
	Corrections and Community Supervision DIRECTIVE		TITLE Polygraph Examination of Sex Offenders	NO. 9305
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REFERENCES (Include but are not limited to) Article 10 of Mental Hygiene Law; American Polygraph Association			APPROVING AUTHORITY 	

- I. **PURPOSE:** To establish guidelines and procedures for the use of Post-Conviction Polygraph Examination with sex offenders under supervision in the community.
- II. **POLICY:** It is the policy of the Department of Corrections and Community Supervision (DOCCS) to employ the use of polygraph examination with individuals on parole, conditional release, or post-release supervision who are subject to discretionary or mandatory supervision as a sex offender, as well as with respondents ordered to Strict and Intensive Supervision and Treatment (SIST) by a County or Supreme Court under Mental Hygiene Law (MHL) Article 10.

This policy is to be used in conjunction with the Standards for Polygraph Examiners (PE) as described by The American Polygraph Association (APA). Methods utilized by PEs shall be as described by APA Policies and Procedures. PEs utilized, will have graduated from an APA accredited school, and have successfully completed an APA approved "Polygraph Testing of Post-Convicted Sex Offenders" training course.

III. PROCEDURE

A. Parolees/Respondents Subject to Polygraph Examination

1. The following special condition of supervision will be imposed on all cases eligible to be supervised as sex offenders, including those placed on SIST, unless otherwise ordered by the Court: "I will participate in the DOCCS' polygraph program as directed by my Parole Officer. I understand that this will include periodic polygraph sessions consisting of a pre-examination interview, polygraph examination, and post-test interview with the Polygraph Examiner or my Parole Officer."
2. The special condition to submit to polygraph examination will be imposed as follows:
 - a. *Pre-release:* All eligible sex offender registry cases will be identified by Supervising Offender Rehabilitation Coordinators/Offender Rehabilitation Coordinators (SORC/ORC), who will recommend the polygraph special condition be imposed by the Board. The SORC/ORC will notify the inmate of the requirement of a polygraph examination and the special condition.
 - b. *Post-release:* All sex offender cases, including those identified as discretionary cases, and those cases ordered to SIST, will be reviewed upon case assignment by the field Parole Officer (PO). If the polygraph special condition was not previously imposed, the PO will impose the special condition (unless otherwise ordered by the Court in SIST cases). The PO will review [Form #CS9305A](#), "Notice of Polygraph Examination Requirements and Procedures," with the parolee/respondent at the Arrival Report.

A copy of [Form #CS9305A](#), signed by the parolee/respondent, will be placed in the community supervision folder and noted in CMS.

3. Polygraph Exclusions: For reasons described below, there may be occasions to document that waiver of the polygraph examination is necessary, even if only for a temporary circumstance. Therefore, if after case review, by the PO with the Senior Parole Officer (SPO), it is determined that any of the following circumstances apply which would preclude a polygraph exam from being completed, this information must be documented in CMS. Exclusion reasons include: HOSPITALIZED, JUDGE EXCLUDED, MEDICAL, MENTAL HEALTH, OTHER, PREGNANT, or SIST SPEC CIRC.

NOTE: Cases with a documented heart condition must provide medical clearance to the PO before a polygraph examination occurs.

An exclusion reason must be entered in CMS by using the F6 (Parolee Detail Menu) and choosing "Miscellaneous." From there "create record" and use F4 on the "type" line. Use F4 to display the dropdown menu and select "Polygraph Exclusion" (C8). Use F4 in the "Detail" line to choose from the above list of exclusion reasons. Once an exclusion reason is entered into CMS, it will be displayed on the monthly NOPOL6 report. Any exclusion reason must be reviewed during monthly case conferences and updated in CMS as necessary. It is noted that exclusion reasons created in CMS will expire in 6 months after it was created. If the case is appropriate for an exclusion reason, a new record must be created in CMS.

B. Need for Polygraph Examination

1. In determining the need for polygraph examination, the PO, in case conference with the SPO, will consider whether such examination will serve one of the following purposes:
 - a. To ensure that parolees/respondents at highest risk of re-offense, particularly Sex Offender Registry (SOR) Level 3 and SIST cases, are routinely assessed to help monitor risk; or
 - b. To deter re-offending through early detection of offense cycles; or
 - c. To assist the treatment process in cases where there are offense denial or minimization issues; or
 - d. To maximize the PO's ability to assess parolee/respondent risk and to more specifically address treatment and supervision needs; or
 - e. To monitor adherence with conditions of supervision and/or in response to information regarding the parolee/respondent activities that might indicate possible parole and/or SIST violations.

Under no circumstances will a polygraph examination be performed at the request of a law enforcement or criminal justice agency, other than DOCCS. If a parolee/respondent or treatment provider makes a request for an examination, the request must be conferenced by the PO, with the SPO, and consideration may be given if it is determined to be required for supervision purposes.

2. The PO/SPO will also review the types and purposes of polygraph examinations, as follows:
 - a. *Full Disclosure or Sexual History Examination*: Used to ensure complete disclosure of sexual history by the parolee/respondent and typically administered after a parolee/respondent has been in treatment 3-6 months. A fully completed Sexual History Disclosure Questionnaire must be completed by the treatment program and provided to the Examiner prior to testing.
 - b. *Specific Issue Examination*: Used to evaluate a specific behavior or allegation during supervision. It is also used when a parolee/respondent denies commission of the sex offense or minimizes the offense. In the event the parolee's criminal case has an appeal pending (which has been verified by the PO) staff should consult with Department Counsel before administering this type of exam.
 - c. *Maintenance or Monitoring Examination*: Used to verify the parolee/respondent's compliance with treatment and/or supervision conditions. This is typically administered on a periodic basis, usually every 6 months.
3. To assist staff with scheduling a polygraph examination, an online print report, "NOPOL6" is available in the Online Print menu. This report is available for each Bureau to print on the 11th of each month and lists all active supervision Registered and Discovery sex offenders who have not been recorded as having a polygraph administered within the last six months. It is important to note that staff must enter the contact code "PA" (polygraph administered) in CMS in order for the polygraph examination to be recorded. If an exclusion reason was entered as indicated above, it will be displayed on the report. Staff must review the case to determine whether the exclusion reason still exists and update the record accordingly. As noted above, exclusion reasons will expire after six months.
4. In some instances, polygraph examinations may be completed by a private examiner as arranged in conjunction with the offender's sex offender therapist. In such cases, the assigned PO/SPO must enter a chrono in F9 in CMS and use the "PA" contact code. The chrono must give the name of the private examiner, date of the exam, and reason for the polygraph. Staff must obtain a copy of the polygraph exam for the case folder.

C. Scheduling Polygraph Examination

1. Each month the assigned PO/SPO will make a determination about cases that should be scheduled for a polygraph. The PO/SPO will submit the completed [Form #CS9305B](#), "Referral for Polygraph Examination," to the Regional Designee (RD) by the 10th day of the month, preceding the month in which the exam is to be scheduled.
2. All Sex Offender Registry Level 3 and SIST cases will be given priority by the Region for referral to the Regional Designee for examination. Other high priority cases, identified by field staff, may also be referred for polygraph examination with the approval of the Bureau Chief (BC).
3. The Regional Designee will forward [Form #CS9305B](#) to the PE. The PE will schedule each case referred with the assigned PO, and return a schedule of examinations to the Regional Designee, assigned PO/SPO, and the Polygraph Senior Parole Officer (PSPO) within seven business days.

- The assigned PO is responsible to inform the parolee/respondent of the date, time, and location of the polygraph examination.
4. The assigned PO will notify the Regional Designee and SPO of any parolee/respondent who was scheduled for polygraph examination who then subsequently violates, absconds, or otherwise becomes unavailable to have a polygraph examination administered. The PO will then provide a replacement referral, as soon as practicable, and advise all parties as outlined above.
 5. Regional staff will make case files, as appropriate, available to the PE prior to scheduled exams. If a case is being scheduled for examination in a location where the case file will not be available, [Form #CS9305B](#) must include a packet of core case documents (e.g., Probation investigations, Parole Board Reports, violation materials, etc.).
 6. Should a scheduled examination slot become free, due to unexpected circumstances, PEs may seek to backfill the slot by reaching out to the Regional Designee for assistance.
 7. The PE will maintain a log of all polygraph examinations requested and conducted. The log will include the parolee/respondent's name, NYSID, assigned PO, assigned PE, date of the examination, results, and record of PE report. This log will be submitted on a weekly basis to the Regional Designee and the PSPO. The PSPO will compile a statewide monthly report which shall contain a record of all exams scheduled, completed, and not completed during that month. The monthly report will be submitted to the Sex Offender Management Unit (SOMU) no later than the 5th day of the following month.

D. Examination Procedures

1. The PE will review [Form #CS9305C](#), "Consent for Polygraph Examination," with the parolee/respondent prior to the examination and ensure that [Form #CS9305A](#) has been signed.
2. The PE may require that the supervising PO escort the parolee/respondent to, and/or be in attendance at the commencement of the polygraph examination. At a minimum, the PO must be available for contact by the PE during the course of the examination, in case any issues arise.
3. No third party, including the PO, may attend, or be in the polygraph examination room while the exam is being administered.
4. The PE will conduct a pre-test interview with each case to determine the appropriateness of conducting the exam. If significant medical, physical, or mental health issues not previously known are discovered, the exam may be cancelled or rescheduled as necessary.
5. The PE will review polygraph examination procedures with the parolee/respondent.
6. The PE will have the parolee/respondent sign [Form #CS9305C](#), "Consent for Polygraph Examination."
7. The PE will make the final determination regarding the parolee/respondent's suitability to participate in the examination.

E. Post-Test Interview

1. Upon completion of the polygraph examination, the PE will conduct a post-test interview with the parolee/respondent. The PO and PE may consult after the PE's post-test interview.
2. It is recommended that the PO debrief the parolee/respondent upon the completion of the polygraph examination.
3. The PE shall disclose all information discussed in the examination with the assigned PO and where appropriate, with the sex offender therapist. For cases with a 'parole only' status, a valid signed release of information form must be on file.

F. Results of Polygraph Examination Process and Parole/SIST Violations

1. The PE will prepare a written report, [Form #CS9305D](#), "Polygraph Examination Final Report," with the results of the polygraph examination, and send a copy to the BC/SPO/PO within five business days of the examination. The report will be reviewed, and a copy placed in the case file. Polygraph results will generally include one of the following:
 - a. No Deception Indicated/No Significant Reaction;
 - b. Deception Indicated/Significant Reaction;
 - c. Inconclusive Exam;
 - d. No Decision Rendered/Unable to Complete the Exam (medical or instrument issues); or
 - e. Non-cooperation with Polygraph Procedures.

The SPO/PO will use the PE's report as a tool for assisting in assessment of the parolee/respondent's supervision and/or treatment compliance. Results of the polygraph examination indicating deception shall not be the sole reason for a parole/SIST violation. Refusal to take the examination, or participate completely in the examination process, and/or non-cooperation with the PE, however, may be a violation of parole, conditional release, post-release supervision, and/or SIST. The PE's examination results report is considered privileged information. However, in some instances (such as in SIST cases) the report may be made available to certain parties as legally permissible. It may also be released to the parolee/respondent, if requested, upon completion, unless the report specifically notes that it contains investigatory or evaluative information.

In cases with a finding of deceptive results, the PO may employ graduated responses (e.g., loss of privileges, increased reporting, treatment modifications, etc.), when deemed appropriate. This will further support the effective and continuous use of the polygraph examination process.

2. If during a polygraph examination, or while in the presence of the PE, a parolee/respondent admits to criminal activity, or violations of parole, conditional release, post-release supervision, and/or SIST conditions, the PE may attempt to procure a written statement from the parolee/respondent regarding such admission, using the following procedure:
 - a. The PE or parolee/respondent writes out such admissions on [Form #CS9305E](#), "Admissions Form;"
 - b. The PE reads the admissions back to the parolee/respondent;

- c. The PE allows the parolee/respondent to review the written admissions;
 - d. The parolee/respondent signs and dates [Form #CS9305E](#) along with the signature of the attending PO or PE; and
 - e. Such information is submitted to the assigned PO upon completion of the polygraph examination.
 3. Post-examination parolee/respondent admissions to behavior or activities that would be subject to investigation as either a violation of parole, conditional release, post-release supervision, and/or SIST conditions or criminal activity will be managed as follows:
 - a. Admission of Violating Condition of Parole/SIST: After the information has been recorded on [Form #CS9305E](#) and shared with the PO, the PO will case conference with the SPO regarding possible action, which may include a violation.
 - b. Admission by Parolee/Respondent of Engaging in Criminal Activity: If the parolee/respondent admits to criminal activity which occurred prior to, or during, parole and/or SIST supervision, the PO will case conference with the SPO. If the criminal activity occurred during parole and/or SIST supervision, the SPO may authorize the issuance of a warrant and will refer the matter to local law enforcement authorities for investigation. If the criminal activity occurred prior to parole and/or SIST release, the matter will be referred by the BC to the local District Attorney's Office to determine if a criminal complaint should be filed.
- G. Record Keeping and Release of Information
1. Upon completion of the polygraph exam, the PE will make a CMS entry (contact code "PA" for polygraph administered and activity code "P" for polygraph).
 2. Each PE will maintain a log of all polygraph examinations and keep it in a separate file for polygraph examination purposes. Such logs are considered privileged for record request purposes. Prior to responding to any record request, the identities of persons other than the parolee/respondent will be redacted by the staff person releasing the log.
 3. Each PE will forward a copy of the polygraph examination log to the Regional Designee and PSPO on a weekly basis.
 4. All polygraph exams must be recorded by the PE via video/audio equipment. The video and audio recording of the polygraph examination is considered investigatory information and shall be maintained by the PE in a secure locked cabinet in accord with Agency record retention policy. All recordings will be labeled with the date of examination, name of parolee/respondent, and NYSID.
 5. Requests for copying or viewing the recording(s) from persons or entities other than the BC/SPO/PO shall be referred to the Office of Counsel for response. For SIST cases, any requests from the Office of the Attorney General may be provided to them.
 6. The PE will release a copy of the polygraph examination consent form ([CS9305C](#)) to the parolee/respondent upon completion. Polygraph Examination Questionnaire Results Chart, Score Sheet, and PE notes are considered investigatory and are not to be released.

7. The need for subsequent polygraph examination on individual cases will be reviewed on an on-going basis by the SPO/PO. Polygraph re-examination may occur as described in this policy.

H. Polygraph Senior Parole Office Duties

1. Report directly to SOMU and coordinate with regional staff;
2. Provide technical assistance to the PEs statewide as needed;
3. Assist the PEs in scheduling exams and will receive weekly schedules from each PE;
4. Maintain the weekly exam schedule and submit the monthly schedule of cases to SOMU and the Regional Designees for the following month;
5. Submit a monthly report of all outcomes and results for all cases that were scheduled for the previous month to SOMU no later than the 5th of the month;
6. Perform quality control checks on the PE's reports and provide feedback on a regular basis to the PE, PO, SPO, BC, and RD;
7. Assist SOMU with any requests for training and ensure all PEs receive required periodic training in accordance with the American Polygraph Association (APA) standards;
8. Assist in performing polygraph examinations or other duties when needed;
9. Ensure that all polygraph equipment is functioning and assist with any requests for replacement equipment; and
10. Coordinate with regional staff in conducting the annual inventory of all polygraph specific equipment as per Departmental procedure and assist with equipment inventory, whenever there is a change in polygraph staff or equipment.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

NOTICE OF POLYGRAPH EXAMINATION REQUIREMENTS AND PROCEDURES

NAME: _____ NYSID: _____

The following are the requirements and procedures associated with the polygraph examination special condition:

1. As a condition of parole, conditional release, post-release supervision, and/or Strict and Intensive Supervision and Treatment (SIST), I may be required to undergo one or more polygraph examinations.
2. The purpose of the polygraph examination is to determine whether or not I am complying with my sex offender treatment, parole, conditional release, post-release supervision, and/or SIST supervision conditions, and/or if I have re-offended while on parole, conditional release, post-release supervision, and/or SIST supervision.
3. Such examinations will occur as directed by my supervising Parole Officer.
4. The polygraph examination **session** consists of a pre-test interview, a polygraph examination with a DOCCS Polygraph Examiner, and a post-test interview with a Polygraph Examiner and/or my Parole Officer.
5. Failure to fully cooperate and participate in any aspect of the polygraph examination **session**, including refusal to answer questions during the examination, may be grounds for violation of my parole, conditional release, post-release supervision, and/or SIST supervision.
6. Answers to questions during the polygraph examination **session** may be used in determining appropriate sanctions to be implemented by DOCCS or an appropriate Court, including a parole violation hearing or Article 10 civil management proceedings. Additionally, admissions to criminal behavior will result in referral to appropriate law enforcement authorities for investigation and possible prosecution.
7. Any admission to criminal behavior during the polygraph examination **session** may be used against me in a court of law.

I have fully read the above conditions regarding DOCCS polygraph requirements and procedures. I fully understand each of the above statements as they have been presented to me.

Parolee/Respondent Signature/Date: _____ / _____

Parole Officer Signature/Date: _____ / _____

cc: case file
parolee/respondent

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

REFERRAL FOR POLYGRAPH EXAMINATION

Instructions: The PO/SPO must fax or e-mail completed form to the Regional Designee by the 10th day of the month preceding the month in which examination is to be scheduled.

Case Name/NYSID: _____ **Bureau:** _____

SIST Case: ___Y___N **Level 3 SOR Case:** ___Y___N **Other (specify):** _____

Date of Referral: _____

The above referenced case is referred for polygraph examination. The preferred examination site is:
_____ Area Office (specify) or _____ remote office location (specify).

Polygraph examination should not be scheduled on the following days/times:

Assigned staff can be contacted as follows (Note: PO **must** be available to speak with the Examiner at any point during an examination):

PO Name: _____ Office Phone: _____ Cell: _____

SPO Name: _____ Office Phone: _____ Cell: _____

Required Information:

Does parolee/respondent fully admit to the sex offense? ___Y___N

If no, provide summary: _____

Is parolee/respondent in sexual offender counseling? ___Y___N

If yes, name, address, and phone number of counselor: _____

Are there any current medical/mental health concerns? ___Y___N

Specify: _____

Is parolee/respondent taking any prescribed medications? ___Y___N

List: _____

Has the parolee/respondent taken a polygraph before? ___Y___N

If yes, date and name of Polygraph Examiner and results: _____

Type of test requested (check one):

- _____ Maintenance Examination (Parole/SIST condition compliance)
_____ Monitoring Examination (sexual behavior under supervision)
_____ Sexual History (used in conjunction with therapist request)

Are there any specific issues that you would like the Polygraph Examiner to inquire about during the exam? _____

NOTE: The full case record must be made available in the office to the DOCCS Polygraph Examiner. For cases where exam in a remote office location is requested, attach the following:

___ Pre-sentence Report for sex offense
___ release sheet/special conditions

___ Parole Board Report/Violation Reports

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
CONSENT FOR POLYGRAPH EXAMINATION

Name of Parolee/Respondent: _____ Date: _____

Name of Examiner: _____ Place of Examination: _____

In accordance with my Parole, conditional release, post-release supervision conditions, and/or my conditions of Strict and Intensive Supervision and Treatment (SIST), I, _____, agree to be examined for the mutual benefit of DOCCS and myself. I understand that the procedure of this Psycho-physiological Detector of Deception (PDD), also referred to as a polygraph examination, involves utilizing electronic components to record physiological reactions. I authorize the placement of the components upon my person. I do not object to having this procedure recorded through audio and/or video means.

I understand that the results of this polygraph examination and related information will be provided to my Parole Officer, and/or sex offender therapist. If on SIST, my results may also be shared with the NYS Office of the Attorney General, the NYS Office of Mental Health, and/or the NYS Office for People with Developmental Disabilities.

I understand that I agreed to take this polygraph examination as a condition of my parole, conditional release, post-release supervision, and/or SIST. I understand that failure to participate in a polygraph examination as instructed by my Parole Officer and the Examiner may result in violation of parole, conditional release, post-release supervision, and/or SIST. I understand results that may indicate deception will not be the sole reason for possible parole and/or SIST violation, but may be considered by DOCCS and/or a civil management court at violation proceedings. I understand that I may choose not to answer questions. However, failure to answer questions regarding my conformance to parole, conditional release, post-release supervision, and/or SIST conditions, in the discretion of the Parole Officer and Polygraph Examiner, may be deemed as a failure to participate in a meaningful way and be submitted to DOCCS as a parole, conditional release, post-release supervision, and/or SIST violation.

I release DOCCS and/or their agents from any liability connected in any way with this polygraph examination. Also, to the best of my knowledge, at this time, I have no physical or mental conditions that could prevent me from taking this polygraph examination.

I have fully read and completely understand the above statements.

Parolee/Respondent: _____ Date: _____ Time: _____

Examiner: _____ Date: _____ Time: _____

Post-Test

I, the undersigned, confirm that I was given a polygraph examination on _____. I further state that all statements made by me were made freely without threats, coercion, or intimidation. I certify that all questions asked in the examination were reviewed with me prior to the examination. I was well treated by the Polygraph Examiner and was not harmed in any way.

Parolee/Respondent: _____ Examiner: _____
Time: _____

cc: case folder; parolee/respondent

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

POLYGRAPH EXAMINATION FINAL REPORT**C
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To: _____

From: _____

Date: _____

SPO: _____

Case Information

Parolee/Respondent: _____ NYSID: _____

DIN: _____ DOB: _____

Referred By: _____ Date of Exam: _____

Place of Exam: _____ Examiner: _____

Exam Results and Information:

The polygraph is used as a tool to assist the Parole Officer in supervising the parolee in the community. Results that indicate deception may suggest that the subject be monitored more closely in the community or the need for further investigation. No subject should have his or her parole revoked based solely on the basis of a negative polygraph examination.

This report () does () does not contain investigatory or evaluative information.

Submitted By: _____ Polygraph Examiner

Date: _____

cc: case file

