

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 189
 Finance

(Senator Hough, *et al.*)

Judiciary

State Correctional Facilities - Correctional Officers - Polygraph Examination

This bill *requires*, rather than *authorizes*, that an applicant for a position as a State correctional officer be subject to a polygraph examination before being appointed to the position.

Fiscal Summary

State Effect: General fund expenditures increase by \$141,700 in FY 2016 to increase polygraph capabilities at the Department of Public Safety and Correctional Services (DPSCS). Future year costs reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	141,700	142,100	148,700	155,500	162,800
Net Effect	(\$141,700)	(\$142,100)	(\$148,700)	(\$155,500)	(\$162,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: DPSCS is *authorized* to require correctional officer applicants to pass a polygraph prior to being hired. However, generally, an employer in the State 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.

Chapter 139 of 2014 expanded the above cited exemptions 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.

By September 30, 2016, 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.

Background: In 2014, in response to federal grand jury indictments against several correctional officers, inmates, and the Black Guerilla Family gang inside the Baltimore City Detention Center and related facilities for racketeering, drug distribution, money laundering, victim and witness retaliation, bribery, and extortion, 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 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. Funding was provided in the fiscal 2014 and 2015 budgets. Specifically, the fiscal 2015 budget includes a total of \$347,019 for the unit (\$266,569 in general funds for the salaries and fringe benefits of a unit supervisor and four polygraph examiners, \$53,500 for new equipment, and \$26,950 for other operating expenses).

The Governor's proposed fiscal 2016 budget maintains that same funding level for the Internal Investigation Unit (IIU) within the Office of the Secretary with a reported unit strength of one supervisor and four examiners.

The Department of Legislative Services (DLS) advises that the new polygraph unit does not yet appear to be fully operational. The Department of State Police (DSP) assisted DPSCS in establishing the polygraph unit to handle all future polygraph testing requirements within DPSCS. However, DSP continues to provide some polygraph testing of parolees and sex offenders for DPSCS.

According to DPSCS's Human Resources Services Division, the current number of authorized correctional officer positions departmentwide is 7,132, which includes all levels and ranks. There are currently 328 vacant entry level positions. The overall attrition rate for correctional officers is 8% per year for all levels and classifications.

In calendar 2012, DPSCS conducted 2,917 correctional officer applicant interviews. Of that number, 2,350 were rejected without the need for a polygraph examination. Based on that 2012 data, DPSCS estimates that, under the bill, an estimated 567 applicants will be subject to a polygraph examination annually. DPSCS also anticipates that the polygraph examinations alone will eliminate all but about 215 of the remaining 567 applicants.

State Expenditures: General fund expenditures increase by \$141,656 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost of hiring two additional polygraph examiners in IIU to conduct polygraph examinations within DPSCS. It includes salaries, fringe benefits, one-time start-up costs (including additional polygraph equipment), and ongoing operating expenses (such as training and State and national professional association fees).

This estimate is based on the following information and assumptions:

- national standards indicate that an examiner should conduct no more than two examinations per day for four days per week, with the fifth day devoted to administrative tasks;

- the existing four polygraph examiners can complete up to 1,440 polygraph examinations annually; and
- two additional examiners are needed for the unit to implement the bill.

Position(s)	2
Salaries and Fringe Benefits	\$100,964
Additional Equipment	25,004
Other Operating Expenses	<u>15,250</u>
Total FY 2016 State Expenditures	\$141,656

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Comments: DLS notes that, for a similar bill introduced during the 2014 session, DPSCS advised that, because the fiscal 2015 budget continued the fiscal 2014 general fund appropriation to establish and operate a polygraph unit in the Office of the Secretary, the department could handle the bill's requirements with existing resources.

Additional Information

Prior Introductions: HB 962 of 2014 passed the House and received a hearing in the Senate Finance Committee. No further action was taken on the bill.

Cross File: HB 200 (Delegate Cluster, *et al.*) - Judiciary.

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

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