

**SUBJECT:** Random drug testing of prison inmates

**COMMITTEE:** Corrections — favorable, without amendment

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

**WITNESSES:** For — None  
Against — None  
On — Wayne Scott, Texas Department of Criminal Justice; Clint Winters, Texas Performance Review, Comptroller's Office

**BACKGROUND :** The Texas Department of Criminal Justice (TDCJ) requires drug testing of inmates when there is “reasonable suspicion” of drug use. An inmate who tests positive twice for the presence of a controlled substance faces penalties that range from a reprimand to permanent loss of good time credits.

**DIGEST:** HB 438 would require TDCJ to implement a mandatory random drug testing program for inmates in state prisons and jails. The tests would have to cover a minimum of 5 percent of all inmates annually. HB 438 would require TDCJ to use the most cost-effective means to perform the testing and direct it to actively seek grants from the federal government and other sources to expand the program. TDCJ would have to implement the program and begin drug testing of inmates by January 1, 1998.  
HB 438 would take effect September 1, 1997.

**SUPPORTERS SAY:** HB 438 would help TDCJ address the serious and growing problem of drug use in prison by instituting a random drug-testing program. A growing body of evidence documents the fact of drug use and abuse in Texas prisons, a practice that may have disastrous implications for state efforts to rehabilitate prisoners.

Random drug testing of inmates in other states has proven to be an inexpensive and effective security tool for managing prisons. Keeping drugs out of prison helps protect the safety of prison employees and reduces the chance of employee-inmate collusion. Random drug testing not only serves as a deterrent to drug use in prisons but also helps identify actual incidence of drug use and thereby pinpoints problem areas for further investigation. Under HB 438 TDCJ would establish a baseline for annual comparisons of security integrity at each prison.

HB 438 would present no constitutional problems because inmates forfeit all constitutional rights except due process when incarcerated. Prisons routinely conduct random searches of inmate's cells without any constitutional impediment. Major employers throughout the country regularly use random drug testing of workers without constitutional problems by scheduling testing according to random computer assignments. TDCJ could easily implement this type of computer-run program to avoid any possibility that the testing would be used to harass or retaliate against prisoners. The reasonable suspicion standard now in use requires reporting by guards who may be in on drug smuggling schemes. Computer programs would eliminate that possibility.

Under a new federal program, states that conduct random drug testing of inmates may be eligible for substantial grants. HB 438 would allow Texas to tap into a funding source for this much needed program, as recommended by the Texas Performance Review in its latest report, *Disturbing the Peace*. Even without a federal grant, the Comptroller's Office estimates that the total cost of a random drug testing would be less than \$100,000, for which TDCJ already has ample funding under its appropriation for substance abuse treatment. The LBB projects no additional cost to implement the bill.

OPPONENTS  
SAY:

Prison officials could easily influence computer selections and use drug testing to harass and retaliate against prisoners who file complaints or request investigations of abuses within the prison. Random drug testing is an unnecessary infringement on inmates' rights, which are already severely constrained. TDCJ currently can require testing based on a reasonable suspicion standard that has proven to be an effective tool in detecting drug use. The money spent to perform random drug tests on inmates would be better spent on substance abuse programs for inmates.

HB 438  
House Research Organization  
page 3

OTHER  
OPPONENTS  
SAY:

HB 438 has laudable objectives but could hamstring TDCJ with its implementation requirements, since the agency's budget contains no specific appropriation for a random drug testing program.

NOTES:

Rep. Marchant plans to introduce a floor amendment that would make HB 438 contingent on the receipt of federal funding.