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British Experiences of Polygraph Testing Sexual Offenders an Update

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Introduction

Just two years ago, in April 2012 (Wilcox and Gray) published a paper in this journal on the then current application of polygraphy with sexual offenders in the UK. At the request of the Journal Editor, this paper represents an update of developments in this area.

Background

The previous article was published prior to Gannon et al's (2012) government commissioned review of the most comprehensive British trial of polygraph

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testing of convicted sexual offenders to date (Gannon et al, 2014). As suggested, based on informal information gathered from Probation Officers involved in the trial (Wilcox and Gray, 2012), Gannon's research findings gave indications of significant benefits to employing polygraph for the purposes of monitoring offence-related issues among convicted offenders. These mandatory polygraph trials involved 599 sexual offenders released on licence from seven probation trusts and ended on 31 March 2012 (Draft Offender Management Act, 2007; Commencement No. 6).

Polygraph testing was used principally to determine the offenders' compliance with specific licence conditions, for example, restricting the offender from visiting places, people, etc. where risk of reoffending was considered to be greater. Recorded data concerning polygraph administration and associated disclosures (Gannon et al, 2012) was employed to impact on case management decisions concerning risk, appropriate levels of supervision, and, at times, judgements as to whether an offender should be recalled to prison due to breaches in licence conditions. Such actions were not directly determined by whether the offender passed or failed the polygraph. Rather, polygraph results and disclosures influenced the case management process and often gave rise to more intensive investigations of the behaviours of the offenders concerned by their supervising probation officer or other individuals directly involved in their monitoring, treatment or assessment. Where additional information indicated a failure to comply with licence conditions or gave indications of increased risk to the public, the offender could, and was at various times, recalled or subjected to more stringent supervision conditions.

While the original study undertaken by Grubin (2010) involved voluntary polygraph testing in 10 UK probation trusts, the further evaluation enforced mandatory testing through the powers of the Offender Management Act (2007), allowing polygraph testing to be used, as deemed appropriate, in the management of sex offenders on licence in England and Wales. Though the magnitude of sexual disclosures reported by Gannon et al (2012) was notably less than that described by Grubin (2010), the directionality was the same, as was the perceived benefit of including polygraph testing in the overall community monitoring offender management package, as compared with excluding this tool from the overall supervision plan.

Broadly, the evaluation of the polygraph pilot conducted by Gannon and colleagues (2012) found that sex offenders on licence who were required to take periodic polygraph examinations were more than twice as likely to make significant disclosures as those in the comparison group who were not required to undertake polygraph examinations. This had a substantial impact on mobilising probation resources and associated agencies to enhance community

safety. The study concluded that polygraph testing appeared to increase preventative action among professionals by enabling them to gain more information for greater effectiveness in managing the offenders' behaviour and safeguarding the public.

Current Status

In the recent parliamentary sixth report (Draft Offender Management Act 2007; Commencement No. 6, 2013), it was indicated that an expansion of this scheme is intended by the UK's Ministry of Justice (MOJ), with the aim of targeting those individuals who pose the greatest risk of reoffending or who give greatest cause for concern to the supervising agencies involved in case management. The MOJ has advised that this would involve approximately 25% of sex offenders in the UK who are on licence. The MOJ estimated that this would necessitate that about 750 sexual offenders should receive polygraph examinations yearly. The MOJ also suggested that a capacity to assess an additional 200 offenders, in circumstances where such action was deemed necessary, would also be included in the overall provision plan. There is a recognition that the capacity to undertake this task, involving these numbers, does not as yet exist within the United Kingdom.

At the time that this pilot was being undertaken, a legal challenge was mounted, alleging that mandating polygraph testing within an offender's licence conditions was a violation of his human rights, citing Article 8 of the European Convention on Human Rights (ECHR, 1950). Opponents argued that this action was not proportionate and could not be justified on the basis that it was in the public's interests. However, this legal argument was not accepted by the Court and, in keeping with the spirit of proportionality and responsible ethical practice in the use of the polygraph (Wilcox, 2013), the planned national rollout would be targeted to sex offenders presenting with the most substantial risk concerns. From 6 January 2014, drawing from the Offender Management Act (2007), the parliament affirmed that polygraph use would be extended across England and Wales in the management of the most serious sexual offenders.

Making provision for polygraph testing on this scale, has proven to be challenging. Initially, plans had been made to privatise lie detector testing for sex offenders, though this decision was reversed when G4S and Serco, two of the government's largest private providers of national security services, became the subject of investigations and what has been described as "outsourcing scandals" within the current services they provide to the UK government

(Peachey, 2014). As a result, the UK government has opted to train its own polygraph examiners and the tendering process for training future examiners has only just been concluded. As yet, it is unclear what impact this will have upon the introduction of mandatory polygraph testing on a large scale in the UK, though it appears that this will only influence the timescales and not the government's basic plan.

As noted previously (Wilcox and Gray, 2012), the Hertfordshire police completed a successful pilot polygraph scheme, significantly reducing investigation time and often providing additional information relating to other unreported offences among suspected sex offenders who volunteered in advance of bringing charges (Travis, 2013). Further development of polygraph use in this area remains under discussion, as the results of this trial have been positively connoted. Relatedly, on this basis, police in Scotland have considered the use of the polygraph with sex offenders (Robertson, 2013) based on their investigation of the English pilot programmes referenced above. Unsurprisingly, the Association of Chief Police Officers (ACPO) in Scotland described reviewing these programmes 'with interest' while simultaneously recognising 'challenges' that any such scheme would have to address in relation to public acceptance.

Polygraph testing is also beginning to be employed in conjunction with psychological testing and incorporated into formal comprehensive reports in care and family proceedings as well as in relation to Sexual Offences Prevention Orders (SOPOs) and Risk of Sexual Harm Orders (RSHOs) where evaluating the behaviours and interests of individuals that impact on community and family safeguarding is considered a key concern (Donathy and Wilcox, 2013). In particular, the polygraph appears to be an important assistive tool in working with non-offending partners, within the context of family proceedings. The authors note that partners who have been groomed over extensive periods of time and particularly subject to the expressed views and opinions of their often convicted partner, benefit greatly from the employment of polygraph examination to obtain greater details about sexual convictions, such that they can achieve greater objectivity in judging the reported offending behaviour of their partner. Through viewing the DVD of the polygraph examination, non-offending partners can personally observe clear indications of inconsistency in the offender's self-reporting, to take into account and more objectively form their own future views about their partner and their family's safety.

Summary

The introduction of polygraph with sex offenders in the UK has been a slow process undertaken with considerable care and planning (Grubin, 2002; Grubin, 2006; Wilcox, 2009; Wilcox and Sosnowski, 2005; Wilcox, Sosnowski and Middleton, 1999). While its use continues to be controversial, the polygraph's benefits with regard to eliciting disclosures that have significant public protection impact has been difficult to refute in spite of its many vocal adversaries. For this reason, the polygraph appears to be set to continue to be rolled out and employed to supervise, treat and assess sexual offenders in the UK and to make an important ongoing safeguarding contribution.

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