

SUBJECT: Barring police demand of polygraph exam for victims of certain sex crimes

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Place, Talton, Farrar, Greenberg, Hudson, Nixon, Pickett, Pitts, Solis

0 nays

WITNESSES: *(On original bill)*

For — Mark Clark, Combined Law Enforcement Association of Texas; Lacey Sloan, Texas Association Against Sexual Assault, Sandra Canfield, Houston Area Women's Center.

Against — Gordon W. Moore, Texas Association of Law Enforcement Polygraph Investigators; Ernie Hulsey, Texas Association of Polygraph Examiners; Charles Johnson, Texas Police Chiefs Association; Julie O'Brien.

On — Michael C. Gougler, Department of Public Safety; Dan Smith, Sheriffs Association of Texas Legislative Committee, Bryan M. Perot, Texas Polygraph Examiners Board.

DIGEST: CSHB 126 would prohibit peace officers from requiring complainants in certain sexual-offense cases to undergo a polygraph (lie detector) exam. CSHB 126 would apply in cases of sexual assault, aggravated sexual assault, indecency with a child and prohibited sexual conduct (incest). Prosecutors could administer a polygraph exam of complainants in these case if the complainant confirmed in writing that the exam was voluntary. A complaint could not be dismissed because of the absence of an exam or because of the results of the exam. CSHB 126 would take effect September 1, 1995.

SUPPORTERS SAY: When victims of sex crimes are coerced, subtly or otherwise, into taking polygraph exams when trying to press a case, they become victims a second time. Victims are given the message that police do not believe them and are reluctant to prosecute. CSHB 126 would address abuses of

polygraph exams by law enforcement officers in sex crime cases while allowing prosecutors to use them within specified limits. Asking victims to take a polygraph test sends the message, sometimes correct, that prosecution of the offender depends on the test result. This in effect coerces the victims into taking the test.

Prosecution of serious crimes should not be based on an unreliable test that probably would be inadmissible in court. The tests are heavily influenced by a person's emotions, which in the case of sex crime victims may be understandably disturbed. When investigations are dropped on the inconclusive or inaccurate result of a polygraph exam given to a distraught victim, rapists and other criminals go free and endanger other victims.

Sex crimes are the only class of crimes in which some law enforcement officers routinely require victims to take polygraph exams. Yet studies show that rape victims are no more likely to falsely report a rape than other crime victims. Some peace officers abuse authority by issuing blanket directives that sex crime victims in certain circumstances, such as those who knew their assailant or are teenagers, must take the tests.

Polygraph tests themselves can be intimidating and traumatic, discouraging rape victims from pressing charges if they know police will demand such a test. Statistics show rape to be one of the most underreported crimes, with some estimates showing that nine out of 10 rapes are unreported. If victims know they can be coerced into taking a polygraph exam, even more rapes and other sex crimes may go unreported.

The committee substitute addresses the concerns of many of those who opposed the original bill, which would have flatly prohibited the use of polygraph exams for complainants in sex crime cases. The committee substitute would only restrict use of polygraph exams by police and other peace officers. The bill would allow prosecutors, who are more familiar with what is necessary to prosecute a case, to ask a victim to take a polygraph test as long as the victim understands that the test is voluntary and that the a case cannot be dismissed based on test results. It is important to preserve this option because being able merely to *ask* a person to take a polygraph is often a useful tool for prosecutors to elicit the truth.

Law enforcement officers would retain the authority to use polygraph exams in appropriate cases, such as arson.

OPPONENTS
SAY:

CSHB 126 would unwisely restrict the use of polygraph exams in law enforcement investigations into allegations of sex crimes and could be the first step in restricting its use for other crimes.

CSHB 126 is an overreaction to stories about the abuse of polygraph exams by some law enforcement officers. Most law enforcement officers use the exams for sex crime victims only in rare instances and only when other evidence points to inconsistencies in an alleged victim's story. For instance, one investigator reports polygraphing only two of 100 alleged victims of a sex crimes.

Allowing police and other law enforcement officers to use polygraph exams for sex crime investigations when necessary helps expedite an investigation and protect the rights of the accused, who can become a victim if falsely accused of a crime such as rape. Alleged sex crime victims have made false allegations — especially in cases of alleged acquaintance rape — or dropped charges after taking or being asked to take a polygraph exam. The ability to ask alleged victims to take polygraph exams also deters some from making false accusations to police.

CSHB 126 would unfairly restrict the use of what can be a reliable law enforcement investigatory tool. Studies show polygraph exams to be reliable if done by properly trained personnel with properly developed instruments and if examinees are fit for the tests.

Asking alleged victims of sex crimes to take polygraph exams is no different than asking alleged victims of other crimes such as arson or burglary to take a test. CSHB 126 could lead to attempts to restrict the use of polygraph exams in the investigation of other crimes.

OTHER
OPPONENTS
SAY:

CSHB 126 is unnecessary because currently no one can be *required* to take a polygraph test.

NOTES:

The original bill would have prohibited both peace officers and prosecutors from requesting or requiring a polygraph exam of persons charging sexual assault, aggravated sexual assault, indecency with a child or prohibited sexual conduct (incest).

SB 222 by Zaffirini, which is identical to the committee substitute for HB 126, passed the Senate by voice vote on March 21 and has been referred to the House Criminal Jurisprudence Committee.

The 73rd Legislature considered a similar bill, SB 482 by Zaffirini, which would have prohibited law enforcement officers or prosecutors from requiring the use of polygraph exams to file complaints. SB 482 passed the Senate and was placed on the General State Calendar but died without being considered by the House. In 1989 Gov. Bill Clements vetoed a similar bill, HB 1701 by Hinojosa, citing an amendment relating to correctional employees taking polygraph tests as the reason for his veto.