

LAM_SB882_FAV.pdf

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Support SB 882 - Correctional Services – Correctional Officers – Polygraph Testing

Background:

- There are 18 state correctional facilities operated by the Department of Public Safety and Correctional Services (DPSCS).
- Correctional officers are responsible for the care, custody, and management of the incarcerated population within these facilities.
- One of the application requirements to become a correctional officer, in addition to a comprehensive background investigation, is the successful passage of a polygraph test.
- The pre-employment polygraph test requirement was instituted following the indictment of 24 correctional officers from the Baltimore City Detention Center on corruption charges in 2015. Prior to 2015, utilization of a pre-employment polygraph was optional.
- DPSCS operationalized an Intelligence and Investigative Division in 2016, including a Special Investigations Unit. The Unit, comprised of investigators with extensive experience in complex criminal investigations allowed for the expansion of background investigations to be conducted on applicants and correctional officers.
- No other state surrounding Maryland requires that their correctional officers undergo a polygraph test (PA, WV, DE, DC, and VA).
- Five states have outlawed the use of polygraph testing to screen applicants or state employees (MA, MI, MN, NJ, OR).

The Issue:

- Correctional facilities are struggling to fill correctional officer vacancies across the state, despite offering numerous employment incentives over the preceding years.¹

¹ [Baltimore Sun \(2022\)](#)

- DPSCS is facing staffing shortages, despite having raised salaries more than 22% since 2018 and offering hiring bonuses based on previous employment and the geographic location of the facility.
- The pre-employment polygraph test requirement elongates the interview process and is a deterrent to applicants who may seek similar correctional employment in jurisdictions at the county level or in neighboring states that do not have this requirement.
- Courts have accepted polygraph testing as an unreliable metric to objectively measure deception because numerous factors can contribute to an individual's autonomic arousal response such as increased heart rate, blood pressure, and skin conductivity that is not related to the truthfulness of one's statement and may create inadmissible evidence in court proceedings.
- DPSCS is forced to collapse posts and utilize voluntary and mandatory overtime to maintain safety and security throughout its facilities when a high number of staff are unavailable to work. This results in staff burnout and high overtime costs. In the fiscal year 2021 alone, DPSCS spent over \$140 on overtime.

What SB 882 Does:

- SB 882 alters the language in Correctional Services article §3-215 to state that DPSCS may require a pre-employment polygraph test in the correctional officer hiring process rather than shall require a pre-employment polygraph test.
- SB 882 authorizes the Secretary of DPSCS to adopt regulations for the use of polygraph testing as a complement to the existing rigorous background investigation procedure.
- SB 882 retains the Department's ability to utilize a pre-employment polygraph test in the hiring of correctional officers.

What SB 882 Accomplishes:

- SB 882 will provide DPSCS with another tool to assist them in filling vacant positions in our correctional facilities by making the polygraph test optional in the hiring process as it is an unneeded and scientifically disproven barrier to qualified applicants who wish to serve as correctional officers.
- Reductions in staffing shortages will benefit the well-being of our existing correctional officer labor force, their families, and the incarcerated populations they serve.

AFSCME_FAV_SB882.pdf

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Patrick Moran - President

Testimony
SB 882 – Correctional Services - Correctional Officers - Polygraph Testing
Judicial Proceedings
March 9, 2022
Support

AFSCME Council 3 supports SB 882. This legislation would “authorize” – instead of “require” – the Secretary of Public Safety and Correctional Services to require an individual to pass a polygraph examination before being appointed to serve as a correctional officer in a correctional facility.

For years now, DPSCS has been challenged with hiring the sufficient number of correctional officers needed to appropriately staff the Division of Corrections. Vacancies reached a point where PINS abolishment was used to acknowledge the difficulties in bringing on new employees and reduce the official vacancy rate. Overtime and mandated double shifts have remained an extreme concern, impacting the health and safety of correctional officers and the staff that work with them in the facilities.

While recent efforts have helped increase hiring, more needs to be done to remove obstacles that serve as a deterrent to hiring otherwise qualified individuals. One such obstacle is the presently required use of a polygraph exam with potential new hires. Despite their accuracy being contested by both the National Academies of Science and the American Psychological Association, polygraph exams have been a requirement in the hiring process and a questionable screening method for applicants. Increased nervousness simply due to testing anxiety could disqualify an individual. Remembering a detail which could change a previously given answer could disqualify an individual. Testing anxiety and faulty immediate memory recall should not be disqualifying factors. And using a process that isn't even allowed as evidence into a court of law – but could be used to deny the hiring of an applicant – should not be a determining factor in the hiring of a correctional officer.

AFSCME urges continued wage and benefit enhancements to create the desired outcome of appropriate staffing of our correctional facilities. And we also urge the removal of ineffective yet disqualifying processes like polygraph exams in the hiring process to achieve those staffing goals.

We urge a favorable report of SB 882.

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An employee has the right to a union representative if requested by the employee.
800.492.1996

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Uploaded by: Wayne Hill

Position: INFO



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BILL: SENATE BILL 882

POSITION: LETTER OF INFORMATION

EXPLANATION: This bill would allow the Department of Public Safety and Correctional Services (Department) to determine when a polygraph examination is to be administered to a candidate for a correctional officer position and it would require the Department to adopt regulations related to the authorized use of the polygraph examination.

Comments:

- The Department's Division of Correction (DOC) operates 13 State correctional facilities which house offenders sentenced to incarceration for 18 months and longer. The Department also oversees the Division of Pretrial Detention and Services which operates the Baltimore City Pretrial Complex.
- In 2015, the Maryland General Assembly passed legislation stipulating that all correctional officer candidates "shall" pass a pre-employment polygraph examination. Prior to this bill, the statute stated that the Secretary of the Department "may" require a correctional officer candidate to pass a pre-employment polygraph as a condition of their hire.
- This bill was passed in response to corruption cases stemming from the Baltimore City Detention Center, which has since been demolished.
- Over the past six years, the Department has found that the passage of a pre-employment polygraph is not necessarily indicative as to whether a correctional officer could be prone to undue influences that lead to corruption. There have been instances of correctional officers who have been hired after clearing a polygraph examination that have later been convicted of corruption.
- Since 2015, the Department has taken significant strides not only to improve upon the hiring process but to also bolster its ability to prevent and combat corruption.

- **The Department has made significant improvements to the hiring process to ensure it is hiring qualified and suitable candidates.** Besides the polygraph examination, the Department uses multiple screening tools, including a:
 - psychological examination,
 - background investigation,
 - interviews,
 - physical examination, and
 - drug test to determine suitability for employment as a correctional officer.

- The psychological examination results are carefully evaluated by the Department's licensed psychologist, who makes the final determination on suitability for hire. The evaluation process may require the correctional officer candidate to participate in an in-person or virtual meeting with the psychologist for further assessment.

- In accordance with statutory requirements of COMAR 12.10.01.15, correctional officer candidates must undergo an in-depth background investigation, which involves investigators reviewing and corroborating information about immediate relatives, personal references, residential history, education, employment history, military experience, financial background, illegal drug use, gang affiliation, and criminal history.

- If Senate Bill 882 were to pass, the Department could utilize a pre-employment polygraph to assist in clearing candidates who may have had issues come up during the psychological examination or the background check. The polygraph test screens for six (6) relevant areas; theft; ganginvolvement; domesticviolence; illegal drugs; sexual crimes; and, serious crimes. When warranted, a pre-employment polygraph test can be administered - focusing on the specific area of concern.

- **Since 2016, the Department has significantly bolstered its corruption reduction efforts.** In May 2016 the Department established the Intelligence Investigative Division (IID) - Special Investigations Unit. This Unit is composed of law enforcement officers with experience working on major complex drug, corruption, and homicide investigations. Their investigative experience includes wiretaps, financial transactions, and money laundering money. Since that time the IID Special Investigations Squad has partnered with the FBI, DEA, US Attorney's Office, The Maryland Attorneys General Office, and the Maryland Special Prosecutor.

- The Department has also established an analytics unit, tasked with utilizing certain systems to identify potential employee and inmate fraternization.
- The Department has also ramped up utilization of its Contraband Interdiction Team (CIT), which is a team of correctional staff, highly trained in the area of contraband concealment and recovery, refocused their efforts on targeted and intelligence based searches throughout all correctional facilities. These searches increased from a weekly to a daily basis. With the assistance of the Intelligence Unit, the K9 Unit, and the Special Operations Group (SOG), the CIT has had tremendous success in reducing the contraband within correctional facilities.
- **Requiring all correctional officer candidates pass a pre-employment polygraph has an impact on the length of time it takes to hire a correctional officer.** Mandating the polygraph for all correctional officer applicants limits the eligible pool and deters potential hires by delaying the hiring process.
 - On average, the polygraph adds 21 days to the hiring process from time of conditional offer to hire date.
 - A polygraph may disqualify an otherwise qualified candidate who is nervous or misinterprets a question.

CONCLUSION: The Department of Public Safety and Correctional Services respectfully requests the Committee to consider these reasons when discussing Senate Bill 882.