

**SUBJECT:** No retaliation against TDCJ employees for refusing polygraph exam

**COMMITTEE:** Corrections — favorable, with amendment

**VOTE:** 7 ayes — Hightower, Allen, Alexander, Edwards, Gray, Hupp, Marchant  
0 nays  
2 absent— Farrar, Serna

**WITNESSES:** For — Richard Simmons, Deborah Louder, Dee Simpson and Toby Tobias, American Federation of State, County and Municipal Employees; B.J. Browning and Jack Means, Texas Conference of Police & Sheriffs; Bill Anderson, Midland Sheriffs Association; Roger Blakes; Billie Lueck  
Against — None

**BACKGROUND :** A Texas Department of Criminal Justice (TDCJ) policy requires certain employees to take polygraph examinations in cases of complaints involving escape attempts by inmates, drugs, weapons or other contraband. Employees who refuse to take the test can be fired.

**DIGEST:** HB 1422, as amended, would prohibit TDCJ from suspending, discharging or discriminating against employees who refuse to take a polygraph examination conducted as part of an investigation into a written complaint.  
The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS SAY:** HB 1422 is needed to correct an unacceptable policy at TDCJ. Terms and conditions of employment should never be dependent on the results of a polygraph exam, much less an employee's willingness to submit to such an exam, because polygraph results are unreliable. Polygraphs are inadmissible as evidence in Texas courts. The Legislature has prohibited the Department of Public Safety from using the exams to investigate their officers and has severely limited the use of polygraphs in certain police and sheriff's departments. There is no valid reason to treat TDCJ employees differently from other law enforcement officers.

Internal policies come and go with changes in administration. TDCJ could change its policy on polygraphs now, but that is no guarantee that the old policy would not be reinstated in the future. HB 1422 would show that the Legislature will not tolerate state agencies using harassing tactics with their employees.

OPPONENTS  
SAY:

HB 1422 is unnecessary because TDCJ simply could be directed to change its administrative policy on refusals to submit to polygraph tests. The department could incorporate due process provisions to ensure that a test was warranted. Prisons are not ordinary places of employment, and special measures may be necessary to gather information about prison events or complaints. In many instances, there may be good cause to require an employee to submit to an exam. TDCJ should be allowed some discretion in exercising its legitimate management responsibilities.

OTHER  
OPPONENTS  
SAY:

HB 1422 should be extended to cover all Texas state employees rather than being limited to workers at TDCJ.

NOTES:

The committee amendment would make the proposed provision applicable to all TDCJ employees, not just correctional officers.