Department of Legislative Services

Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 126 (Chair, Finance Committee)(By Request - Departmental - Public Safety and Correctional Services)

Finance Judiciary

Public Safety - Prohibition of Polygraph Examinations by Employers - Exemption

This departmental bill expands a current law exemption from a prohibition against the use of polygraph tests as a condition of employment so that, in addition to a correctional officer *applicant*, the exemption is applied to an individual who is *already employed* as a correctional officer or other employee in a State correctional facility or in any other capacity that involves direct personal contact with an inmate in a State correctional facility. The bill also eliminates an outdated reference to the Baltimore City Jail under the same provisions.

By September 30, 2016, the Department of Public Safety and Correctional Services (DPSCS) must report to the Senate Finance Committee and the House Judiciary Committee on the number of polygraph examinations submitted to or taken by correctional officers and employees of State correctional facilities and the number of grievances filed or complaints made in connection with those examinations.

Fiscal Summary

State Effect: None. The FY 2015 budget contains a FY 2014 deficiency appropriation of $347,000 in general funds to create a polygraph unit in DPSCS, as recommended by a special joint commission, as discussed below. Funding for the new unit continues in FY 2015. Accordingly, DPSCS could handle the bill's expanded polygraph authority with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: DPSCS has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: DPSCS is authorized to require correctional officer *applicants* to pass a polygraph prior to being hired. However, generally, an employer may not require or demand, as a condition of employment, prospective employment, or continued employment, that an individual submit to or take a lie detector or similar test. Specified exceptions from this prohibition include:

- State and local law enforcement officers;
- an individual who applies for employment as a correctional officer at a State or local correctional facility;
- an individual who applies for employment or is employed as a correctional officer at the Baltimore City Jail, the Baltimore County Detention Center, and local detention facilities in Baltimore, Cecil, Charles, Frederick, Harford, and St. Mary's counties;
- individuals who apply for employment or who are employed as correctional officers or other positions involved in direct personal contact with inmates in the Calvert or Washington county detention centers;
- an applicant for employment as a correctional officer with the Anne Arundel County Department of Detention Facilities, or the Caroline County Department of Corrections;
- a communications officer in the Calvert County Control Center; and
- an applicant for employment with the Washington County Emergency Communications Center.

Thus, passing a polygraph examination cannot currently be required as a condition of *continued employment* as a State correctional officer.

Background: On April 23, 2013, a federal grand jury returned an indictment charging 25 individuals, including inmates and 13 correctional officers employed by DPSCS, with conspiring to run operations of the Black Guerilla Family (BGF) gang inside the Baltimore City Detention Center (BCDC) and related facilities. Charges included racketeering, drug distribution, money laundering, victim and witness retaliation, bribery, and extortion. According to the indictment, correctional officers helped leaders of the BGF smuggle cell phones, drugs, and other contraband into State correctional facilities.

In November 2013, an additional 19 individuals, including 14 former and current DPSCS correctional officers, were charged with conspiring to operate the BGF gang inside correctional facilities. With the November 2013 indictment, 44 individuals, including 27 correctional officers, have been charged in the case.

In response to the April 2013 indictments, the Legislative Policy Committee appointed a Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities to look into matters relating to these events. The commission held six public meetings during the 2013 interim. The December 2013 final report of the commission recommended, among other things, that in order to improve the pool of correctional officer applicants and to avoid the hiring of correctional officer applicants with gang affiliations, as soon as practicable, the State begin to polygraph all new correctional officer applicants, consistent with its current authority. The commission further recommended that a deficiency appropriation be provided in the fiscal 2014 State budget to establish a polygraph examination unit within DPSCS in order to handle the expanded polygraph testing. In testimony to the special commission, DPSCS estimated that it would cost $347,019 in fiscal 2014 and $338,982 annually thereafter to create and maintain a polygraph unit within the department.

Currently, when needed, the Department of State Police (DSP) administers polygraph examinations for DPSCS at no charge. DSP advises that work is already underway to assist DPSCS in establishing a DPSCS polygraph unit to handle all future polygraph testing requirements within DPSCS.

According to DPSCS, the initial polygraph upon employment is an effective initial screening tool; however, it does not assist in ensuring that the integrity of an officer remains uncompromised over time. DPSCS believes that this bill will assist the department in preventing corruption in State correctional facilities.

In addition, DPSCS advises that, although the current statute exempts correctional officers in the Baltimore City Jail from the prohibition to require polygraphs as a condition of continued employment, the jail is now under the authority of DPSCS and is referred to as BCDC. Given the transfer of authority and the change in the name of the facility, DPSCS advises that the statute lacks clarity as to whether State correctional officers employed at BCDC can be subject to polygraphs as a condition of their continued employment.

DPSCS currently has 11,076 authorized positions across all agencies within the department. Of that number, 10,495 are filled positions.

State Expenditures: As noted above, the commission recently recommended the establishment of a polygraph unit within DPSCS so that the department can expand its

use of polygraph testing with respect to State correctional officer applicants. The fiscal 2015 budget contains a general fund deficiency appropriation for fiscal 2014 of $1.5 million for a new polygraph unit and an expanded Internal Investigation Unit (IIU) within DPSCS. Of that amount, $347,019 is specifically for the polygraph unit. It includes $266,569 for the salaries and the fringe benefits of a unit supervisor and four polygraph examiners, $53,500 for new equipment, and $26,950 for other operating expenses. The fiscal 2015 budget continues funding for the polygraph unit in fiscal 2015, which will organizationally operate as a unit of IIU.

Accordingly, the department can handle any additional polygraph testing that it chooses to conduct as a result of the bill (on those already employed as correctional officers in a State correctional facility or in any other capacity that involves direct personal contact with an inmate in a State correctional facility) with existing resources. It is assumed that DPSCS would only use the bill's new authority on an as-needed basis.

Additional Information

Prior Introductions: None.

Cross File: HB 173 (Chair, Judiciary Committee)(By Request - Departmental - Public Safety and Correctional Services) - Judiciary.

Information Source(s): Department of Budget and Management, Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - January 13, 2014
ncs/lgc Revised - Updated Information/Updated Budget Information - January 15, 2014
Revised - Senate Third Reader - March 11, 2014
Revised - Enrolled Bill - April 17, 2014

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Public Safety – Prohibition of Polygraph Examinations by Employers – Exemption

BILL NUMBER: SB 126

PREPARED BY: Department of Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS