Maryland General Assembly
Department of Legislative Services

Reproposed Regulations
Department of Public Safety and Correctional Services

(DLS Control No. 18-001)

Overview and Legal and Fiscal Impact

These regulations create a department – wide, uniform process under which an inmate may be disciplined for non – compliance with a rule, policy, procedure or law.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Public Safety and Correctional Services:

Division of Correction: Inmate Discipline: COMAR 12.02.27.01 through .40
Operations: Inmate Disciplinary Process: COMAR 12.03.01.01 through .34
Patuxent Institution: Inmate Discipline: COMAR 12.12.30.01 through .40
Pretrial Detention and Services: Resident Discipline: COMAR 12.16.02.01 through .40

Legal Analysis

Background

The original proposed regulations were filed with the Joint Committee on Administrative, Executive, and Legislative Review in July 2017 and published in the *Maryland Register* on September 15, 2017.

Subsequently, the committee received correspondence from stakeholders expressing concerns about the regulations. The concerns included that the regulations:

- fail to address Maryland's excessive reliance on segregation and the disproportionate placement of persons with serious mental illness or disability, or both, in segregation;
- invite selective and arbitrary enforcement of overly broad and vague prison rules;
- allow for serious harm and risk of harm to incarcerated persons, especially those with disabilities and youth, and fail to accommodate persons with disabilities; and

- expose the State to legal claims under the 8th Amendment of the U.S. Constitution's prohibition against cruel and unusual punishment, Article 25 of the Maryland Constitution, and the Americans with Disabilities Act.

In order to ensure that these concerns were addressed, by letter dated October 27, 2017, the committee notified the Department of Public Safety and Correctional Services of its intention to conduct a more detailed study of the regulations and requested that the department delay final adoption of the regulations.

The department states that it is seeking to improve the way segregation is used as a method for inmate discipline. In 2015, the department requested that the National Institute of Corrections (NIC) provide technical assistance and recommendations for the improvement of the department's inmate discipline policies. According to the department, these regulations are one strategy within a three part plan to bring Maryland into line with NIC's recommendations for best practice policy regarding inmate discipline. As described in the department's February 2016 Report on the Implementation of the National Institute of Corrections Recommendations, the three part plan includes amending regulations to reduce the use and length of an inmate's stay on segregation as well as developing structured housing for inmates who are chronically violent, seriously mentally ill, or both. The department states that in 2017, it initiated separate structured housing programs for chronically violent inmates and inmates who are seriously mentally ill.

The department indicates that the reproposed regulations substantially address the concerns raised by stakeholders regarding the original proposal.

Summary of Regulations

This action repeals COMAR 12.02.27 – Inmate Discipline, Division of Correction, COMAR 12.12.30 – Inmate Discipline, Patuxent Institution; and COMAR 12.16.02 – Resident Discipline, Division of Pretrial Detention and Services, and creates a new COMAR 12.03.01 – Inmate Disciplinary Process, which applies to all units within the department.

The repealed chapters essentially restate the same substance with minor differences in terminology unique to the respective departmental unit. The new regulations update and clarify existing provisions, eliminate duplication, and create a consolidated process for inmate discipline for all applicable departmental units.

Changes made by this reproposal to the original proposed regulations include:

- further revising the disciplinary matrix;

- eliminating the mandatory sanction of restricted visitation and limiting the amount of time a visitation restriction may be applied;

- eliminating a hearing officer's authorization to override the matrix by increasing an inmate's length of discipline beyond what the matrix allows; and

- Reducing the maximum length of disciplinary segregation for certain rule violations.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 2–109(c), 3–205, 4–208, and 5–201 of the Correctional Services Article as statutory authority for the regulations. Section 2–109(c) authorizes the Secretary of Public Safety and Correctional Services to adopt regulations to govern the policies and management of correctional facilities in the department. Section 3–205 authorizes the Commissioner of Correction to adopt regulations for the operation and maintenance of units in the Division of Correction, including regulations that provide for the discipline and conduct of inmates. Section 4–208 requires the secretary to adopt regulations to carry out the subtitle relating to Patuxent Institution. Section 5–201 provides that the Division of Pretrial Detention and Services has the same authority with regard to the custody of its inmates and the operation of the Baltimore City Detention Center as the Division of Correction has with regard to the custody of its inmates and the operation of the Division of Correction.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations reflect current practice and, thus, have no fiscal impact. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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