

BILL ANALYSIS

Senate Research Center
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S.B. 358
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Code of Criminal Procedure allows judges to assign community supervision (colloquially known as probation) to criminal defendants in certain circumstances. As a condition of probation, these defendants are often required to submit to regular polygraph testing in which they are asked about the other conditions of the probation. For example, the individual may be asked whether he has left the state in the past 30 days, or whether he has failed any drug tests. If the polygraph indicates that the individual may be lying, prosecutors sometimes begin proceedings to revoke the probation.

Polygraph testing is the subject of much debate, but American courts are nearly unanimous in refusing to admit polygraph results as evidence in court. For 60 years, the highest criminal court in Texas, the Court of Criminal Appeals, has been consistent and emphatic in its position that these tests are unreliable. In fact, the court finds the tests to be so untrustworthy that it will not allow Texas courts to admit the results even when the defendant consents to the use of the results as evidence.

Despite the Court of Criminal Appeals' consistent rejection of polygraph evidence, some investigators and prosecutors have argued that a failed polygraph test is a sufficient basis upon which to revoke community supervision. The court rejected this argument in a November 2012 decision, *Leonard v. Texas* (No. PD-0551-10). S.B. 358 amends the Code of Criminal Procedure to bolster the court's opinion and make it clear that Texas judges may not revoke community supervision solely on the basis of polygraph testing results.

As proposed, S.B. 358 amends current law relating to the use of a polygraph statement as evidence that a defendant has violated a condition of release on community supervision.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5(b), Article 42.12, Code of Criminal Procedure, as follows:

(b) Prohibits a court from proceeding with an adjudication of guilt on the original charge if the court finds that the only evidence supporting the alleged violation of a condition of community supervision is an uncorroborated polygraph statement. Provides that the determination to proceed with an adjudication of guilt on the original charge is reviewable in the same manner as a revocation hearing conducted under Section 21 (Indictment and Information) in a case in which an adjudication of guilt has not been deferred. Makes nonsubstantive changes.

SECTION 2. Amends Section 21(c), Article 42.12, Code of Criminal Procedure, as follows:

(c) Prohibits the court from revoking the community supervision of a defendant if, at the community supervision revocation hearing, the court finds that the only evidence

supporting the alleged violation of a condition of community supervision is an uncorroborated polygraph statement. Makes nonsubstantive changes.

SECTION 3. Provides that the change in law made by this Act applies to a hearing held under Section 5 (Family Violence Prevention) or 21, Article 42.12, Code of Criminal Procedure, on or after the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2013.