

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 12  
Judiciary

(Delegates McKay and Wivell)

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State Correctional Facilities - Correctional Officers - Background Check

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This bill alters the requirement that an applicant for a position as a State correctional officer be subject to a polygraph examination before being appointed to the position. Under the bill, the Secretary of Public Safety and Correctional Services must require an individual to pass a polygraph examination *or an extensive background check, or both*. The Secretary must adopt regulations governing the administration of the required polygraph examination and background check.

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Fiscal Summary

**State Effect:** Potential minimal increase in general fund expenditures, as discussed below. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** Chapter 407 of 2015 requires that an applicant for a position as a State correctional officer be subject to a polygraph examination before being appointed to the position. 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 Carroll, 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.

**Background:** Correctional officer vacancies within the Department of Public Safety and Correctional Services (DPSCS) have risen steadily in recent years, from a low of 2.4% in fiscal 2013 to a high of 19.8% as of January 2019. While several factors, such as more stringent polygraph testing requirements and strict drug use standards, have had a negative effect on the number of new officers hired, research has shown that a high State employment rate has led potential candidates away from correctional officer positions in Maryland and across the country.

**State Expenditures:** General fund expenditures for DPSCS may increase minimally depending on how DPSCS modifies its existing hiring process for correctional officers as a result of the bill. DPSCS advises that currently, correctional officer applicants undergo both a background check and a polygraph examination as a part of the hiring process. While the bill does not *require* DPSCS to change its existing process, general fund expenditures may increase minimally to the extent that DPSCS chooses to forego polygraph examinations in lieu of more extensive background checks and needs to hire additional personnel as a result.

DPSCS advises that currently, after a routine investigation (fingerprinting, verification of prior employment history, State and national database check), an investigator conducts a background interview with each applicant. The interview with the investigator takes approximately 20 minutes and is used to verify information provided on the application.

The current polygraph examination supplements the background interview and is approximately 2 to 3 hours, with in-depth questioning regarding information provided on the application. According to DPSCS, each polygraph examination costs approximately \$904.40 (excluding the background investigation).

If, as a result of the bill, DPSCS eliminates the use of polygraph examinations, and instead relies solely on background checks, DPSCS advises that the background investigation process would be restructured to include a more detailed interview session. Such a restructure would reduce the number of applicants that can be processed each day to approximately 50% of the current case load (from 40 applicants per day to 20 applicants per day). This would increase the number of interview days needed each week (from one day to at least two days). As a result, investigators would have fewer days each week available to complete the additional requirements of the background investigation (employment, reference, and criminal checks). Accordingly, additional staff may be needed to handle the increase in workload. Although the extent to which DPSCS chooses to modify its existing process in this way is unknown, the annual salary for a new background investigator is approximately \$49,000.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Public Safety and Correctional Services;  
Department of Legislative Services

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