

Position Paper

The Use of Polygraph Testing in Monitoring Child Sex Offenders



2007

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About Bravehearts Inc.

Founded in 1997 by Hetty Johnston, Bravehearts Inc. has evolved into an organisation whose purpose is to provide therapeutic, support and advocacy services to survivors of child sexual assault. We are also actively involved in education, prevention, early intervention and research programs relating to child sexual assault.

Bravehearts operates from our Head Office on the Gold Coast, advocating and lobbying nationally, with branches across the country.

The work of Bravehearts in the community includes:

- **The Ditto® Suite of Programs:** Includes *Ditto's Keep Safe Adventure* - CD ROM and Ditto's in-school protective behaviours education program.
- **Research:** Bravehearts is actively involved in research and policy development that prevents, responds to and ultimately reduces the incidence of child sexual assault.
- **Lobbying and Campaigning:** Bravehearts advocates for survivors directly and more broadly, through participation in State and Commonwealth government committees, inquiries and working parties, media, community debate and legislative review and reform.
- **Bravehearts Online:** Our online partnerships with Google and YouTube, together with our presence on other social networking sites such as Facebook, provides for the sharing of information, advice and support directly to young people and those who care for them.
- **Practitioner Workshops:** Bravehearts provides a suite of workshops tailored to provide specialist professional development education to therapists.
- **Supporting Hands:** This program provides valuable and effective training and awareness workshops on risk management for staff and volunteers in organisations that have contact with children, including teachers.
- **Community Awareness Campaigns:** Now partially funded by the Commonwealth Government, National White Balloon Day® is our signature awareness campaign. Held annually since 1997 in September during Child Protection Week Visit: www.whiteballoonday.com.au
- **Risk Audit:** Bravehearts provides a specialised Physical and Policy Risk Management Audit service for community groups, sporting clubs, retail and commercial sites that engage with children.
- **Counselling and Support Programs:** We provide counselling and support to children, adolescents and adult survivors of child sexual assault, as well as their family members.
- **Sexual Assault Disclosure Scheme:** SADS successfully encourages survivors to overcome the barriers to disclosure and as such, protects thousands of children from those who, through SADS, become known predators.
- **Telephone Crisis and Advocacy:** Bravehearts currently provides a Freecall 1800 BRAVE 1 (1800 272 831) crisis-support and advocacy line. We receive more than 80 phone calls each week from people who need timely accurate advice, assistance or referral in times of crisis.

Abstract

There is much anxiety across the country regarding the release of convicted child sex offenders into the community. Given the far-reaching emotional, psychological and spiritual impacts incurred by victims, the effects on their lives and the lives of those with whom they interact, including society at large, are not only lasting, but deep and painful.

A number of States (Queensland, Western Australia, New South Wales, South Australia) have responded to concerns that dangerous sex offenders are being released back into the community by introducing legislation to allow courts to continually detain sex offenders assessed as at risk of re-offending. However, the judicial system continues to release these offenders on supervision orders.

Limitations and concerns around rehabilitation and monitoring practices are abundant. As outlined in our Position Paper on *The Management and Treatment of Child Sex Offenders* (2006), Bravehearts supports enhanced and strengthened approaches to supervising offenders in the community. It is our position that we need to utilise a battery of tools in order to decrease the likelihood of a child sex offender re-offending. An important emphasis in this proposal was the inclusion of not only psychological testing, but also psychophysiological tests, including polygraphy.

This Position Paper outlines our specific recommendations for the inclusion of polygraph testing in the supervision of child sex offenders.

Based on the experience of overseas usage of polygraphs in the community supervision setting, Bravehearts advocates for:

- The introduction of the use of polygraph testing as part of a battery of assessment and monitoring tools for child sex offenders in Australia.
- A trial be put in place, guided by current practice in International jurisdictions.

It is our position that one of the best deterrents for child sex offenders is the risk of being caught, Polygraphs should not be viewed as a punitive tool, but a valuable preventative incentive to assist stopping offending.

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Risk Assessment and the Sex Offender

An easy mistake to make when monitoring and assessing individuals who have committed sexual offences, particularly when resources are limited and caseloads are high, is to rely on a single source of information. With existing technology and the increased use of actuarial risk assessment tools, it can be tempting to become overly dependent upon a single source of data or assessment tool for decision-making. The danger in doing this can be understood if consideration is given to the range of factors that are associated with increased recidivism among sex offenders.

These include, among others:

- Negative mood
- Substance abuse
- Lack of support
- Sexual pre-occupation
- Non-compliance with supervision plans
- Conflicts in relationships
- Deviant sexual interests
- Pro-offending thoughts
- Anti-social orientation

Accurate risk assessment is crucial in making decisions about a sex offender's level of risk to the public. However, there is no fool-proof method of assessing offending risk. No single instrument or data source in and of itself should be used to make critical decisions that impact on the safety and protection of the community. This caution is perhaps best understood when those working with offenders are aware of some of the limitations of common data sources and techniques used in the assessment of child sex offenders.

- **Clinical risk assessment** involves a judgment by a forensic psychologist or psychiatrist concerning the risk a specific offender poses. This type of assessment involves interviews and/or observation of the offender, using developed tools or checklists. All known information about the offender's personality and behaviour and the details of the crime itself are considered. The risk factors used in clinical assessment are different for each person assessed and can change over time; including various aspects of a person's mental health, personality, behaviour, personal history and social skills. Studies, however, indicate that clinicians often come to different conclusions after assessing the same individual. Such findings question the notion of clinical 'expertise' in dangerousness prediction, suggesting that the assessment process is arbitrary, and that the fate of an offender is dependant on who conducts the assessment.
- **Actuarial risk assessment tools** focus primarily on static (unchangeable) factors that influence recidivism. Several studies have found that the static risk factor with the strongest influence on general recidivism (all types of criminal offences) is prior contact with the criminal justice or mental health systems. When an offender is assessed using an actuarial tool, their particular

characteristics are inventoried and level of risk is determined by the extent to which the individual possesses various risk factors associated with recidivism. The information considered in the assessment process typically includes the offender's education level, employment status, known or suspected mental disabilities, in addition to the individual's criminal history. While these tools generally provide better results than unstructured clinical judgements, the predictive accuracy of these tools is far from perfect. Hanson & Morton-Bourgon (2007) suggest that these tools are only moderately successful in predicting recidivism because they cannot realistically include all relevant risk factors for sexually abusive individuals.

- **Physiological assessments** can provide an independent and objective means for collecting useful assessment information that is not reliant on an offender's statement. These include penile plethysmograph and polygraph testing. The plethysmograph is not discussed in this paper. Our belief is that it's focus is best suited as an objective measure of sexual interest rather than as an aid to the supervision of offenders. The polygraph tends to be associated with disclosures of information that may not be provided by self-report alone. Although there have been questions about its reliability and validity, including the potential for some individuals to use countermeasures to control some the physiological responses that are measured, the polygraph is becoming increasingly a valuable tool in the treatment and supervision of offenders, post-release and has been proven to be highly successful.

Combining a range of methods provides the most comprehensive analysis of offender's risk and results in a broad assessment spanning a range of factors from personal traits to environmental contexts (Centre for Sex Offender Management, 2007).

While both actuarial risk assessment tools (such as the SONAR [Sex Offender Needs Assessment Rating] and RRASOR [Rapid Risk Assessment for Sexual Offence Recidivism]) and clinical judgement are commonly used in the Australian context, the polygraph is not utilised. In the US, polygraphy is used within many sex offender treatment programs and in from a quarter to a third of probationary management services (English, Jones, Pasini-Hill, Patrick & Cooley-Towell, 2000; Grubin, 2003). This paper will explore the experience of International justice agencies use of the polygraph to inform assessment, treatment and monitoring of risk.



Polygraph Technology

The polygraph is a device that has been around since the early 20th century, popularly known as a lie detector, despite the fact that these tools do not detect lies, but rather measure physiological responses believed to be associated with deception.

The polygraph has enjoyed increasing popularity, particularly in the United States. While the polygraph has been featured as an entertainment tool in popular media to ascertain if guests are being truthful to their partners, friends or family, it has been utilised in pre-employment screening and law enforcement.

The types of polygraph testing used include:

Instant Offence Disclosure - This format is used to determine whether the original crime was actually committed by the alleged offender.

Sexual History Disclosure - Appropriate treatment can only be successful if the offender's complete sexual history is disclosed to the treating psychologist. This format is used to verify whether the offender has withheld pertinent information from his/her background.

Monitoring Testing - An important aspect of the monitoring and supervision of released offenders is to verify that the offender has not committed new sexual offences.

Maintenance Testing - This format is used to determine any issue related to parole, probation or therapy of specific interest to the psychologist or parole/probation officer. Some typical uses for this exam would be to determine whether the offender has been in contact with children in violation of parole/probation guidelines, has viewed pornography, has had any contact with a previous victim, or is "grooming" anyone as a new potential victim. (Council on Sex Offender Treatment, undated)

Polygraphs are perhaps the most controversial tool in law enforcement. It has been argued that there is no real consensus that polygraph evidence is reliable, with the scientific community polarised on the matter. However, both the reliability and validity of polygraph methodology have continued to improve over the past couple of decades, which has enhanced their accuracy and validity.



The Polygraph and Offender Management

It is argued in this paper that post-conviction child sex offender polygraph tests could make a substantial contribution to managing the significant risk that these offenders present to the public.

Post conviction polygraphy has in recent years been put forward as a valuable treatment and supervision tool with sex offenders, When used in this context, the polygraph has the potential to overcome limitations in current supervision practices, as well as generally improving the assessment and treatment of sex offenders. Its use internationally in such a capacity has increased markedly over the last decade, particularly in the United States. This expansion is likely to continue as professional organisations and leading sex offender practitioners endorse its utility.

Supporters of polygraph testing argue that it provides invaluable information on (Gannon, Beech & Ward, 2007):

- a) Past/historical offences or high-risk behaviours (e.g. number of victims, types of behaviours etc.) more truthfully than information attained through self-reports;
- b) Psychological traits implicit in high-risk offenders; and
- c) Truthful disclosures about risky behaviours, thoughts and actions.

The polygraph has become an important tool in treatment and supervision of child sex offenders because it is argued to provide independent information about compliance with release conditions and progress in therapeutic programs. Most sex offenders would be reluctant to disclose that they had experienced risky thoughts or had engaged in high-risk behaviour in the community. The potential for polygraphy to reduce offenders not fully disclosing or minimising their behaviour is one of its main advantages.

Polygraph testing as part of a supervision order may help keep the child sex offender out of prison and support them in receiving effective treatment and reintegrating themselves back into the community while reducing the level of risk they pose. As such, the polygraph test has the potential to contribute significantly to the more reliable assessment of the individual offender, increasing the accuracy of identifying those who pose an unacceptable risk to the community.

In the United States polygraph tests are utilised in parole and probation across the country (California Research Bureau, 2004) as a tool for post-release monitoring and aftercare. In addition, polygraph testing is required or provided for through State sex offender treatment standards and/or legislation in a number of states. Combined with criminal justice supervision and sex offence-specific treatment, polygraph tests are making a substantial contribution to managing the significant risk that sex offenders present to the public (Cooley-Towell, Pasini-Hill and Patrick, 2000).

The use of the post-release polygraph is becoming an invaluable tool in the management and treatment of sex offenders. The purpose of the polygraph examination, in this sense, is to verify the perpetrator's completeness regarding offence history and compliance with therapeutic directives and terms of supervision. Thus, when the polygraph is used as a treatment tool it increases the accountability of an offender living in the community. In a 1990 research study, Humbert found that when a polygraph was utilised during the latter part of sex offender treatment, there was a 600% increase in the number of sexual perpetrations reported originally. Taking this information into consideration, the usefulness of the polygraph in sex offender therapy cannot be underestimated when considering that paedophilia "is a disorder maintained largely by the offender's ability to deny, justify, and rationalise the behaviour" (Hagler, 1995, p.104).



Are Polygraphs Reliable?

What do polygraphs measure?

Despite its usage, the term 'lie detector' is misleading. Polygraph instruments do not analyse truthfulness, but rather they measure changes in a range of physiological responses in the bodies autonomic system, including hearts rate, respiration rate and electrodermal changes.

When an individual is being deceptive, this increases their anxiety levels resulting in an increase in autonomic system arousal (heart rate, breathing etc.). Critics argue that these physiological responses do not translate into proof of lying (Saxe, Dougherty & Cross, 1987) and may in fact be a result of being accused of deception or in the case of child sex offenders, merely by being asked questions about sexual thoughts or behaviours with a child. It may therefore be that increased physiological arousal may be a result of anxiety, nervousness, excitement or sexual arousal and not deception.

In order to overcome these potential 'misinterpretations', it is crucial that external conditions are normalised and the examiner is highly experienced in conducting and interpreting polygraph tests. For example, questions must be specific and narrowly-focused, the environment where the polygraph is conducted must be a neutral place, the examinee must not feel pressured or stressed and the examinee must believe in the efficiency of the polygraph test. These conditions are likely to increase the likelihood of detecting deception.

Is the Polygraph Appropriate to Use with Sex Offenders

Critics of polygraph testing argue that while enthusiasm to utilise these tests in the monitoring and supervision of sex offenders is understandable, research evidence demonstrating its value in these settings is questionable. It is suggested that studies are complicated by methodological problems such as small research groups, retrospective methodologies, lack of comparison groups and social desirability biases. In spite of these issues, many of the claims of proponents of polygraph testing are valid and appear consistent with theories from social psychology fields.

Concerns expressed by researchers and clinicians in respect to the appropriateness of the polygraph for use with sex offenders:

- Many sex offenders have personality disorders, which may mean that they do not experience anxiety when they lie.
- Sex offenders often engage in cognitive distortions and rationalise their thoughts and behaviours, which may affect their reactions to the polygraph.
- Because they engage in patterns of lying and manipulation, sex offenders may be desensitised to anxiety as a response to lying.
- Sex offenders often come to believe their lies and distortions about risky thoughts and behaviours as truth.

Proponents of polygraphs argue that opponents criticise the polygraph based on its use in substantiating sexual assault allegations, while they support the use of polygraph in other circumstances. Proponents argue that the polygraph is most useful as a condition of supervised release for known sex offenders or as part of an offender's treatment program.

In particular this paper puts polygraph testing forward as a means of:

- a) Bringing a supervisor's attention to potentially high-risk thoughts, behaviours and actions that may have otherwise gone undetected; and
- b) Acting as a deterrent for child sex offenders tempted to engage in high-risk thoughts, behaviours and direct actions.

Over the past number of years, the criminal justice system has witnessed a steady increase in the use of polygraph testing in adult offenders in the US, aimed at deterring re-offending behaviours and verifying compliance with supervision conditions.

Research has reported positive findings in both of these areas.

In one study of 122 sex offenders who received polygraphs as part of a supervision program, 36% disclosed high-risk behaviour through the polygraph examination (English, Jones, Pasini-Hill, Patrick & Cooley-Towell, 2000). Other studies have found that sex offenders have disclosed a number of high-risk behaviours, including 57% of offenders reporting stalking behaviours (Gannon, Beech & Ward, 2007).

The usefulness of polygraph tests as a deterrent for child sex offenders depends inherently on the offender's belief that the test will reveal any deceptions and that the 'costs' of being caught and judged deceptive are undesirable. If offenders are not going to maintain a belief in its accuracy, the value of the polygraph as a deterrent and as an aid in offender rehabilitation would greatly diminish.

Van Aperen (2002) cites results from a study by Abrams and Ogard in the US that found that only 28% of offenders, who were not subjected to polygraphs as part of their supervision, did not re-offend and successfully completed their probation, whereas 68% of offenders who were subjected to polygraphs as part of their supervision did not re-offend and successfully completed their probation.

A study on fifty adult male sex offenders (Grubin, Madsen, Parsons, Sosnowski & Warberg, 2004) found that all but one offender reported that knowing they were to face a polygraph was a deterrent from re-offending and approximately 25% said the polygraph test increased their resistance to high-risk behaviours. The results of this study also suggested that the utilisation of polygraphs as a tool in offender supervision "reduced not only the frequency of high-risk behaviour, but also its severity".

Grubin also found that probation officers reported new disclosures, relevant to treatment and supervision, by offenders on supervision orders in 70% of polygraph tests conducted. About 15% of these were considered high-risk disclosures (specific breaches of release or re-offending).

These results have been replicated. In a 2005 survey of sex offenders, 72% stated that facing a polygraph had been of benefit to them (Kokish, Levenson & Blasingame, 2005) and just over 50% of offenders in a study by Harrison and Kirkpatrick (2000) stated that they were deterred from risky behaviour.

Grubin (2002) concluded:

“Thus, polygraphy can contribute substantially to treatment programs, as well as assisting offenders to avoid the sorts of behaviours that increase their risk of re-offending. It encourages offenders to disclose information that is relevant to treatment and supervision. Determination of the reliability and validity of the technique itself is of less pertinence than when it is used in investigative settings, but the empirical base for its use in treatment and supervision nevertheless needs improving... Although a small study, our results suggest that the most effective use of the polygraph may be as a ‘truth facilitator’ rather than a lie detector. It can bring worrying behaviours to the attention of supervisors and treatment providers, allowing effective intervention and additional treatment before offending occurs”.

Are Polygraphs Accurate?

One of the problems in discussing accuracy figures and the differences between statistics quoted by proponents and opponents of the polygraph is the way the figures are interpreted. At the risk of over-simplification, critics often classify inconclusive results as errors. In the real-life setting, an inconclusive result simply means that the examiner is unable to read a definite result. In such cases, examiners usually conduct a second test at a later date to get a definite result.

Whether or not the use of polygraphs elicit truthfulness is often questioned by opponents. Polygraphs have certainly been successfully used to gain information from sex offenders that has not otherwise been disclosed. A study on convicted child sex offenders found that responses to questions on the offender’s personal history were impacted on when polygraph testing was introduced. Offenders were required to write a detailed sexual history, including information on whether they were abused as children. When the polygraph was introduced as part of this study, child sex offenders reporting childhood victimisation dropped from 67% to just 29% (Hindman, 1988). A follow-up by Hindman and Peters (2001) supported these findings, concluding that adult sex offenders not subjected to polygraph testing were more likely to minimise their criminal history and overstate their own histories of victimisation.

Data from an Alaskan study on true offending rates of convicted sex offenders showed that at conviction, the 24 participating offenders had 19 adult victims and 22 child victims. After having been polygraphed during treatment or supervision, these 24 offenders admitted to 166 adult victims and 126 child victims (Harris, 2007).

A study on the post-conviction utility of polygraph testing, involving 176 sex offenders in the US, concluded an approximate accuracy rate of 85% (Grubin & Madsen, 2006).

Other reviews of studies into the accuracy and reliability of polygraphs indicated between 96% and 98% of tests correctly identified deception. The test-retest reliability of real cases (field studies) averaged around 92% with the reliability of mock cases (lab studies) averaged around 81% (English, Jones, Pasini-Hill, Patrick & Cooley-Towell, 2000).

Implications of False Negatives and False Positives

Certainly the wider scientific community continues to be divided about the accuracy of polygraph technology. Polygraph errors may be caused by the examiner's failure to properly prepare the examinee for the examination or by a misreading of the physiological data from the polygraph chart. Errors are usually referred to as either false positives or false negatives. A false negative is where someone who is guilty 'passes' the polygraph and is considered to be innocent. Just as the guilt can be deemed innocent, the innocent can be deemed guilty (fail a polygraph).

The true accuracy of polygraph testing is difficult to ascertain as polygraphs are often utilised in cases where other evidence is insubstantial or not evident, making it difficult to validate findings. Even proponents acknowledge that polygraph are not infallible and errors do occur. However, research suggests that these errors are quite low. Kokish, Levenson and Blasingame (2005) found that 22 out of the 333 tests conducted on sex offenders in a community-based treatment program resulted in false indications of deception (false negative) and only 11 out of the 333 tests resulted in false indications of truthfulness (false positives).

Bravehearts Position

Unfortunately concerns about the polygraph can distract criminal justice professionals from a fundamental issue in sex offender management: the need for complete and accurate information to (a) determine the level of risk to the public and (b) ensure adequate supervision management plans are in place. The expectation that the sex offender will be honest and forthright, as a condition of community supervision, can often be lost in debates about polygraphy. Complete information is only available from the offender. As discussed earlier, no methodology is 100% accurate. Those who work with sex offenders are increasingly becoming aware of the importance of utilising a range of tests in assessing risk levels. Being truthful in treatment and supervision is key to this process.

Bravehearts supports the introduction of polygraphs in the monitoring and supervision of released child sex offenders. It is our position that post-release polygraph testing of child sex offenders will deter child sex offenders from participating in risky behaviours and motivate offenders to be truthful and honest about their behaviours, possible relapses and high risk conduct.

We believe that the polygraph shows the most promise and utility in this area, where child sex offenders may need extra incentive to disclose high-risk situations and behaviours to their community corrections officers.

On Polygraph Testing of Child Sex Offenders

- Bravehearts advocates for the introduction of polygraph testing as part of a battery of assessment and monitoring tools for child sex offenders in Australia.
- Bravehearts recommends that a trial be put in place, guided by current practice in International jurisdictions.

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