

**STATE OF ALASKA  
DEPARTMENT OF CORRECTIONS**



**POLICIES & PROCEDURES**

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<b>CHAPTER:</b> <b>905</b>	<b>NUMBER:</b> <b>905.02</b>	<b>P&amp;P TYPE:</b> <b>Public</b>
<b>TITLE:</b> <b>Post-Conviction Polygraph Testing</b>		
<b>APPROVED BY:</b> <i>Nancy A. Dahlstrom</i> <b>Nancy A. Dahlstrom, Commissioner</b>		<b>DATE:</b> <b>05/06/2020</b>
<b>ATTACHMENTS / FORMS:</b> A. Polygraph Testing Notification, Standards of Dress, Conduct and Appearance Form B. SOMP Disclosure and Advisement C. Polygraph Referral Form D. Compliance Form E. Decision Grid		<b>AUTHORITY / REFERENCES:</b> <b>AS 12.55.100 AS 12.63.100</b>

**POLICY:**

- I. The Department of Corrections recognizes that the use of evidence-based, best practices in the supervision and management of sex offenders is essential in promoting the safety of the community and reducing future victimization. Through that, the Department utilizes polygraph testing in concert with cognitive based treatment and specially trained probation/parole officers to form the containment model of supervision. The polygraph is a valuable tool in monitoring offender compliance with conditions established by the court and the Alaska Board of Parole.
- II. The Department of Corrections, in accordance with AS 12.55.100 shall make polygraph testing reasonably available to all sex offenders who are required to submit to testing. The Department shall only contract with polygraph examiners who adhere to the minimum standards and best practices as indicated by the American Polygraph Association, the American Society for Testing and Materials, and the Association for the Treatment of Sexual Abusers, as well as the standards set in the Sex Offender Management Program Standard Operating Procedures.

**APPLICATION:**

This policy applies to all Department employees and contractors working with sex offenders, and probationers/parolees and inmates required to submit to polygraph testing.

**DEFINITIONS:**

**Serious Mental Illness (SMI)**

A mental, behavioral or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.

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## PROCEDURES:

- I. Probation Officer Training
  - A. The Department shall provide appropriate training to probation officers who are assigned the supervision of sex offenders.
  
- II. Polygraph Examination Types:
  - A. Maintenance and Monitoring Polygraphs (M/M) are used to detect compliance and non-compliance with conditions of supervision or treatment related issues.
  - B. Sex History Polygraphs (SH) are used to investigate the sex offender’s lifetime history of sexually victimizing others, lifetime history of sexual deviance, preoccupation and compulsivity.
  - C. Instant Offense / Specific Issue Polygraphs (IO) are used to address a sex offender’s denial and address specific current behaviors of concern.
  
- III. Pre-Polygraph Staffing and Suitability for Polygraph Testing
  - A. Unless otherwise noted, all sex offenders on community-based, probation or parole supervision are assumed to be suitable candidates for polygraph testing.
  - B. For institutional polygraph testing, only sex offenders who are actively engaged in sex offender treatment shall be subject to polygraph testing. This testing is limited to Sex History 1 & 2.
  - C. When necessary to determine whether an offender is a suitable candidate for polygraph testing, due to cognitive functioning, disability, or other reasons the probation officer shall conduct a case review with a supervisor, sex offender treatment providers and the mental health team (when appropriate). Below are conditions or factors to consider when making a determination:
    - i. Offenders with SMI are not necessarily inappropriate for polygraph testing. Offenders with SMI who have been stabilized with medication or other means may be appropriate for testing. However, offenders with acute psychotic episodes should not undergo polygraph testing.
    - ii. Offenders with developmental delays or advanced age, may be appropriate or inappropriate for testing. Factors to consider due case review are: the sex offender’s ability to discern the truth from a lie, level of intellectual functioning, attention span, verbal skills, comprehension and cognitive skills.
  - D. Sex offenders pending a petition to revoke probation, parole violation or new criminal charges (including ISC violators) can be directed to submit to Maintenance/Monitoring

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polygraph examinations. The questions may only focus on compliance with conditions of supervision.

- E. Sex offenders who are appealing their conviction and/or sentence, are pending a Post-Conviction Relief (PCR) Application or have invoked their 5<sup>th</sup> Amendment Rights can be directed to submit to polygraph testing. The probation officer shall confirm the status of any pending appeals, or PCRs with the Attorney General’s Office. Polygraph questions may only focus on conditions of supervision, and not on prior sexual behaviors or index offense sexual behaviors.
- F. Sex offenders under investigation for new charges can be directed to submit to a Maintenance/Monitoring polygraph examination. The questions must focus on conditions of supervision only.
- G. A pregnant offender must provide a medical waiver from a physician, or other medical professionals, attesting to the fact that polygraph testing would not interfere with the pregnancy.
- H. If a sex offender claims he/she is unable to submit to a polygraph examination due to medical issues, the sex offender must provide a medical note from a medical provider for verification purposes.
- I. For hearing impaired or offender’s requiring a translator, the probation officer shall coordinate with his/her supervisor, Criminal Justice Planner (CJP), and the polygrapher to schedule an appropriate translator so that polygraph testing may take place.
- J. Offenders that are determined to be inappropriate for polygraph testing should be reassessed for a higher level of supervision.

IV. Fifth Amendment Rights / Appeal

- A. The DOC recognizes that sex offenders have the right under the Fifth Amendment to decline to provide information during the sex offender management (supervision, treatment, polygraph) process which would subject them to criminal liability.
- B. A Fifth Amendment right does exist when a sex offender has a pending merit appeal or post-conviction relief action (PCR) seeking to reverse his/her conviction, or when the sex offender denied the offense at trial, and therefore could be prosecuted for perjury if he/she admits the offense during treatment.
  - 1. The statute of limitations for Perjury is five years. Thus, any testimonial denial that occurred more than five years ago is not protected by the Fifth Amendment, and the sex offender may be required to discuss his/her offense unless there is a pending appeal or Post Conviction Relief.

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- C. A convicted sex offender has no Fifth Amendment right to refuse to discuss the offense(s) for which they were convicted, as there is no longer a threat of self-incrimination.
  - D. Refusal to provide information regarding conduct relating to the crime(s) of conviction may result in the revocation of probation and/or parole.
- V. Polygraph Coordination and Scheduling
- A. The CJP shall coordinate with polygraphers that have been accredited through the Approved Provider Committee.
  - B. Each District Probation Office and Institution shall coordinate with the CJP to schedule annual polygraph testing. Testing shall occur per established contract for the district office and institution.
    - 1. Probation staff shall coordinate with the CJP and / or the contracted polygrapher to determine how many individuals will be polygraphed per day and how many days of testing are needed.
    - 2. No more than four polygraph tests will be performed in one day by one polygrapher, unless otherwise approved.
      - a. At least 30 days prior to the polygraph examinations the probation staff shall develop and provide a polygraph testing schedule.
      - b. This schedule shall be sent to the polygraph examiner, PO Supervisor, and other applicable team members as necessary, such as a sex offender treatment provider.
      - c. The schedule may include alternative testing subjects as necessary.
      - d. The schedule may be modified as needed when circumstances dictate.
  - C. Probation staff shall make a reasonable effort to notify sex offenders at least 30 days prior to each scheduled polygraph examination of the date, time and location of the polygraph. Probation staff shall document providing this notification in the DOC offender management system. If shorter notice must take place, the case should be staffed and authorized with the probation officer's supervisor.
    - 1. The Probation Officer shall hand-deliver or send via mail, fax or email a copy of the Polygraph Testing Notification, Standards of Dress, Conduct and Appearance Form (Attachment A) to the offender.

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2. If the polygraph notice is provided via phone, the PO shall read through all sections of Attachment A (Polygraph Testing Notification, Standards of Dress, Conduct and Appearance Form) and offer to provide the offender a hard copy of the notice. In these instances, the PO shall document in the offender management system:
  - a. The date, time and location of the polygraph.
  - b. That all rules were reviewed telephonically with the offender.
  - c. Any questions or concerns reported by the offender.
  - d. Whether the offender requested a hardcopy of the notice, and if so the date and method it was provided to the offender.
3. The offender shall return a copy of Attachment A to their assigned probation office within 24 hours of receipt.

VI. Pre-Test / Interview / Testing Phase

- A. A probation officer shall be available throughout the duration of any polygraph testing to ensure that any issues or questions are addressed as they arise.
- B. Prior to the polygraph being conducted, the offender shall review and complete the SOMP Disclosure and Advisement Form (Attachment B). Additionally, the probation officer shall prepare and complete the Polygraph Referral Form (Attachment C) and provide to the polygrapher. Whenever possible, the probation officer shall staff the polygraph referral with a supervisor, the assigned sex offender treatment provider (if in treatment) or the CJP.
- C. The offender shall be advised that the polygrapher is an independent contractor and does not work for the Department. The offender shall also be advised that the polygrapher will provide information to the probation officer and/or sex offender treatment provider (mandated reporters) who will report any new law violations to law enforcement.
- D. The polygrapher shall explain the test process during the interview phase. The following information will be obtained and discussed during the interview phase:
  1. Demographic information including but not limited to the offender’s address, employment, current living situation, relationship status, and treatment status.
  2. For those offenders on community supervision, any possible violation of conditions of probation/parole including but not limited to victim contact, contact with minors, substance abuse, and unauthorized travel.

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3. To ensure the offender understands what is being asked of him/her during the polygraph, and to provide ample opportunity to disclose any information prior to the active testing phase, the polygrapher and the offender will formulate structured yes or no questions that the offender will be tested on.

E. The pre-test interview and polygraph shall be digitally recorded and maintained by the CJP.

## VII. Post-Testing Phase

A. Following completion of the polygraph testing, the probation officer shall be provided with the results by the examiner. Results are as follows:

1. Multi-Issue Examinations (SH and M/M Examinations)
  - a. No Opinion (NO)
  - b. Significant Response (SR)
  - c. No Significant Response (NSR)
  - d. Inconclusive (INC)
2. Instant Offense (IO)
  - a. No Opinion (NO)
  - b. Deception Indicated (DI)
  - c. No Deception Indicated (NDI)
  - d. Inconclusive (INC)
3. Results that apply to all examination types:
  - a. Purposely Non-Cooperative / Countermeasures (PNC)
  - b. No Show (N/S)
  - c. Cancel No Snow (C N/S)

## VIII. Responding to Polygraph Results for Community-Based Sex Offenders

- A. A probation officer's response to polygraph results shall be documented in the DOC offender management system.
- B. The probation officer shall meet with the offender and debrief the results of the polygraph examination to determine appropriate sanctions and enhancements.

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1. If the polygraphing process reveals high-risk behaviors or conduct, the probation officer shall debrief with the offender immediately and respond to the behaviors / admissions / conduct. Additionally, the probation officer shall document the high-risk behaviors on the SOMP Compliance Form (Attachment D).
  2. If no high-risk behaviors are noted during the polygraphing process, the probation officer may debrief with the offender within a week of having received the complete polygraph examiner's report.
- B. Depending upon the results of the polygraph and noted behaviors, the probation officer shall respond to both prosocial or antisocial conduct using the Decision Grid (Attachment E).
- C. Information from a polygraph examination that alleges a violation should not be used without other corroborating evidence as a basis for filing a violation report or remanding of an offender. Information from a polygraph may be used as supporting evidence.
1. Violation reports and remanding an offender shall be based upon self-disclosure, or corroborative evidence obtained by independent investigation of the probation officer. The supporting documentation for a violation should focus on an independent investigation and not directly refer to the polygraph examination.
  2. Polygraph reports shall not be attached to a violation report. Admissions during any phase of a polygraph examination may be noted in violation reports and shall be utilized to request enhanced supervision conditions.
  3. Probation officers shall refer to the Sex Offender Management Program Standard Operating Procedures Manual for guidelines to address violations.
- D. Refusals to test, no-shows or admissions to include high risk behaviors, relapse behaviors or new violations during any phase of the polygraph examination shall be addressed immediately by the probation officer. When available and circumstances allows, the probation officer may staff the admissions with the treatment team to include their supervisor. Pertinent aspects of the offender's supervision plan should be examined and changed to address the defendant's risk to the community.

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- E. If an admission occurs during the polygraph that involve a new criminal offense with identifiers, the probation officer shall cease the examination, notify their supervision and contact local law enforcement agencies. If the offender remains in the community pending the investigation, the offender shall be supervised as high risk until the risk to the community decreases.
  - F. If an admission occurs during the polygraph that involves a new criminal offense without identifiers, the probation officer shall determine whether to cease the examination by staffing the admission with their supervisor and supervise the offender as high risk until the risk to the community decreases.
  - G. If an offender refuses to submit to polygraph examination, this is considered a significant violation, and the case shall be staffed with a supervisor to determine whether a revocation action should be taken.
  - H. When the results of a polygraph are Significant Response or Deception Indicated, the probation officer shall meet with the sex offender immediately following the polygraph examination to discuss the disclosures and the reasons for the deceptions. The defendant should be supervised as a high-risk offender until the defendant deceases their risk to the community. If determined appropriate by the treatment team, a re-test should be scheduled as soon as possible.
  - I. When the results of a polygraph are No Significant Response or No Deception Indicated, the probation officer shall meet with the offender and review the report for any admissions or high-risk behaviors. Where appropriate, the offender should receive positive incentives for avoiding high risk situations.
  - J. When the results of a polygraph are Purposefully Non-Cooperative or Countermeasures, the results shall be treated as a refusal to submit to polygraph testing, as this result is given when there is evidence that the offender has attempted to falsify or manipulate the test results. The case shall be staffed with a supervisor to determine whether a revocation action should be taken.
  - K. Absent a legitimate and verifiable reason for missing a polygraph, a result of No Show shall result in the probation officer filing a revocation action requesting the issuance of a warrant or summons.
- IX. Responding to Polygraph Results for Inmate Sex Offenders
- A. The probation officer and the sex offender treatment provider (if available), shall meet with the offender and debrief the results of the polygraph examination.

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- B. An inmate sex offender who has refused to participate in the polygraph testing process, failed to report for a scheduled polygraph, engaged in countermeasures or whose polygraph has resulted in Purposely Non-Cooperative, may be considered a violation of conditions of supervision and may subject them to an anticipatory revocation.

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