

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Public Safety and Correctional Services  
(DLS Control No. 15-423)**

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**Overview and Legal and Fiscal Impact**

The regulations repeal and replace outdated language concerning requesting, approving, processing, and arranging inmate marriages in a correctional facility, including Patuxent Institution.

The regulations present no legal issues 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 Marriage: COMAR 12.02.21.01 - .07

Patuxent Institution: Special Activities: COMAR 12.12.17.07

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**Legal Analysis**

**Summary of Regulations**

The regulations' stated purpose is to establish procedures for requesting, processing, approving, arranging, and conducting the marriage of an inmate at a correctional facility (COMAR 12.02.21.01A and B). The regulations state that they are not intended to infringe on the statutory right of an inmate to marry but to govern how the right may be exercised when the marriage involves an inmate in a departmental correctional facility (COMAR 12.02.21.01C).

In order to be eligible, an inmate and the inmate's intended spouse must comply with the minimum requirements for marriage eligibility established by State and local statute and regulation (COMAR 12.02.21.03A). The regulations prohibit an inmate from marrying an employee (including interns and volunteers) or another inmate (COMAR 12.02.21.03B). The regulations provide that the inmate must be mentally competent according to State law (COMAR 12.02.21.03C).

The regulations authorize an individual planning to marry an inmate to request and be granted access to the inmate's correctional history, according to procedures established under the regulations (COMAR 12.02.21.04).

The regulations require the inmate and the intended spouse to independently submit written requests to marry (COMAR 12.02.21.05A). The requests are to be submitted to the inmate's managing official in a format established by the official, which must include specified information, including names and dates of birth, the type of ceremony, correctional or law enforcement volunteer history, and a statement from the intended spouse that the intended spouse has reviewed or declines to view the inmate's correctional history (COMAR 12.02.21.05B). The managing official is authorized to approve up to three sessions of pre-marital counseling to the couple and an approved officiant (COMAR 12.02.21.05C). Only the managing official at the inmate's correctional facility can authorize a marriage of an inmate in the facility (COMAR 12.02.21.05D). A managing official may not require the chaplain or other religious leader under the official's authority at the correctional facility to participate if there is a religious constraint (COMAR 12.02.21.05E).

Within five days of receiving the written requests, the managing official must designate a member of the facility's staff to process the marriage request (COMAR 12.02.21.06A). The designee must review the requests, establish that the commitment to marry is agreed to by both parties, does not constitute a threat to the security or operation of the facility, and complies with the regulations (COMAR 12.02.21.06B(1) and (2)). The designee is directed to consider specified information, including the inmate's criminal record and correctional history, compliance with the inmate's case plan, the inmate's correctional adjustment history, any existing detainers or pending charges against the inmate, and the inmate's physical and mental health. If the inmate is a Patuxent inmate, the designee must also consider the inmate's treatment plan and mental competency. Finally, the designee must consider if the intended spouse had any involvement in correctional or law enforcement related services that may have placed that individual in contact with the inmate (COMAR 12.02.21.06B(2)(b)). After reviewing the information, the designee must determine if the requested marriage meets eligibility and minimum requirements under the regulations and would not pose a risk to security or orderly operation of the facility (COMAR 12.02.21.06C). If the designee determines that the requirements are not met, the designee must prepare a written recommendation to deny the request, include the basis for the denial, and forward the recommendation to the managing official (COMAR 12.02.21.06D). The managing official may accept the recommendation of denial and have the designee advise the couple in writing or not accept the recommendation and advise the designee to continue to process the request as submitted or with modifications (COMAR 12.02.21.06E).

The managing official's authorization to marry is contingent on receipt and approval of the information required under the regulations (COMAR 12.02.21.07A). The designee, within 5 business days of determining that the request meets the conditions, must provide the inmate with a copy of an Inmate Marriage Information sheet and instruct the inmate on its completion, including that the authorization is contingent on receipt of all required information and that the inmate and the intended spouse need to complete and submit the sheet at least 10 days before the requested marriage date (COMAR 12.02.21.07B(1)). The designee must advise the inmate that the inmate or intended spouse are responsible for the expenses of the marriage ceremony, the intended spouse is responsible to obtain the marriage license and to provide it to the coordinator, the intended spouse must obtain the services of an officiant, the intended spouse must obtain a list of items the officiant will need, and that a maximum of four guests may be permitted to attend the ceremony, not including the spouse and the officiant, but including any minor. All attendees are

required to follow all relevant policies and procedures. The maximum time permitted for conducting the ceremony is two hours (COMAR 12.02.21.07B(2)). The designee must present the information to the managing official for review (COMAR 12.02.21.07F). On receipt of the above information, the managing official must review the information and notify the designee that the information is acceptable and authorization is granted or unacceptable and the authorization is denied (COMAR 12.02.21.07G). If it is a denial, the designee must notify the inmate and intended spouse in writing, including the reason for the denial. Unless the inmate demonstrates a significant change in the circumstances on which the denial is based, the denial is final (COMAR 12.02.21.07H). The regulations preserve the managing official's authority to limit the number of guests, deny attendance to certain guests, reduce the time permitted for the ceremony, deny the use of items to be used by the officiant, approve the date and time requested for the ceremony, and establish an alternate date and time for the ceremony (COMAR 12.02.21.07I).

If authorization is granted, the designee must notify the shift supervisor of the date and time of the ceremony, arrange for entry to the facility by the intended spouse, officiant, and approved guests, if appropriate, register the inmate's wedding ring with the facility property officer, and arrange for approved post-ceremony visitation (COMAR 12.02.21.08B). After the ceremony, the inmate and the inmate's spouse must immediately obtain a copy of the certificate of marriage signed by the officiant and provide a copy to the designee within five days. The designee must forward the certificate and all marriage documents to Case Management for inclusion in the inmate's file (COMAR 12.02.21.08C and D).

If the inmate receives authorization but then is subject to a non-disciplinary transfer to another institution, the inmate, if the inmate intends to continue with plans to marry, is required to notify the managing official at the receiving institution as soon as possible of the intent to marry (COMAR 12.02.21.09A). The managing official must obtain and review the documentation (COMAR 12.02.21.09B). The managing official at the receiving institution is authorized to overturn the previous authorization to marry and deny the request or modify it (COMAR 12.02.21.09C).

If the inmate receives authorization but then is subject to a disciplinary transfer to another institution, the inmate is required to initiate a new request, if the intent to marry remains (COMAR 12.02.21.10).

If an inmate is housed in a correctional facility but under federal or another state's jurisdiction, the inmate is required to comply with the policy, procedure, statute, and regulation of the sending jurisdiction and, if a federal detainee, obtain authorization from the United States Marshall and the prosecutor in the detainee's case (COMAR 12.02.21.11A). The managing official or designee is required to include contact with and input from the inmate's responsible jurisdiction as part of the processing of a request (COMAR 12.02.21.11B).

If an individual who is not in the custody of the department and married to an inmate is subsequently placed in the custody of the department, the married couple may not be housed in the same dormitory or housing unit (COMAR 12.02.21.12A). A married couple may not be housed in the same dormitory or housing unit (COMAR 12.02.21.12B).

Finally, the regulations require that Patuxent Institution comply with the above provisions if an inmate at Patuxent requests to marry (COMAR 12.12.17.07).

### **Legal Issues**

The regulations present no issues of legal concern.

### **Statutory Authority and Legislative Intent**

The department cites § 2-109(c) and § 4-208 of the Correctional Services Article as authority for the regulations. Section 2-109(c) requires the Secretary of Public Safety and Correctional Services to adopt regulations to govern the policies and management of correctional facilities in the department. Section 4-208 requires the Secretary to adopt regulations to carry out the title covering Patuxent Institution.

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 have no impact on State or local governments. 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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