generates little support – towards an understanding of how treatment can be used as a tool of supervision for sex offenders in the community. First and foremost, treatment must be considered another method of protecting the community from sex offenders, and as an additional tool with which probation and parole officers may estimate offender performance in the community, their interest in or susceptibility to continued sex offending, and their stability within the general populace.

### What is Treatment?

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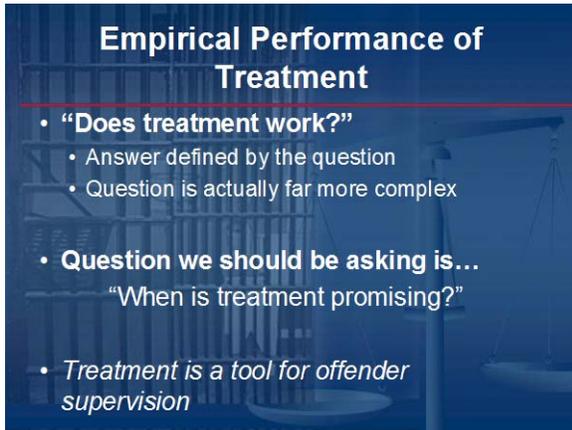
#### **Trainer says about:**

It is necessary to note that treatment is *not* a cure for sex offenders, and that any focus on making it such will almost certainly result in disappointment and failure. Still, treatment must be seen as a productive technique, along with other tools such as punishment, incapacitation, and supervision that can be used to initiate a strong reaction to sex offenses. It is particularly important that victims understand this notion; treatment will not “fix” the offender, but may ultimately be used as a part of offender *containment* and supervision in the community.

As a tool that seeks to develop cognitive structures

opposed to sex offending, treatment serves to highlight the psychological and behavioral connections between an offender’s thought processes and subsequent deviant actions. Because the cognitive structures of the sex offender lend themselves to offending, treatment seeks to raise the offender’s awareness of the thoughts and attitudes that lead to problem behavior, and to find ways to change that way of thinking. Sex offender treatment is not intended to be a “cure” in the sense that one might think of, for example, medical treatment; instead, it can be considered a way to manage the criminogenic thoughts and attitudes of sex offenders as one of several tools to promote public safety.

Empirical Performance of Treatment



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**Trainer says about:**

Let’s talk a bit about what the current research says about sex offender treatment. In reality, establishing an empirical picture of relevant sex offender treatment is difficult. There seems to be a fairly firmly-held notion in the public subconscious that sex offender treatment does not “work”. If we are measuring whether or not treatment “works” using a yardstick that asks if

sex offenders are “cured”, this train of thought is accurate. Think about drug treatment for a moment: how many of you have had offenders who were “cured” in drug treatment? While some drug offenders may have indeed found success in treatment programs, many have not. Still, drug treatment is one tool among many for managing these offenders in the community.

A fair amount of research over the past 20 years has suggested that general offender treatment does have little effect on sex offender recidivism. Most recently, a long term study in California found no real difference between treated and untreated sex offenders who participated in an inpatient prison program regarding violent or sexual reoffending over an 8-year follow up as compared to offenders who did not participate in the program, although offenders who met the goals of the treatment program did fare better than those who did not (Marques, Wiederanders, Day, Nelson, and van Ommeren, 2005).

There is, on the other hand, a contingency of research that paints a more promising picture of sex offender treatment. Again, the true problem often lies in how one frames the question of “effectiveness”; asking whether or not general sex offender treatment “works” will likely generate dismal reviews. The more valuable question must not be whether or not treatment works, but rather under what circumstances is treatment more promising vs. less promising, and which characteristics of treatment hold the most potential. Most importantly, given that we cannot measure treatment by whether or not a sex offender is “cured,” we must examine the promising methods of offender treatment in an effort to understand how these approaches might intersect with (and be used as) tools of supervision focusing on enhancing public safety – rather than curing the offender.

Here, we can take a look at some of the characteristics of treatment that empirical evaluations have deemed promising.

## Historical Perspective

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**Historical Perspective**

- **1930's**
  - Image of "deranged offender"
  - Led to psychoanalytic treatment, incarceration
- **1970's**
  - Decrease in confidence level regarding treatment
  - Offenders became rational, conscious, responsible actors
  - Emergence of behavioral therapies
- **Current**
  - Cognitive-behavioral therapies

*WARNING PAEDOPHILE RAPIST LIVING HERE*

### Trainer says about:

Treatment, at least in terms of its traditional definition in supervision of offenders, has rarely been considered a legitimate end in its own right. The focus on offender psychology and behavioral tendencies often does not readily “fit” with the traditional means and goals of probation, which often rely primarily on the expertise of criminal justice officials to structure containment practices. In fact, the very social construction of the sex offender image often proves to be a significant roadblock to the successful implementation of

effective treatment supervision strategies, as punitive and traditionally-rehabilitative strategies are often viewed as independent tools.

Beginning in the 1930's, sex offender treatment began in response to the popular institutional image of the “deranged” individual. This treatment consisted mainly of psychoanalytic techniques, coupled with formal incarceration. By the 1970's, however, the confidence in treatment had waned, and rather than considering offenders particularly psychologically damaged, they became conscious, rational actors responsible for their own deviant behaviors. This change in approach towards sex offenders resulted in the emergence of behavioral therapies as an approach towards offenders, which ultimately evolved into today's popular cognitive-behavioral therapies (McCulloch and Kelly, 2007).

Initial evaluations of sex offender treatment, those prior to the 1980's, showed little impact on recidivism. It is important to note, however, that this was a period of substantial growth in both treatment methodology and treatment efficacy research methods, as well as in the definition of “effectiveness” as it relates to sex offenders. More recent research indicates that treatment may, indeed, have a positive impact on recidivism, particularly when used in an outpatient setting, and when used in a form that remains individualized and supervisory.

## Changes in Treatment Evaluation Over Time

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### Trainer says about:

The most important result of recent research on offender treatment has been a reexamination of the question of “what works;” in reality, this seemingly-straightforward question must be broken down into more specific and useful questions (Marques, 1999).

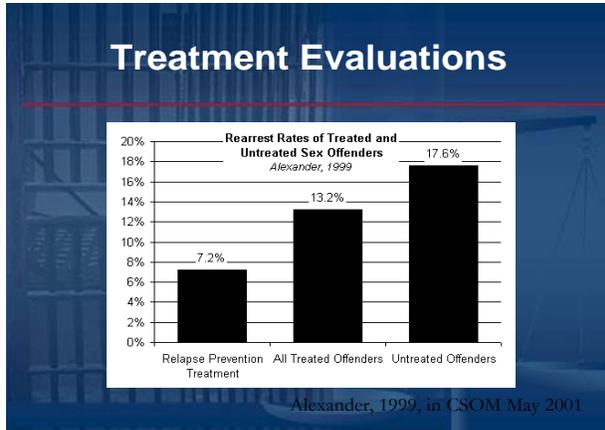
**Treatment Evaluations**

- **Initial evaluations of offender treatment showed little impact on recidivism**
  - Period of growth in methods, research, definitions
  - Recent research indicates that *more* promising treatment approaches may occur when treatment is administered in a specialized, individualized capacity
- **Who works**
- **What works**

Of course, when it comes to treatment, it's also a question of "who works;" because the effectiveness of treatment often rests heavily on the relationship between an offender and the source of treatment, probation/parole often provide a desirable setting for the use of treatment as a tool for offender control.

### Treatment Evaluations

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#### **Trainer says about:**

Take a look at this slide: in this recent study, Alexander combines a large group of 79 treatment outcome studies, examining both treatment and effectiveness in terms of offender rearrest rates. The important thing to note is that there are three bars, rather than the traditional two treatment vs. non-treatment bars. Here, a differentiation is made in the form of treatment that an offender receives. Although the study shows a modest effect from offender treatment generally, the real change in rearrest rate can be seen with those offenders

that receive individualized, case-specific relapse prevention treatment. In this case, it is indeed a matter of approach, what techniques are promising, and who works (Alexander, 1999).

Of course, while this study shows that individualized relapse prevention treatment may have a positive effect on rearrest rates, it's less clear on the precise *method* of offender control; in other words, what about individualized treatment makes it particularly effective? We'll touch on this in our next section.

### Why use treatment?

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#### **Trainer says about:**

Because they differ from other criminal offenders in several notable ways, sex offenders require particularly specialized treatment. Sex offenders are an extremely diverse group of offenders, both in terms of offending behavior and socio-demographic characteristics. Effective sex offender treatment allows a tailored response that can encapsulate these differences on a

### Why Use Treatment?

- SO's differ from normal criminal offenders
  - Offending behavior, cognitive patterns
  - Socio-demographic characteristics
- Treatment allows specific response to these differences
- Treatment also provides additional means of offender control and containment

case by case basis, with treatment defined by its application to individual offenders. The potential for successful community reintegration depends on changing engrained patterns of thought and behavior, and qualified treatment personnel can be used to identify what cognitive patterns need to be changed for individual offenders, developing a treatment plan to target those individual cognitive deficits while simultaneously teaching pro-social behavior. Treatment also provides an additional means of external structure for offenders in the community, reducing offender leisure time and providing yet another avenue of supervision.

For our purposes it may also be useful to put the issue of sex offender treatment into some practical perspective. While treatment may not be a popular approach to dealing with sex offenders in the political and public eye, if you, as probation and parole professionals, find yourselves supervising a sex offender, that means that the offender *is* in the community. The question then becomes how to best manage that offender and treatment; regardless of all the empirical research and academic arguments about effectiveness, treatment is a tool that has a unique ability to structure offender time, allows you to get information about the offender both in terms of offending history and deviant thoughts and behaviors, and allows you to use tools such as polygraph examinations to motivate disclosure (something we will discuss later). Indeed, the information you get about an offender in the course of their treatment can be used to develop, monitor, and modify (when necessary) conditions of probation or parole.

### Characteristics of Treatment

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#### **Trainer says about:**

It's important for us to examine a few unique characteristics of sex offender treatment. First, unlike much psychological and behavioral therapy, treatment is almost always involuntary. Next, the focus of sex offender treatment differs from other forms of treatment

because community and victim concerns are a central focus; treatment for sex offenders is not client-driven as it is in other forms of treatment. The focus on community safety in sex offender treatment also means that the concept of confidentiality is much different in this area of treatment than in others. In fact, as we will see, the information gleaned from treatment providers about a particular sex offender can become an essential tool in the supervision of that offender – in fact, for your purposes, it is likely the most important tool. Finally, the stakes for sex offender treatment are much higher than for other forms of treatment, and an unsuccessful outcome has broad consequences that influence not only the offender, but past and future victims and the community, as well.



## Treatment Providers

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**Treatment Providers**

- **SO's lifestyle centered on manipulation, secrecy**
  - Psychological, social systems, image of "self" difficult for traditional management
- **Communication and information**
  - Flow of communication is key
  - Increases effectiveness of offender control, reduces risk to community

### **Trainer says about:**

Like other forms of inter-agency and inter-profession cooperation, one of the most valuable products that offender treatment provides is *information*. The very nature of the sex offender lifestyle is that of secrecy and manipulation; offenders typically have extremely complex psychological and social systems designed to minimize the effects of their actions on both others and their image of "self," something that makes traditional management more problematic for probation/parole professionals (English, Pullen, and Jones, 1997). As a result, any design

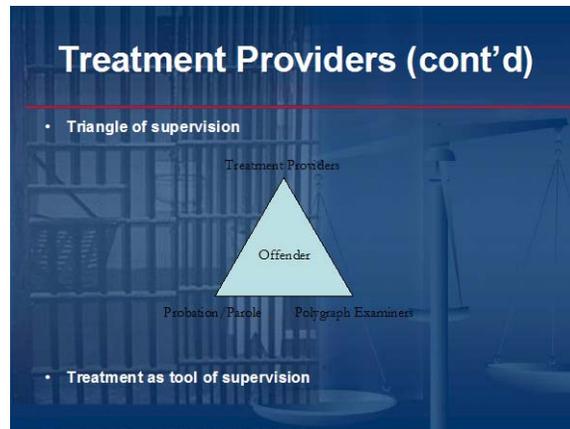
utilized to reduce the risk posed to a community must be founded upon the constant flow of information and communication between all supervisory personnel.

## Treatment Providers (cont'd)

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### **Trainer says about:**

The triangle of supervision is built from the three main forms of community containment: probation/parole professionals, treatment providers, and polygraph examiners. Because the role of each position provides unique informative content and interaction with an offender, each is extremely important to the flow of communication between all parties. The offender resides within this containment triangle, surrounded on all sides by interlinked supervisory professionals (English, 1998).



Of particular value in the triangle of supervision is the treatment provider. Because this individual works closely with the offender, the information passed between the two parties proves beneficial to the entirety of the containment system – feeding back into probation and parole decisions, and as we will see in the last section, polygraph examinations. Although disclosure of the offender's sexual history is provided to all supervisory personnel, the treatment provider is an expert in psychological and behavioral systems, and as such is often able to provide more in-depth analyses of offender backgrounds.

Treatment is a common inclusion in the sentences of sex offenders, and a large percentage of probation/parole professionals cite mandated mental health treatment for convicted offenders (English et al, 1997). When used as a tool of supervision, treatment can provide a valuable

multi-dimensional lens for examination of the risk posed by an offender to the community. Unlike most community corrections patterns, treatment can be used as a “starting point” in supervision and containment rather than using such tactics as an extraneous part of sentencing. Because the deviant thought processes and psychological constructs of an offender are enormously important to the subsequent behaviors of an offender, risk management that starts with treatment providers can actually be seen as particularly preventative in nature, targeting behaviors *before* they manifest (English, 1998).

Provider Reports: Tools for Supervision Structure Adjustment



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**Trainer says about:**

Because this type of information-gathering is unique to the treatment provider, it is the flow of this information through the containment triangle from providers to probation/parole professionals that proves particularly beneficial when constructing supervisory structures. By working with treatment specialists, probation/parole officers are able to form conditions of supervision around the individual

risk profile of an offender, restricting at-risk activities and environments such as driving, employment, etc (English et al, 1997).

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**Trainer says about:**

This technique may also be used in court to modify conditions of supervision; by gathering and disseminating information about an offender’s latent tendencies, providers are able to supply court officials with tools to form effective sentencing structures.



Nature of Communication

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**Trainer says about:**

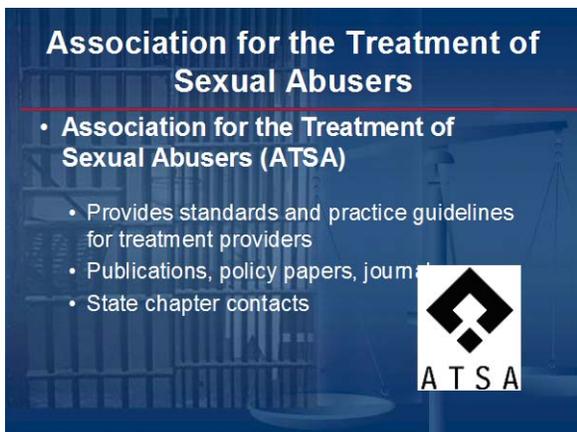
Of course, the quality of communication between treatment providers and other supervisory personnel is of the utmost importance. Although each is responsible for an indispensable segment of offender supervision, the techniques, tools, and responsibilities vary greatly between professionals. As a result, all information must be passed clearly from one portion of the containment triangle to the next. This holds particularly true for treatment providers, as the complexity of the information they provide is

often substantial, and probation/parole professionals should call for as much information as possible to make supervisory decisions. Although both treatment providers and probation/parole personnel should work towards a mutual goal of offender containment and community safety, conflicts may arise between parties, and must be handled carefully towards the same mutual ends (McGrath, Cumming, and Holt, 2002). Refer participants to Handout E1 (Treatment Provider Perspectives on Collaboration).

**Trainer’s Note:** You may find it useful to ask participants to look over Handout E1 for a few moments and consider how their perspectives agree or disagree with treatment provider responses to collaboration scenarios. It might be useful to have participants brainstorm 3-4 differences they can think of in professional cultures between themselves and treatment providers and then identify ways resulting communication barriers might be overcome.

Association for the Treatment of Sexual Abusers (ATSA)

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**Trainer says about:**

In an effort to promote interdisciplinary communication and cooperation, the Association for the Treatment of Sexual Abusers (ATSA) was formed in 1984, and continues to serve as a provider of standards and practice guidelines for treatment providers. The ATSA is an excellent resource for information for all supervisory personnel, and the organization’s website offers contact information for state by state chapters and numerous resources including reports, position papers, conferences, and the journal *Sexual*

*Abuse: A Journal of Research and Treatment.*

Role of Treatment

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**Trainer says about:**

The common misconception of sex offender treatment is that it is designed primarily to aid offenders in terms of recovery and self-betterment. In reality, this is not the case, as treatment must be viewed as an integral part of the larger goal of community and victim safety. The premiere task given to all officials working within the supervisory triangle is relapse prevention, working together to both protect the public generally and to effectively contain an offender's at-risk behaviors.



Relapse Prevention Approach Elements

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**Trainer says about:**

The most common (and tested) type of sex offender treatment focuses on relapse prevention through a cognitive-behavioral approach, including victim empathy, relapse prevention training, social skills training, sexual assault cycle identification, cognitive distortion modification, and sexual reconditioning (Managing Sex Offenders in the Community, 2003).

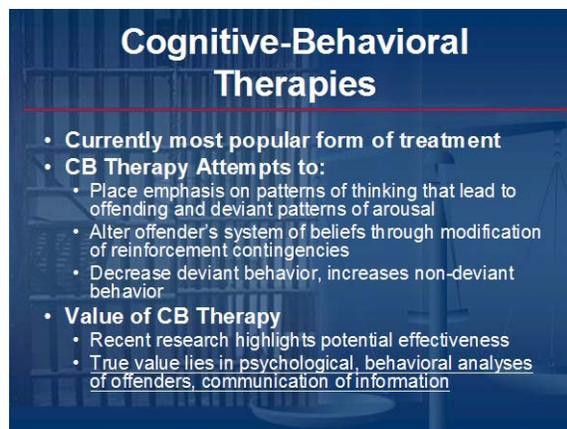


## Cognitive-Behavioral Therapies

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### **Trainer says about:**

The cognitive-behavioral component of this treatment approach places emphasis on patterns of thinking that lead to offending and deviant patterns of arousal; by altering an offender's overall system of beliefs, cognitive-behavioral techniques aim to both reduce deviant behaviors and increase non-deviant behaviors through modification of reinforcement contingencies (Managing Sex Offenders in the Community, 2003).



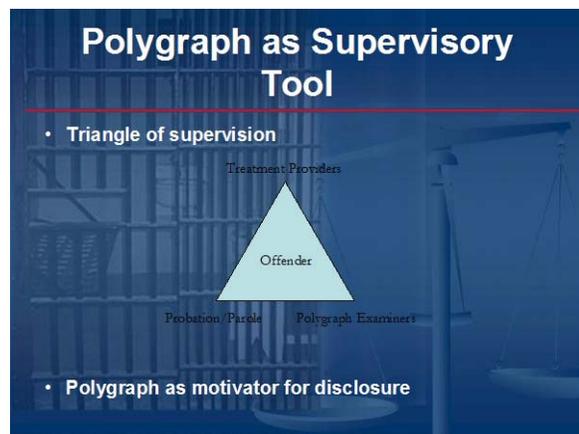
**Cognitive-Behavioral Therapies**

- Currently most popular form of treatment
- CB Therapy Attempts to:
  - Place emphasis on patterns of thinking that lead to offending and deviant patterns of arousal
  - Alter offender's system of beliefs through modification of reinforcement contingencies
  - Decrease deviant behavior, increases non-deviant behavior
- Value of CB Therapy
  - Recent research highlights potential effectiveness
  - True value lies in psychological, behavioral analyses of offenders, communication of information

While cognitive-behavioral treatment has proven effective at reducing deviant arousal and increasing overall social skills, the psychological and behavioral analyses inherent to such therapy are particularly advantageous to offender supervision. Because cognitive-behavioral techniques focus on the recognition of deviant thought processes and their connection to subsequent behaviors, the supervisors of an offender should use the information provided by therapy to further modify and solidify the containment plan. Treatment providers are able to communicate information gathered by therapies to the other members of the triangle of supervision, providing an offender-specific perspective towards containment (English, 1998). Although treatment is useful in all cases of offender supervision, the availability of treatment options and providers may differ between locations, particularly between rural and urban areas. As with most services, there will likely be more options for treatment in urban areas, but it is important for those of you in rural working environments to reach out to and coordinate with the treatment organizations in your area, and to use resources such as the ATAS to network with and inform treatment providers.

## Polygraph as Supervision Tool

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**Polygraph as Supervisory Tool**

- Triangle of supervision

Diagram illustrating the Triangle of Supervision:

- Top vertex: Treatment Providers
- Bottom-left vertex: Probation/Parole
- Bottom-right vertex: Polygraph Examiner
- Center: Offender

- Polygraph as motivator for disclosure

### **Trainer says about:**

As discussed, the containment triangle consists of the probation or parole officer, treatment personnel, and polygraph specialists, with the sex offender under supervision in the center of the triangle. We'll now discuss, in greater depth, the role that polygraph testing can play in the toolbox of sex offender supervision.

Above all else, the polygraph is a tool to motivate disclosure from a sex offender. Supervisory personnel and treatment providers should work

together to target polygraph questions based on the unique modus operandi and issues facing an individual offender.

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**Trainer says about:**

The polygraph is a stable indicator that can both illicit information about an offender's fantasies and desires, as well as motivate disclosure about an offender's behavior as it relates to potential risk factors. Kim English (1998: 228) has described the role of postconviction polygraph testing in sex offender supervision as essential; in fact, she describes the postconviction polygraph exam as equally essential for sex offenders under supervision as the urinalysis drug test for drug offenders. Using physical measures of respiration, Galvanic skin response (which measures physiological arousal through how much resistance to electricity a subjects skin loses from an increase in sweat gland activity) and cardiovascular interbeat intervals, the postconviction polygraph is a helpful tool within the containment model that offers a unique ability to physically bypass the curtain of secrecy and denial that sex offenders often require to thrive.

**Polygraph as Supervisory Tool (cont'd)**

- Polygraph can both illicit disclosure and provide information about an offender
  - English (1998): Polygraph is to sex offenders as urinalysis is to drug offenders
- Polygraph:
  - Respiration
  - Galvanic skin response
  - Cardiovascular interbeat intervals
- Lifts "veil of secrecy"

Postconviction Polygraphing, English et al. 2003

**Postconviction Polygraphing, English et al 2003**

TABLE 1. Comparison of hands-on offenses, hands-off offenses, and risk behaviors before and after treatment/polygraph process<sup>a</sup>

	Before (%)	After (%)
<b>Hands-on offenses</b>		
Vaginal penetration	56.7	72.8
Attempted penetration	5.6	15.0
Anal penetration	9.4	18.3
Oral sex	36.7	56.1
Fondling/foresage	66.7	85.6
Excess aggression	3.9	9.4
Assault (including domestic violence)	11.7	18.3
<b>Hands-off offenses</b>		
Exhibitionism	13.9	46.7
Voyeurism	8.9	53.9
Stalking	2.2	3.9
Risk Behaviors		
Urination w/sex act	1.7	8.3
Bestiality	4.4	36.1
Pornography	13.3	38.3
Obscene Intercomphone	2.2	18.9
Masturbate to deviant fantasy	8.3	46.7
Excess masturbation	1.7	13.9
Specific preparation (e.g., driving sound)	8.3	21.7
Other <sup>b</sup>	17.8	65.6

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**Trainer says about:**

Refer participants to Handout E2 (Treatment/Polygraph Process: Potential to Inform). Explain that this study of disclosure before and after treatment/polygraph testing illustrates just how useful polygraphs can be in uncovering actual sex offender behavior. This study examined disclosure of 180 convicted sex offenders before and after four treatment/polygraph programs (English, Jones,

Patrick, and Pasini-Hill, 2003). We can see from this study just how important polygraph testing can be in the disclosure of sex offenders.

## Postconviction Polygraphing

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### **Trainer says about:**

The postconviction polygraph examination consists of three primary components: the pretest, the in-test, and the posttest. No physiological measures are taken during the pretest portion of the examination. In this portion, background data is collected from the subject, test questions are refined and finalized, and the examination procedure is

explained to the subject. During the active testing phase, or the in-test phase, the examiner asks the subject questions, and the physiological data previously mentioned is recorded on polygraph charts per the subject's responses. In the posttest portion of the exam, the subject has the opportunity to ask the examiner questions about the exam, and the posttest provides a general opportunity for the subject to discuss the test and explain or clarify responses. This is also the portion of the exam in which inconsistencies are addressed.

As mentioned, the postconviction polygraph for sex offenders can be thought of in many of the same ways that we tend to think of drug testing for drug offenders. It is a physical measure that can add layers of information that supervision in the community and treatment cannot, but it can also feed back into the other portions of the containment triangle. We saw how much additional information the polygraph can help disclose; let's look now at some specific types of information that the polygraph can uncover, and how that information can be used in your supervision toolbox. There are three types of postconviction polygraph examinations used in the supervision of sex offenders: sexual history disclosure exams, specific-issue exams, and maintenance or monitoring exams (English, Jones, Pasini-Hill, Patrick, and Cooley-Towell, 2000).

**Postconviction Polygraphing**

- **Three main components**
  - Pretest
    - Preparation phase
  - Active (in-test)
    - Testing phase
  - Posttest
    - Clarification/briefing phase
- **Polygraph provides unique information**
  - Information as important to offender supervision as information from treatment providers, probation/parole officials

**Postconviction Polygraph Examinations**

- **Three main types**
  - **Sexual history disclosure**
    - Prompts disclosure of information regarding offender thoughts, behaviors
    - Typically follows written questionnaire
    - Important for full, truthful disclosure
  - **Specific-issue exams**
    - Focuses on specific offenses
    - Also used to verify disclosure of issues related to probation/parole
  - **Maintenance/monitoring exam**
    - Used to generally verify compliance with conditions of probation/parole

## Postconviction Polygraph Examinations

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### **Trainer says about:**

The sexual history disclosure exam is an important tool with which probation and parole and treatment providers are able to gain insight into an offender's ongoing risk and treatment needs. Because full disclosure is of the utmost importance in assessing risk, the sexual history disclosure exam compels an offender to disclose

information regarding age of onset of sexual deviancy, frequency and scope of past offending, how recently risky behaviors have been engaged in, and the thoughts and behavioral precursors to inappropriate behavior. The sexual history disclosure exam generally follows the collection of a sexual history document in which the offender is required to record over a specified period of

time after starting treatment, the gender, age, and method of assault on all victims. The polygraph examiner then reads this record provided by the offender along with other case information and uses those records to conduct the exam – specifically verifying the truthfulness of the offender’s disclosure of past assaults and attempted assaults (English et al, 2000). As you can imagine, given that most sex offending behaviors are not captured in the official record, the sexual history disclosure polygraph exam is an important tool for coercing full and truthful disclosure by the offender, especially when that almost always includes illegal behaviors not previously known to the justice system.

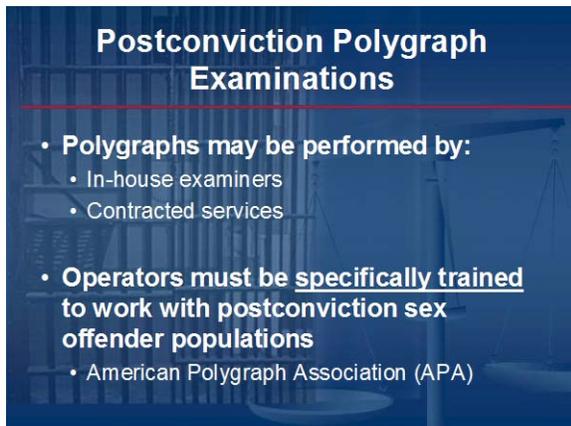
### Specific-issue Exams

Specific-issue exams can be used in several ways. They are often used in cases where an offender continues to deny the conviction offense, or to verify details of the conviction offense in cases where the offender’s version of events differs from the victim account. They can also be used to clarify points of deception on previous exams. Specific-issue exams may also be an important tool during supervision as a way to physically verify an offender’s disclosure about issues that arise during probation or parole, such as contact with children while under supervision (English et al, 2000).

### Maintenance and Monitoring Exams

While the sexual history disclosure exam provides treatment personnel with information to guide an offender’s individual program and probation and parole officers with information regarding an offender’s risk and behaviors that must be considered during supervision, specific-issue exams are generally used when a point of deception needs to be clarified or there is a specific suspicion or concern about which disclosure needs to be motivated. In contrast, maintenance and monitoring exams are used to generally verify compliance with conditions of probation or parole and treatment. Supervisory personnel work with treatment providers and polygraph examiners to develop questions tailored to probe each offender’s unique high risk behaviors, thoughts, and attitudes (English et al, 2000).

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**Postconviction Polygraph Examinations**

- **Polygraphs may be performed by:**
  - In-house examiners
  - Contracted services
- **Operators must be specifically trained to work with postconviction sex offender populations**
  - American Polygraph Association (APA)

**Trainer says about:**

The postconviction polygraph tests are one piece of the containment triangle that probation and parole professionals can use to understand offenders and establish a pattern of compliance, or in some cases use non-compliance as a means to inform the supervisory and treatment processes.

In-house or contracted

**Trainer says about:**

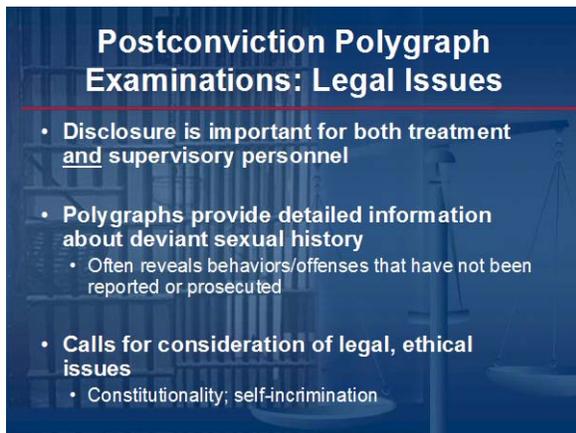
Polygraph services for sex offenders may be performed by in-house examiners or through contracted services depending on resources and availability. However, polygraph examiners used for sex offender cases must be specially trained

for this offender population, and should also be independent actors. For examiners qualified in postconviction sex offender exams, the American Polygraph Association provides specific standards of practice extending beyond the requirements for general polygraph examiners. Examiners who perform postconviction sex offender exams must complete an additional 40 hours of certified training in postconviction sex offender-specific training and, if they hold duties as treatment providers and/or probation or parole officers, are explicitly prohibited from engaging in polygraph examinations of offenders whom they directly or indirectly supervise or treat (American Polygraph Association Standards of Practice, 1/20/2007).

The postconviction polygraph exam is an important tool of supervision for sex offenders. It can be an important tool to reveal future desires, break down denial, motivate truth, act as an information-sharing channel between treatment providers and probation and parole officers, and provide a way for probation and parole officers to better-inform their case management decisions. The postconviction polygraph exam can be a tool that demonstrates that an offender is both compliant and truthful, but also addresses all areas of deception in cases where the offender is neither truthful nor compliant.

### Postconviction Polygraph Examinations: Legal Issues

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**Postconviction Polygraph Examinations: Legal Issues**

- Disclosure is important for both treatment and supervisory personnel
- Polygraphs provide detailed information about deviant sexual history
  - Often reveals behaviors/offenses that have not been reported or prosecuted
- Calls for consideration of legal, ethical issues
  - Constitutionality; self-incrimination

#### **Trainer says about:**

Because postconviction polygraph exams for sex offenders can reveal rich and detailed information about deviant sexual history, there are an abundance of legal and ethical issues that must be considered. As we know, most sex offenses are never reported, and any given sex offender is likely to have a history of illicit sexual activity that extends beyond the offense of record in any given instance. Therefore, the sexual history exam is likely to reveal offenses and victims for which the offender has not been prosecuted.

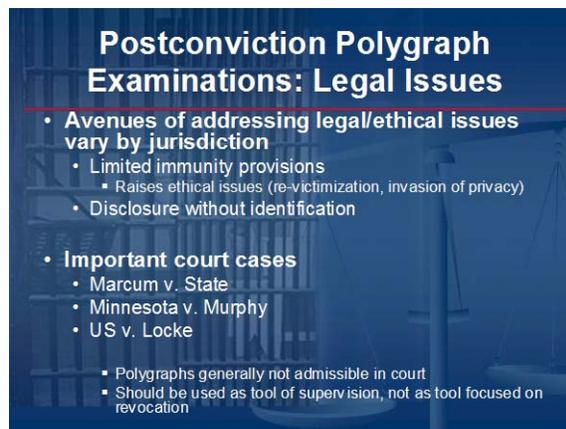
Full disclosure is exceptionally important for both treatment providers, who need to understand an offender's history in order to development treatment processes, and for probation and parole officers, who need to understand an offender's behavioral risk factors. However, disclosure under mandated reporting conditions may lead to further prosecution, which would end the treatment and supervision the polygraph was intended to inform (California Coalition on Sex Offending, 2004).

Postconviction Polygraph Examinations: Legal Issues (cont'd)

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**Trainer says about:**

The way this issue is handled varies across jurisdictions and will certainly become clearer as the legal and ethical issues are more fully-explored and as sex offender supervision networks increasingly employ the use of the postconviction exam. The key issue is that there must be some form of safeguard of an offender's constitutional protection against self-incrimination when they are motivated to disclose information about potentially prosecutable pre-treatment behaviors.



In an effort to promote the use of postconviction polygraph exams and to avoid constitutional challenges to their use, some jurisdictions make a limited immunity provision in which pre-treatment offenses are not pursued for prosecution in the spirit of full disclosure. While this bypasses the constitutional challenge of forcing an offender to incriminate themselves, it also poses specific ethical considerations. Proponents of this approach argue that limited immunity for full disclosure means that while the offenses are not prosecutable, past unreported victims may be contacted and offered support and services. Others suggest that this may re-victimize unreported victims and invade their privacy. Another method that some jurisdictions therefore favor requires disclosure without identifying victims – for example, giving victims a number such as victim #1, #2, etc. Advocates of this method also point out that this approach both protects the privacy of a victim and does not interfere with a previously-unreported victim's ability to bring charges later if they so choose, as may be the case with limited immunity (California Coalition on Sex Offending, 2004).

Important Court Cases

There are several important court cases that support the use of polygraph testing as a condition of probation. In *Marcum v. State*, the court found that when a polygraph exam is administered as a condition of probation, it does not become a Miranda trigger because it is not an in-custody interrogation. In the *Marcum* case, it was found that when a parolee admitted to additional crimes during a polygraph examination, that admission was permissible in a revocation hearing.

In another case, *Minnesota v. Murphy*<sup>1</sup>, no violation of the Fifth Amendment was found in questioning sex offenders on probation. English et al (2000) explain the importance of this case by noting that statements cannot be compelled. They explain that, “[c]ompulsion pertains to the consequences to an offender for failure to admit responsibility for undetected sex crimes, and if these constitute substantial penalties that are too coercive.” These authors further recommend, in their thorough investigation of postconviction polygraph examinations for sex offenders, that

local officials explicitly state the utility of polygraph exams as a treatment tool and include their use a documented condition of supervision.

Most recently in *US v. Locke 2007*, a probation revocation for an offender was upheld on appeal. The offender's initial charge was on child pornography, and a condition of his probation included polygraph testing. In this case, the defendant had admitted to his treatment provider that he had viewed erotic stories on his wife's computer, which was not allowed as a condition of his probation. His response when asked whether or not he had viewed pornography was subsequently deemed to be dishonest on his polygraph examination. Using the statements he made to his treatment provider, the dishonest polygraph response, and the consent of his wife, a forensic examination of his wife's computer was performed with court approval. The examination found downloaded erotic stories and pornography. Not surprisingly, Locke admitted to the evidence when it was subsequently presented to him; his probation was then revoked, leading to a sentence of 12 months plus one day in prison. Locke's appeal was based on his assertion that conditions of his probation – the polygraph – coerced him into revealing that he had violated the terms of his probation, thus violating his Fifth Amendment rights. The court noted that polygraph testing has been affirmed to be an acceptable condition of probation and that because the questions were intended to ascertain whether or not he had violated the conditions of his probation, the Fifth Amendment argument was not valid. The court noted that, "[the] probationer may only invoke the Fifth Amendment privilege if a truthful answer would incriminate the probationer by exposing him to prosecution for a different crime."

### **Polygraph examinations are not admissible in most courts**

It is important to note that, in general, polygraph examinations are not admissible in most courts. However, the lower evidence threshold in probation and parole revocation hearings allow for wider latitude of use than in cases where guilt or innocence needs to be determined beyond a reasonable doubt. Speaking to this idea, English et al (2000) make some very important points in their study of how postconviction polygraphs are used. They note that the courts have recognized the need for postconviction polygraph testing as a tool for the supervision of sex offenders, but that it is best to focus the results of this tool on increased management of the offender, rather than on revocation specifically. Thus, if a violation is disclosed during the polygraph exam, the probation or parole officer would step up surveillance of the subject. These authors also describe how other efforts to gain information can be initiated from content gleaned from the poly, such as interviews with potential victims, employers, and law enforcement.

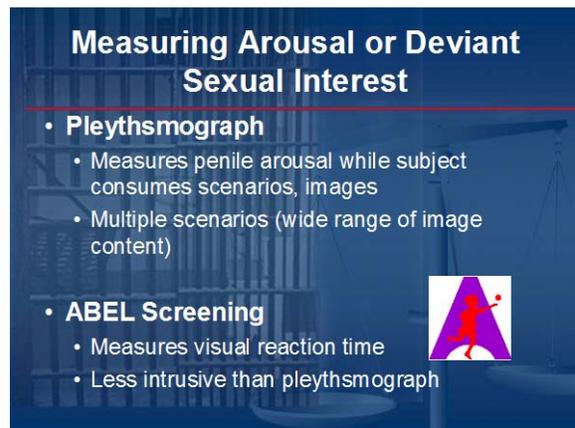
### Measuring Arousal or Deviant Sexual Interest

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#### **Trainer says about:**

#### Penile Pleythsmograph

For male offenders, the penile pleythsmograph may be used to measure a defendant's level of



**Measuring Arousal or Deviant Sexual Interest**

- **Pleythsmograph**
  - Measures penile arousal while subject consumes scenarios, images
  - Multiple scenarios (wide range of image content)
- **ABEL Screening**
  - Measures visual reaction time
  - Less intrusive than pleythsmograph



arousal to inappropriate or deviant stimuli. As such, it is a potential tool in the diagnosis and treatment of sexually deviant behaviors. A gauge is fitted around the penis of the subject, calibrated to determine a baseline circumference, and then the subject is presented with visual and auditory stimuli. The gauge measures shifts in arousal through blood flow in and out of the penis and leads to a device that graphically portrays the change in circumference of the subject's penis while the subject watches, reads, or listens to scenarios and images. Generally, up to 12 potentially sexually stimulating scenarios are presented to the subject to determine normal versus abnormal stimulation – thus, consenting scenarios may be presented along with non-consensual scenarios, as well as situations involving adults (of both sexes), adolescents, and children. It is not necessary for the scenes, particularly those involving minors, to be sexual in nature; even nonsexual scenes of minor children can reliably indicate age preference of a subject.

### ABEL Screening

The ABEL Assessment of Sexual Interest is a less-intrusive test in that it measures visual reaction time rather than penile erection. The ABEL test also depicts images of clothed adults and children, avoiding some of the ethical issues of showing subjects nude images of children. It also bypasses the potential legal issues of exposing juvenile offenders to sexually explicit material. The ABEL test records how long a subject looks at each slide, with longer reaction times being related to increased interest.

This is a laboratory test, and therefore it may be possible for offenders to not demonstrate arousal when, under normal circumstances, they would likely be aroused. So, while ABEL screening is not often used, it is certainly an available tool that you should be aware of, as there is a strong relationship between deviant sexual arousal and new sex offenses. Indeed, this may be another means to ferret out such information from an offender under your supervision.

### Medication

Sex offenders under community supervision may also be prescribed psychoactive medications. As with any offender under the care of a mental health provider, the probation or parole officer should act as a partner with the treatment provider to monitor any required medications.

### Management Resources

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#### **Trainer says about:**

The Center for Sex Offender Management (CSOM), which has been around since 1997, is an incredibly valuable resource for information about managing sex offenders in the community. CSOM is sponsored by the DOJ's Office of Justice Programs and works in collaboration with the National Institute of Corrections, the State Justice Institute, and the American Probation and Parole Association. CSOM provides professional

personnel with training, technical assistance, and a vast amount of related information (available on their website at [www.csom.org](http://www.csom.org)), including policy and practice briefs and numerous full-text reports.

Exercise

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**Trainer note:** divide the group into small groups of 3-4 participants. Refer participants to Handouts E3 to E6 (Exercise Case Studies) facilitate small group discussions around the case studies.

The key question the small group discussion should center around is: How would the information offered by the treatment provider help me do my job in supervising this offender in the community?

After approximately 10 minutes of small group discussion spend about 5 minutes wrapping up as whole group with a few comments from groups about each case.

