



CONCERNS ABOUT SB 519 (Polygraphs)

Basis For "Oppose" Position – 3/14/17

General Concerns

1. The use of polygraphs in job screening settings has never been shown to be scientifically reliable;
2. Subjecting law enforcement to a lower employment standard than that of general employees has almost never proven to be a good idea.
3. The scientific evidence is overwhelming that "guilty" individuals can defeat polygraphs with minimum training, and that the rate of polygraph failure for "innocent" individuals can approach 50%.
4. Anecdotal experience in states with and without pre-employment polygraph screening for police is that there are higher rates of misconduct and other employment failures in states allowing polygraphs, suggesting that #3 is a very real phenomenon.
5. We're in the middle of the worst national police recruitment crisis of our lifetimes, making the use of a tool that wrongly and disproportionately screens out "innocent" potential applicants even more disturbing.

Specific Basis Supporting ORCOPS Opposition

1. Among a large number of scholarly articles critical of the use of polygraphs for screening purposes, the National Academies of Science Engineering and Medicine released a report in 2003 that summed up the public's overconfidence in polygraph results thusly: "... it would be far wiser for law enforcement and security agencies to minimize use of the tests and to find strategies for reducing threats to public safety and national security that rely as little as possible on the polygraph." Faigman, David L., Stephen E. Fienberg, and Paul C. Stern. "The Limits of the Polygraph." *Issues in Science and Technology* 20, no. 1 (Fall 2003).
2. A witness in favor of SB 1555 (Michael Roberts) noted that polygraphy was more "cost effective" than traditional investigations, causing us concern that despite the measure's intentions many cash-

strapped agencies will see polygraphs as an acceptable substitute for more definitive background test measures.

3. At least one account (for which we are trying to track down the author in order to confirm methodology) has indicated a racial bias in polygraph assessment, whereby black examinees were 28% more likely to be falsely identified as being deceptive than their white counterparts and 36% less likely to be correctly identified as being truthful. Applying such a test to pre-employment screenings for law enforcement officers could severely inhibit local efforts to diversify units. Barland, Gordon H. "Analysis of DPI Studies." Department of Defense Polygraph Institute, August 1990. <https://antipolygraph.org/documents/dodpi-racial-bias-study.pdf>
4. The general rule is that polygraph evidence is inadmissible in a civil or criminal proceeding under the Oregon Evidence Code. See *State v. Brown*, 297 Or 404, 687 P2d 751 (1984). The Oregon Supreme Court engaged in a very detailed analysis of why polygraphs are unreliable evidence that should be kept out of a courtroom. <https://www.courtlistener.com/opinion/1389576/state-v-brown/>
5. Federal law prohibits polygraphs in most private employment settings. <http://www.dol.gov/whd/regs/statutes/poly01.pdf>
6. The Supreme Court has ruled that polygraph evidence is inadmissible, finding that there simply is no consensus that polygraphs are reliable. <https://www.law.cornell.edu/supct/html/96-1133.ZS.html>
7. One of the more thorough reviews of polygraph scientific literature was conducted by the National Research Council for the Department of Energy in 2003. The heart of NRC's conclusion was that "Polygraph testing yields an unacceptable choice for DOE employee security screening between too many loyal employees falsely judged deceptive and too many major security threats left undetected. Its accuracy in distinguishing actual or potential security violators from innocent test takers is insufficient to justify reliance on its use in employee security screening in federal agencies." <http://www.nap.edu/read/10420/chapter/2#4>

The study reached many other conclusions, including one on screening versus specific incident testing:

"Because actual screening applications involve considerably more ambiguity for the examinee and in determining truth than arises in specific-incident studies, polygraph accuracy for screening purposes is almost certainly lower than what can be achieved by specific-incident polygraph tests in the field."

The NRC somewhat famously concluded:

"Almost a century of research in scientific psychology and physiology provides little basis for the expectation that a polygraph test could have extremely high accuracy. Although psychological states often associated with deception do tend to affect the physiological responses that the polygraph measures, these same states can arise in the absence of deception. Moreover, many other psychological and physiological factors also affect those responses. Such

phenomena make polygraph testing intrinsically susceptible to producing erroneous results.”

8. One other thorough review of polygraph literature was done in 2004 by the British Psychological Association. The study focused in part on the problem of false positives: “Depending on the review, between 53 per cent and 78 per cent of innocent suspects were correctly classified and between 11 per cent and 47 per cent were incorrectly classified.”
http://www.bps.org.uk/sites/default/files/documents/polygraphic_deception_detection_-_a_review_of_the_current_scientific_status_and_fields_of_application.pdf
9. There are any number of effective “countermeasures” that can be used to foil a polygraph examination. One notable example of such a study was conducted by Floyd “Buzz” Fay, who had been falsely convicted of murder on the basis of a failed polygraph examination. Fay became a polygraph expert and, while in prison, coached 27 inmates on how to defeat a Control Question polygraph examination. All of the inmates were actually guilty, and shared the details of their crimes with Fay. After only 20 minutes of coaching, 23 of the 27 inmates passed polygraph examinations.
<https://www.theguardian.com/science/2012/apr/22/lie-detector-fallibility-criminal-psychology>
10. Newer research suggests that in addition to traditional countermeasures, polygraph test-takers can defeat the test through memory suppression.
<http://www.sciencedirect.com/science/article/pii/S0301051113001154>
11. The list of serial killers and other major criminals who passed polygraphs is a long one. Gary Ridgeway murdered at least 49 women in Oregon and Washington and passed a polygraph.
https://en.wikipedia.org/wiki/Gary_Ridgeway.
12. The most common type of polygraph examination follows Control Question approach. An article published in 2001 in the *Journal of Forensic Psychology Practice* reviews the scientific literature on the Control Question approach, and concludes:

“The theory is based on naive, implausible assumptions indicating (a) that it is biased against innocent individuals and (b) that it can be beaten simply by artificially augmenting responses to control questions. Although it is not possible to adequately assess the error rate of the CQT, both of these conclusions are supported by published research findings in the best social science journals (Honts et al., 1994; Horvath, 1977; Kleinmuntz & Szucko, 1984; Patrick & Iacono, 1991). Although defense attorneys often attempt to have the results of friendly CQTs admitted as evidence in court, there is no evidence supporting their validity and ample reason to doubt it. Members of scientific organizations who have the requisite background to evaluate the CQT are overwhelmingly skeptical of the claims made by polygraph proponents.”

<https://www.ncjrs.gov/App/publications/Abstract.aspx?id=186441>
13. Studies going back many years find “unacceptably high error rates” for polygraphs.
<http://www.nature.com/nature/journal/v308/n5958/abs/308449a0.html>.