



REPRESENTATIVE FOR
CHILDREN AND YOUTH

Issue Report
Phallometric Testing and
B.C.'s Youth Justice System

April 2011



REPRESENTATIVE FOR
CHILDREN AND YOUTH

April 14, 2011

The Honourable Bill Barisoff
Speaker of the Legislative Assembly
Suite 207, Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Mr. Speaker,

I have the honour of submitting this report, *Phallometric Testing and B.C.'s Youth Justice System*, to the Legislative Assembly of British Columbia.

This report is prepared in accordance with Section 20 of the *Representative for Children and Youth Act*, which states that the Representative may make a special report to the Legislative Assembly if she considers it necessary to do so.

Sincerely,

Mary Ellen Turpel-Lafond
Representative for Children and Youth

pc: Mr. E. George MacMinn, QC
Clerk of the Legislative Assembly



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1. Introduction

Purpose of Review

In July 2010, Justice for Girls (a non-profit Vancouver-based organization) and the BC Civil Liberties Association publicly raised concerns about phallometric testing (defined in Section 2 of this report) being used on B.C. youth. Phallometric testing (using a penile plethysmograph, or PPG) was used by Youth Forensic Psychiatric Services, part of B.C.'s Ministry of Children and Family Development (MCFD). MCFD's minister initially suspended and then ordered the permanent cancellation of phallometric testing at Youth Forensic Psychiatric Services (YFPS).

The Representative has a mandate to monitor, review and conduct research on the provision of designated services within the child-serving system. Under the *Representative for Children and Youth Act*, this includes programs delivered by YFPS.

Although PPG testing has been cancelled at YFPS, the Representative decided that this independent review was still necessary. Because of the nature of the issues raised, especially around effectiveness of PPG testing and consent issues, and the potential for the cancellation decision to perhaps be re-considered in the future, important aspects needed to be further examined and recommendations made. The review commenced in late July 2010. (In this report, phallometric testing will be referred to by the acronym PPG, because that is how it is referred to at YFPS.)

The specific objectives of the review were threefold:

1. to consider the effectiveness of the use of PPG in terms of the assessment and treatment of sexually offending youth
2. to review its use and application at YFPS in its treatment program for youth sexual offenders, and
3. to determine whether there is any harm to youth related to the use of PPG.

Methodology

The approach included:

- a comprehensive review of the literature and published research on the use of PPG testing on adolescents and adults
- a cross-jurisdictional scan of other jurisdictions using PPG testing on adolescents
- identification of any best practice model, and identification of and interviews with recognized experts
- identification and assessment of YFPS policies and procedures related to PPG testing on adolescent sexual offenders
- interviews with YFPS clinicians to obtain the input of YFPS practitioners on the use of the PPG.



REPRESENTATIVE FOR CHILDREN AND YOUTH

The Representative acknowledges and appreciates the professionalism and cooperation of YFPS clinicians and staff during this review.

A Project Advisory Team¹ composed of independent professionals representing the fields of social work, forensic psychology and sexual medicine was formed to help define the research agenda, analyze research findings and provide advice to the Representative.

Former clients of YFPS who had received PPG testing were not interviewed as part of this review. This was a deliberate and difficult decision made after careful consideration of the ethical and legal aspects of seeking out individuals who had been treated by YFPS. Identifying and contacting youth formerly treated by YFPS would be a significant invasion of their privacy and contrary to the strict confidentiality provisions of the *Youth Criminal Justice Act*. No former client contacted the Office of the Representative directly during the course of the review to register a concern or raise an issue with YFPS and its PPG testing.

¹ Names and biographies of advisory members are on page 20.



2. Use of PPG at Youth Forensic Psychiatric Services

What is PPG?

The PPG is a device used to measure male sexual arousal. The male is asked to place a flexible cuff or strain gauge on his penis that will measure changes in penile circumference or volume. The PPG measures physical changes in response to the presentation of a range of auditory and visual stimuli. PPG testing is used by some North American programs in the assessment and treatment of adult and youth sexual offenders.

Youth Sex Offender Treatment Program

YFPS has had a Youth Sex Offender Treatment Program (YSOTP) since 1986. The program takes a standardized approach to the assessment and treatment of youth charged with a sexual or sexually related offence, and youth convicted of a sexual or sexually related offence. The program is intended to assist clients to identify and reduce their "sexually deviant behaviour through appropriate therapeutic interventions."² The program uses a cognitive/behavioural therapy model that is adapted from treatment programs for adult sexual offenders.

The PPG was used as an assessment tool for male youth in the sexual offence treatment program. The results of PPG testing were not used for court-related assessment purposes or entered in court or used in court proceedings.

If a community-based sentence was imposed, a youth was admitted to the program through outpatient clinics where PPGs were administered. If a custody sentence was imposed, clinicians travelled to the youth custody centre to provide sexual offence treatment but PPGs were not administered within custody centres.

YFPS provides mental health services to youth 12 to 17 years who:

- have been charged with and/or convicted of an offence under the *Youth Criminal Justice Act*
- are ordered by the youth court to undergo assessment and/or treatment, and
- are in need of services for mental health and/or behaviour problems.

YFPS provides two broad categories of clinical services: court-ordered and court-related assessments and mental health treatment programs.

(Source: YFPS Policy and Procedure Manual, Revised September 2, 2009)

² YFPS Policy and Procedure Manual, Revised September 2, 2009.



An Overview of Youth Treated Under the YSOTP

Youth admitted to the sexual offence treatment program must meet one of the following criteria:

- charged with a sexual offence and required, as a condition of an extra-judicial sanction, to attend the program (extra-judicial sanctions are measures that are designed to hold youth responsible for having done something wrong, without creating a criminal record)
- convicted of a sexual or sex-related offence and attendance is required as a condition of probation or a conditional supervision order, or recommended by a youth custody centre staff member
- charged with or convicted of a non-sexual offence, with a history of sexually offending behaviours.

Referrals to the treatment program are made by youth probation officers or youth custody centre staff or, in the case of extra-judicial sanctions, by Crown counsel. Upon referral to the treatment program, the youth is assessed by a multidisciplinary team of YFPS staff (a psychiatrist and/or psychologist, registered nurse and social worker) and a recommendation is made regarding admission to the program.

YFPS did not compile statistics on the total number of youth who have received PPG testing throughout the years. Because of this, a time-consuming review of individual files would be required to determine the number of youth in the YSOTP who received a PPG test over the life of the program.

At the Representative's request, YFPS collected specified information on youth treated in 2009 in order to provide an overview of the treatment population.

Ninety male youth were referred to the YSOTP for treatment in 2009. Most of these youth were charged with or convicted of sexual assault or sexual interference of a person under the age of 14.

Of the 90 youth, nine were referred to more intensive mental health or alternative programs. The remaining 81 youth were assessed and 70 of them recommended for treatment under the YSOTP. Of these 70 youth, 62 attended and were treated in the program (the remaining eight went to another program or an alternative decision was made).

Of those 62 youth, 30 were offered PPG testing, and 25 consented to the procedure. Five youth refused the PPG. Youth who received a PPG test in 2009 ranged in age from 14 to 19 (three were 14-year-olds).



Special Needs Youth

About 30 per cent of the 62 youth treated under the YSOTP in 2009 were identified as having special needs.³

Depending on the assessment of the clinician as to their ability to understand and consent to the procedure, youth with special needs could be offered PPG testing. Four of the 25 youth (16 per cent) who received PPG testing in 2009 were identified as having special needs.⁴

Legal Status of Youth

Of the 62 youth treated under the YSOTP in 2009, 11 (18 per cent) were under a form of care with MCFD:

- five were a "Child In Care" (CIC) of MCFD under a continuing custody order (three received PPG)
- one was a CIC under a temporary custody order (no PPG)
- four were a CIC under a voluntary care agreement (no PPG)
- one was a CIC under a special needs agreement⁵ (no PPG).

Of these 11, three received PPG testing.

The Representative also requested that YFPS review its files for the period January 1, 2010 to July 29, 2010, when the minister permanently cancelled the use of PPG. This review identified that 44 youth received the PPG during that period. There were 110 male youth treated under the YSOTP during that period. More specific details on these youth were not requested.

³ Defined by clinicians as low cognition – IQ under 70, attention deficit hyperactivity disorder, fetal alcohol spectrum disorders, autism spectrum disorders, developmental disorders, and other neurological disorders.

⁴ Although the YSOTP only applies to youth ages 12 to 17 years of age, a youth may enter the program when 17 years of age, but turn 19 before he completes the treatment.

⁵ PPG Statistics, November 2010 (presentation prepared by YFPS for the RCY Review).



3. Summary of Research and Program Review

Effectiveness of the PPG

The Representative's comprehensive review of published research and articles on the use of the PPG on adolescents and adults found that the evidence is inconclusive regarding the effectiveness of the PPG as a device to measure deviant sexual arousal. Most of the published research relates to use of the PPG with adults. Studies pertaining to the validity and reliability of the PPG for adults are generally not applicable to youth.⁶

In summary, regarding the existing research and literature on the use of PPG testing:

- *As an indicator of deviant sexual arousal in adults:*

There is mixed evidence to support the *validity* of the PPG – its accuracy in measuring what it is supposed to measure – and *reliability* – consistency of results over time. Some research has shown that PPG scores are related to sexual and violent recidivism (tendency to relapse or commit the behaviour again) and that when measured with a PPG, sex offenders demonstrate greater deviant sexual arousal and interests than non-sex offenders. However, although the PPG has been proven to measure sexual arousal, results are not consistent when tested over time and when compared with results from other instruments used for sexual offenders.⁷

- *As an indicator of deviant sexual arousal in youth:*

Current research on the use of the PPG with adolescent offenders is limited to a small number of studies. Existing research is inconclusive in terms of the reliability of the test on youth, and evidence of the validity of the PPG in measuring pedophilic interest in youth is mixed.⁸ A 2001 study found that the PPG may be useful in identifying a high-risk group – youth sexual offenders who have been abused themselves and who target male victims.⁹

- *As a predictor of recidivism for youth:*

Research examining PPG testing and its use in predicting recidivism in young offenders is also limited to a few studies, and the combined result of those studies is mixed, although some research indicates the PPG may be useful in predicting recidivism in youth showing sexual arousal to male and female children.¹⁰

⁶ Some research suggests that there are "fundamental and unique differences" in youth and adult sexual offenders, including evidence of greater fluidity of offence patterns in youth as compared to adults, weaker relationship between arousal and offence history, and significant differences in risk factors for recidivism between youth and adult sexual offenders in both sexual and non-sexual offences. A number of recent studies have questioned the role of sexual deviance in adolescent sexual offending, with results indicating that most youth sex offenders do not display primarily deviant sexual interests (Becker, Hunter, Goodwin and Becker, 1994). A 2009 study, however, suggested that phallometric assessment developed for adults is a valid measure for youth based on the results of the study that indicated that sexually offending youth "responded similarly to adults on PPG and responded significantly differently than non-sexual offenders and community controls" (Rice and Harris, 2009).

⁷ Marshall, 2006.

⁸ Seto, Laumière and Blanchard, 2000; Clift, Rajilic and Gretton, 2009.

⁹ Murphy, DiLiollo, Haynes and Steere, 2001; Becker, Hunter et al., 1989.

¹⁰ Clift, Rajilic and Gretton, 2009; Worling and Curwen, 2000.



PPG Use in Other Jurisdictions

The research and literature review indicates a variety of views on the purpose of PPG testing. The research primarily refers to PPG testing in the context of treatment outcome and assessment of risk. Some research suggests that, similar to adult offenders, caution should be taken in using the PPG with adolescent sex offenders who deny their charges "because adolescents who deny their charges tend to suppress their arousal and low arousal is related to low reliability."¹¹ Other reports suggest the PPG "may be useful only for adolescents who are 14 years of age or older, acknowledge they are sexual offenders, and who offended sexually against males."¹²

In a 2009 survey of North American sexual offence treatment providers,¹³ 15 Canadian male adolescent sex offender programs provided information on their assessment measures. Only three of those reported using the PPG.¹⁴

According to this survey, most youth sexual offence treatment programs in Canada do not use the PPG. The reasons for this – whether due to concerns around the effectiveness of the PPG as a treatment tool, issues with consent, or ethical considerations – are not clear.

Research indicates that there is no widely accepted protocol or established standard for the use of the PPG with youth sexual offenders across those programs and jurisdictions that use it. As a result, there is wide variance in PPG assessment procedures, stimuli used and data interpretation.

Sexual Offence Assessment and Treatment Tools

A review of best practices indicates that the consensus regarding the best approach in assessing, treating and monitoring adolescent sexual offenders is to use multiple assessment tools and multiple sources of information to make informed decisions about risk. There are three recognized approaches for assessing risk in adolescent sexual offenders:

- objective (including use of the PPG)
- self report
- risk assessment measures (including unstructured and structured professional judgment and actuarial methods).

The PPG is the only currently available physiological measure of sexual arousal. No research was found that compares the effectiveness of the various measures or compares the effectiveness of the PPG against other measures.

¹¹ Becker, Hunter et al., 1992; Becker, Kapla et al., 1992.

¹² Becker and Harris, 2004.

¹³ McGrath, Cumming, et al., 2010.

¹⁴ There is no authoritative list of adolescent male sexual offence programs in Canada – a list developed by researchers for this review identified 100 clinics providing youth sexual offences treatment services.



Use of the PPG in the Youth Sex Offender Treatment Program

Policy and Clinical Practice

Policy requires that "every male youth accepted in the YSOTP should have a pre-treatment and post-treatment PPG assessment when clinically appropriate and feasible."¹⁵ Several years ago, PPG testing was a mandatory part of the treatment program. For the past few years and until its cancellation, the PPG was still considered an integral part of the treatment program. However, a youth could continue and complete the program without having PPG testing.

A YSOTP clinician had discretion to determine whether or not PPG testing was clinically appropriate or feasible for a particular youth,¹⁶ and a youth (or parent) could refuse to consent. A youth who refused to consent to PPG testing was still able to continue with and complete the treatment program. The YFPS leadership team indicated that this change in policy was partly in response to concerns and a "continuing debate" among some YFPS clinicians offering treatment about "the utility of the PPG procedure for assessing sexual arousal in youth."¹⁷

During the Representative's review, almost half of B.C.'s YSOTP clinicians and managers were interviewed. The interviews revealed that there was a variation in the use of the PPG in clinics throughout the province and even within clinics. Many clinicians used PPG testing as a regular part of treatment, while others used it on a case-by-case basis. A few did not support its use generally as part of the treatment program or for the treatment of sexually offending youth.

As well, clinicians who used the PPG, whether regularly or on a case-by-case basis, reported that they used it for a variety of reasons, all consistent with YFPS policy. Clinicians surveyed indicated the following purposes for using the PPG:

- as a treatment assessment tool that provides an indication of the youth's sexual arousal patterns, helping to shape treatment
- as a treatment tool that helps to open dialogue with the youth and engage them in their treatment
- as a treatment tool that helps to break down denial or minimization of the youth and/or parent about the youth's offence, and
- as a post-treatment assessment tool that provides an indication of the youth's ability to suppress arousal.

Several YFPS clinicians interviewed indicated that there were also issues with lack of clarity or inconsistent practices related to record-keeping, reporting and information-sharing regarding PPG testing.

¹⁵ YFPS Policy and Procedure Manual, Revised September 2, 2009.

¹⁶ YFPS clinicians indicate that circumstances where the PPG may be considered not clinically appropriate or feasible include where the youth has a significant cognitive impairment/lack of capacity to give informed consent, the youth has significant special needs, the offending youth has been a victim of significant sexual abuse or trauma, or medical or physical issues make it unfeasible. Other considerations on whether to offer the PPG include the age of the youth and the nature of the offense or offending history.

¹⁷ Report of the YSOTP Standing Committee in the YFPS Annual Report 2008-2009.



Stimulus Material

Two types of stimulus material were presented to the youth:

1. "pre-test" stimulus material, designed to establish a baseline
2. "test" stimulus material, designed to measure the youth's arousal to deviant sexual material.

The pre-test stimulus set was a segment from an adult sexual education video showing a man and woman engaged in consensual intercourse, with a voice-over describing the mechanics of the acts and the response. The pre-test stimulus material was obtained by YFPS through an adult bookstore 25 years ago, when the YSOTP was first implemented.

The test stimulus material was a video of a set of still photographs, ranging from infants to young adults, shown in underwear or bathing suits.¹⁸ One photograph shows a naked baby with genitalia blanked out. The photographs were shown with a voice-over of a male youth describing various scenarios suggestive of deviant and coercive sexual acts, but not containing sexually explicit language.

The test stimulus materials were updated in 2005 with material specifically for adolescents.¹⁹ The material was obtained from a company authorized to sell PPG materials and equipment to programs treating sexual offenders.

Consent

All youth who are admitted to the YSOTP must provide written consent to treatment under the program. As well, ministry policy required that both the youth and the parent must provide consent if PPG testing is to be done.

In practice, however, interviews with clinicians indicate that policy regarding consent requirements and practices was inconsistently applied amongst clinics, ranging from:

- consent required from the youth only, regardless of age
- youth consent required and parent informed where possible and appropriate
- youth and parent consent required if youth 14 years old or younger
- both youth and parent consent required in all circumstances.

¹⁸ The "typical" test stimulus material has 12 categories representing sexual maturity stages from infant through adult subjects. The range of pictures depicting different age groups and genders is intended to provide a measure of a client's arousal to various forms of deviant stimulus against his arousal to consenting sexual situations between age-appropriate partners.

¹⁹ Prior to the 2005 update to the test stimulus material, "the visual stimulus used were of naked children, often posed in erotic ways" [YFPS Policy Manual, section on "Administration and Interpretation of the Penile Plethysmograph"]. The 2009 report by YFPS, "Discriminative and Predictive Validity of the Penile Plethysmography in Adolescent Sex Offenders" was based on pre-2005 file data and reported on the pre-2005 test stimulus material.



YFPS clinicians interviewed indicated they employed "standard clinical practice" in ensuring informed consent. The YFPS policy and procedure manual states that four conditions must be present for consent to be valid:

- *Clients must have the capacity to consent* – capacity is defined as the ability to understand the information that is relevant to making a decision about treatment and ability to appreciate the reasonably foreseeable consequences of a decision or lack of a decision. An individual who is capable of providing consent is also capable of withdrawing consent to treatment.
- *Consent must be related to treatment* – treatment is defined as "anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment or plan."
- *Consent must be informed* – the client's decision to consent to treatment must be informed. The client must receive information about the nature of the proposed treatment, its expected benefits, any risks or adverse effect associated with it, alternative course of action and likely consequences of not having the treatment.
- *Consent must be voluntary.*

As noted earlier in the section providing an overview of youth treated in the program in 2009, about 17 per cent of youth refused to consent to PPG testing. This is consistent with a 2006 internal survey of YFPS clinicians, who estimated that about 15 per cent of youth did not consent to the PPG testing. The 2006 survey indicated that reasons cited by youth for refusing to consent included negative feelings, religious concerns, lack of parental consent, belief the procedure was unnecessary and lack of a lawyer present when signing a consent form.

Program Evaluation and Research

The Program Evaluation and Research branch of YFPS undertakes research to examine the impact and effectiveness of YFPS treatment programs. The branch has undertaken a number of research and evaluative studies of PPG testing, specifically its impact on assessing risk and recidivism. This is not experimental research done in real time, with youth being treated as research subjects. It is post-treatment research based only on file data. (The 2009 study, "Discriminative and Predictive Validity of the Penile Plethysmography in Adolescent Sex Offenders," which came to public attention in July 2010, was based on client file data from 2005 and earlier.) All research is approved by a sub-committee of the Program Support and Administration Committee, which provides advice to the YFPS Provincial Director and Clinical Director on research and program evaluation.



YPFS policy requires that access to records for research purposes is only permitted with the written authorization of the Program Evaluation and Research Committee. Access to client records for research purposes must comply with internal MCFD policies regarding client information, the *Freedom of Information and Protection of Privacy Act* and the *Youth Criminal Justice Act*. When records are accessed for research purposes the committee must provide the MCFD office responsible for client information a written authorization to allow access for research use and a copy of the approved research protocol. Non-ministry individuals must sign an "Agreement for Non-Disclosure / Confidentiality."

The policy manual states:

"Client consent is not required for the release of information for authorized research purposes provided that the released information does not in any apparent way identify a particular client.... Where the release of information for authorized research could in some way identify a particular client, the information may not be released without the express written consent of the client (or his or her legal guardian if the client is unable to consent)."²⁰

Impact on Youth

Clinicians interviewed and the YFPS provincial management team stated that there were no formal complaints relating to use of the PPG at any of its clinics over the past 25 years. Clinicians also stated they perceived no negative impact on youth who underwent PPG testing.

No studies were found examining the impact of the use of the PPG itself on youth. It appears that no research has been done to assess the impact of PPG testing on youth or its effectiveness as part of a treatment program for youth sexual offenders. No research was found on how it compares to other tools for treatment of sexually offending youth. However, there is no evidence of the effectiveness of PPG testing as part of a treatment program for sexually offending youth.

The reviewed research and interviews with practitioners indicate that some specialists and practitioners in the field have ethical concerns about the use of the PPG in treating youth sex offenders. Concerns raised include that "because adolescence is a time of sexual development, there is a potential for harm by exposing them to the visual and/or audio stimuli used in the PPG procedure" and that "there is a potential harm and/or increased risk of sexual/emotional/behavioural deregulation through exposing [youth] to PPG stimuli."²¹

Other concerns raised included the use of stimulus material with youth who have been sexually victimized and may suffer from post-traumatic stress disorder, noting that there is a "social obligation to protect youth from a procedure that is invasive and degrading."²²

²⁰ YPFS Policy and Procedure Manual, Revised September 2, 2009, section YRR 003.

²¹ Becker and Harris, 2004; Hunter and Lexier, 1998.

²² Rothman, Daniel, personal communication, October 25, 2010.



4. Analysis and Recommendations

Overall Finding

On the preponderance of the evidence reviewed, the Representative does not support the use of PPG testing on youth.

It is not possible to come to a definitive finding about the effectiveness of PPG testing in terms of the treatment of youth sexual offenders. It is also not possible to conclude whether or not PPG testing causes harm to youth given that there is no research of the impact of the procedure on youth.

If clearer evidence emerges and agreement is reached on the effectiveness of PPG in treating sexually offending youth, and if specific issues relating to consent and rights were to be addressed, this issue could be revisited.

YSOTP and Use of PPG Testing

Many YFPS clinicians believe that PPG testing is a useful and important tool in treating youth sexual offenders. They believe results of the PPG test help to identify deviant sexual arousal patterns in order to shape treatment, facilitate a dialogue with the youth and break down denial or minimization of the offence by the youth. Some YFPS clinicians and the YFPS provincial management team maintain that when viewed from a public safety perspective, the potential impact of the tool justifies its use in treating sexually offending youth.

While there has been some research on the reliability and validity of the PPG, the results are mixed and inconclusive. However, there is no evidence of the effectiveness of PPG testing as part of a treatment program for sexually offending youth. There is also no research evidence comparing PPG testing with other assessment and treatment tools for youth sexual offenders. And, even within YFPS, there is a debate among clinicians as to the use of the PPG and whether it is an appropriate tool in treating sexually offending youth.

Regarding harm to youth who have had the procedure, the lack of evidence of harm to youth is not a justification for the use of the tool. In fact, in exceptional circumstances where a procedure is used that is as intrusive as the PPG, until there is evidence of *no harm* PPG testing should not be used in the treatment of sexually offending youth.

Furthermore, there are legitimate concerns about the ethics of this procedure and whether it is an appropriate procedure for the treatment of sexually offending youth, particularly in absence of any evidence as to its effectiveness in improving the outcomes of treatment. Ethical considerations about the use of the PPG include whether it is appropriate to expose youth to sexual material, including whether this exposure could desensitize the youth to such material, and the inherent contradiction in showing sexual material to youth who have been charged with or convicted of sexual offences. There is also a concern with retraumatizing some youth who have themselves been victims of sexual abuse.



A fundamental consideration in any assessment of a program that is intrusive into the privacy and security of youth is whether or not the youth's constitutional and legal rights are given adequate consideration, both in policy and practice. Two aspects of youth rights are directly relevant here and deserve careful planning and attention.

The first is the right of the youth to the "security of person," as guaranteed in Section 7 of the *Canadian Charter of Rights and Freedoms*. A program that poses a potential risk to this right must meet a high standard. Great care must be taken in evaluating whether such a risk is justifiable in the circumstances for any individual. When youth are involved, extra safeguards are required.

The second consideration relates to the youth's right to consent, which is closely tied to fundamental constitutional rights to security of the person. Youth are ordered by the youth justice court to attend and complete the YSOTP as a condition of probation or conditional supervision. Although the YSOTP is court ordered, youth nonetheless still have the legal right to consent or refuse treatment, including PPG testing. There is obviously potential for a degree of implicit coercion in circumstances where there is an imbalance of power between an immature young person and an adult in a position of authority, or where there is an order by the court to attend a treatment program. These circumstances demand that the young person's consent is truly voluntary.

An effective program for treating sexually offending youth is a societal responsibility. Some youth will exhibit deviant sexual behaviours that cause harm to others and will be identified through the justice system and other channels. It is critical for their own benefit and for the protection and safety of the public that there is an effective program in place to treat them. It is understood that early intervention is key and the focus is rehabilitation. It is noted that British Columbia is one of the few jurisdictions to have a comprehensive government-operated sexual offence treatment program for youth.

The YSOTP has been in place for more than 25 years. However, there has been no change to the fundamental framework of the program, including the use of the PPG as a key treatment tool. Although YFPS has undertaken some research on the effect of PPG testing on recidivism, it has never undertaken a comprehensive policy and program review and evaluation of its approach to treating youth sexual offenders and the assessment and treatment tools and approaches it uses, including the PPG, and their impact on the youth treated. Some program changes have been made in recent years, and YFPS clinicians undertake their own ongoing continuing education. However, the last time a major review and adjustment of the YSOTP was undertaken was as a result of an audit by the Office of the Comptroller General, Internal Audit and Advisory Services, in 2002.

Given that the effectiveness of the YSOTP has not been comprehensively evaluated, and the concerns about the PPG as a key assessment tool, including its impact on youth, the Representative believes that it is timely for an in-depth, comprehensive examination and reconsideration of the overall policies and procedures of the YSOTP and its assessment and treatment approaches.



As well, the Representative has become aware through the preparation of this report that PPG testing is used in private clinical settings in B.C. on youth. The Representative is forwarding a copy of this report to the regulatory bodies (the B.C. College of Physicians and Surgeons, and the College of Psychologists of British Columbia) for their consideration.

Recommendation 1(a)

That use of PPG testing in B.C. not be reinstated at this time.

Recommendation 1(b)

That MCFD undertake a comprehensive policy and program review of the Youth Sex Offender Treatment Program.

Detail:

The review should consider:

- the effectiveness of various assessment and treatment tools
- new and emerging research on the nature of sexually offending youth, and developments in the management and approach to the treatment of youth sexual offenders
- the requirement for and content of a program of continuing professional development for clinicians
- required updates, enhancements and improvements to the YSOTP, and the appropriate assessment and treatment tools to support the program, that reflect current best practices in the treatment of sexually offending youth.

A progress report should be provided to the Representative by Sept. 30, 2011.

The review should be complete by March 30, 2012.

Consent

By law, a youth who is assessed to be capable on the basis of his level of development and maturity may consent to treatment. However, in certain circumstances, the issue of a youth providing truly voluntary consent can be problematic, including situations where there is an imbalance in power. This is a particular concern for YFPS and the ability of a youth to provide informed consent to PPG testing as part of a treatment program that he has been mandated to take as a consequence of his involvement in the justice system.



The Representative takes a strong interest in ensuring that programs for youth have adequate protections in place for consent, especially as in this case, where a young and often vulnerable population is interacting with persons in authority. Like many medical interventions, PPG is an invasion of bodily integrity and privacy. An individual's constitutional right to liberty and security of the person is a vital consideration whenever programs are provided to vulnerable populations. The Representative is not satisfied that the practice for obtaining consent to PPG testing was as rigorous as it could have been, given the especially intrusive nature of the testing.

Special consideration must be given to youth in these circumstances, given their stage of development in terms of their sexuality and physical, psychological and emotional maturity.

In seeking the consent of a youth to a sensitive, potentially invasive or intrusive procedure such as the PPG, it is necessary to take extra steps to ensure that consent is fully informed and freely given, rather than simple compliance with a court order or avoidance of the disapproval of a clinician where the youth is already under legal scrutiny.

Parents and guardians also play an important role in safeguarding their children's rights. In recognition of the highly intrusive nature of PPG testing, YFPS policy required that the parent's consent be sought and obtained. However, the right to consent must remain, by law, with the youth. There may be circumstances where considerations of privacy and medical confidentiality limit the degree of consultation and involvement of a parent or guardian. The Representative expresses significant concern that the parental consent policy was inconsistently applied across YFPS clinics, and thus did not provide an overall appropriate level of scrutiny for the rights of the child.

Recommendation 2

That should MCFD decide to reinstate the use of PPG testing at any future date, clearer policy and practice be in place in advance to ensure that consent is fully informed and freely given.

Detail:

- Clear and consistent instructions must be developed to explain the procedure, the right to refuse and the consequences of refusal, so that a minor may truly give informed consent.
- In all cases where a youth's parent/guardian is available, the parent/guardian must also be notified and their views obtained, unless there are confidentiality concerns.
- Youth must be given the opportunity, prior to making the decision whether to consent, to consult with publicly provided legal counsel to assist the youth in making an informed decision.



Standards for Research and Program Evaluation

It is positive that YFPS undertakes specific research and evaluation related to its programs and that it has a structure and process in place for the review and approval of research activities. Given the nature of YFPS programs and the highly confidential and personal information contained in its client files, MCFD has an obligation to ensure the highest level of ethical research standards be applied to the review and approval of research activities, particularly where external parties will have access to file data. In the context of the ongoing program of research activities at YFPS, its internal review and approval process must meet the highest ethical standards required for such research.

Recommendation 3

That MCFD review the current YFPS approval process for research activities and make any changes required to ensure it meets ethical research standards equivalent to the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans.

Detail:

The review should consider:

- research review and approval processes for other programs and agencies undertaking similar research using highly sensitive and personal client data
- making the review and approval body external to YFPS or adjusting the membership to include parties external to YFPS and MCFD.

The review should be complete and changes instituted by June 29, 2012.



Conclusion

The issue of the use of the PPG on youth in British Columbia elicits strong reactions. It is a challenging matter to examine, in part because of the need to move past initial reactions that for many are understandably emotional or intense.

Overall, research and studies into PPG testing on youth are very limited. Most research in this area relates to adult offenders. The youth-focused research that does exist presents a sometimes confusing co-mingling of facts and theories – presented by those who support or those who oppose its merit, its effectiveness or its potential benefits.

Clinicians who support the use of PPG testing say that in the absence of harm to the youth receiving it, PPG testing is justified as a tool to potentially help rehabilitate a sexually offending youth, and as such contributes to the safety and protection of the public.

However, others who do not support its use point out that its value or effectiveness as a treatment tool are not proven and that it may potentially cause harm to the youth receiving it.

For some, at the heart of the matter is what even practitioners of PPG testing have long recognized – the deeply personal intrusiveness of this type of testing, potentially compounded when given to a youth who may have been sexually victimized himself.

For others, a more troubling aspect is that government itself, in a position of power and authority over these young offenders, carried out such testing.

The Representative for Children and Youth must also consider other fundamental issues. These include the rights of this particularly vulnerable group, because too often the term "sexual offender" blinds some people to individual rights. Consent issues must be considered, to ensure consent for the test was not only obtained but was true and freely given. As well, problematic ethical considerations are also deserving of the Representative's attention, such as concerns about exposing troubled adolescents to sexually explicit and inappropriate material.

Supporters of PPG testing emphasize that research shows no scientific or clinical evidence of emotional, psychological or physical harm to youth as a result of having experienced a PPG. The lack of proof of harm does not, however, justify its use, as no studies definitively show that it *doesn't* harm youth receiving it.

These are significant concerns with use of the PPG in treating sexually offending youth, unanswered at this time because of a lack of definitive evidence in some areas and persistently troubling questions in others.

With a procedure so invasive, so controversial by its very nature and so questionable in its reliability, great care must be exercised when dealing with a young and often vulnerable population. The greatest of care with what is known at this time means not using PPG testing on youth in British Columbia.



Members of Project Advisory Team

- Dr. Grant Charles is Associate Professor and Chair of Field Education in the School of Social Work at UBC. Prior to coming to UBC, he worked in a variety of mental health, special education and child welfare settings. He has been the treatment director of a number of specialized community and residential treatment programs working with such diverse client groups as adolescent sexual offenders, Aboriginal adolescent solvent abusers and other hard-to-serve young people and their families. He has published extensively on issues relating to at-risk youth and professional practice.
- Stacy Elliott, M.D., is a Sexual Medicine Consultant for Vancouver Coastal Health and a Clinical Professor for the Departments of Psychiatry and Urological Sciences at UBC. Dr. Elliott is the Past Chair of the Canadian Male Sexual Health Council and participates on several national and international advisory boards regarding treatment of sexual disorders.
- Stephen Hart, Ph.D, is a Professor in the Department of Psychology at SFU. Dr. Hart's expertise is in the field of clinical-forensic psychology. He is active in research and consults and provides training in workshops for mental health, law enforcement and corrections and has been qualified to give expert testimony in the superior courts of B.C., Manitoba and Ontario and in several states in the United States.



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YFPS Penile Plethysmograph: Provincial Survey, March 2006 (prepared by YFPS Program Evaluation and Research Group) YFPS Policy and Procedure Manual, Revised September 2, 2009

YFPS Standards and Guidelines for the Assessment, Treatment and Management of Youth Who Have Sexually Offended, December 2002

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List of Interviews

Four members of YFPS Provincial Leadership Team, including the YSTOP Executive Sponsor – October 1, 2010, November 9, 2010 and November 26, 2010 (with members of Project Advisory Team)

YFPS Program Evaluation and Research Branch – October 23, 2010

YFPS Staff – 14 clinicians (out of 36 clinicians province-wide providing services under the YSOTP) between November 9 and November 17, 2010. Those interviewed represented a range of clinical roles (a psychiatrist, psychologists, nurses and social workers) from all eight clinics located across the province:²³

- Burnaby Clinic – two clinicians
- Langley Clinic – two clinicians
- Nanaimo Clinic – three clinicians
- Kamloops Clinic – one clinician
- Kelowna Clinic – one clinician
- Prince George Clinic – two clinicians
- Vancouver Clinic – one clinician
- Victoria Clinic – two clinicians

²³ Eleven YFPS staff were interviewed in person and seven by phone. Written responses were also received from staff at the John Howard Society North Island who provide services to the Courtenay / Campbell River region on a contract arrangement with YFPS.



REPRESENTATIVE FOR
CHILDREN AND YOUTH