

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 432 (Chairman, Judiciary Committee)
(By Request – Departmental – Public Safety and Correctional Services)

Judiciary

Correctional Services - Adoption of Rules and Other Statements

This emergency departmental bill excludes rules and statements adopted by the Secretary of Public Safety and Correctional Services pertaining to the routine internal management of correctional facilities in the Division of Correction (DOC) from requirements of the Administrative Procedure Act. The bill also excludes the classification, discipline, or conduct of inmates in DOC, the Division of Pretrial Detention and Services, or the Patuxent Institution from the same requirements.

Fiscal Summary

State Effect: None. The changes are procedural in nature and would not directly affect governmental finances.

Local Effect: None.

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: Regulations proposed by DOC are required to be promulgated in accordance with the notice and comment provisions of the Administrative Procedure Act. Under the Administrative Procedure Act's requirements, an agency may not adopt a proposed regulation until it has been submitted to the Attorney General and the Joint

Committee on Administrative, Executive, and Legislative Review (AELR), published in the *Maryland Register*, and given the public the opportunity for comment.

Excluded from this requirement are guidelines pertaining to the routine internal management of correctional facilities in DOC.

Background: In a recent unreported opinion (*Ernest Leonard v. Secretary of the Department of Public Safety and Correctional Services*, September Term, 2003, no. 271), the Court of Special Appeals held that a DOC directive relating to the revocation of an inmate's diminution of confinement credits for failure to participate in mandatory remediation programs, and another DOC directive relating to the restoration of revoked diminution credits, were invalid because they were not promulgated in accordance with the provisions of the Administrative Procedure Act. The court directed that 709 diminution credits that had been revoked from the inmate be restored, which resulted in the inmate's release from custody.

The court noted that the Administrative Procedure Act defines a regulation as a statement by a governmental unit that has general application; has future effect; is adopted by the unit to carry out a law or to govern the organization, procedure, or practice of the unit; and is in any form, including a guideline, rule, standard, etc. The court concluded that the directives have general application to inmates participating in the mandatory remediation programs, have future effect on inmates and their diminution credits, and govern DOC's procedures by which an inmate's release date is determined.

Some of DOC's current policies and rules have been promulgated as regulations, while many others are contained in DOC directives. DPSCS believes that promulgating all directives as regulations would prove extremely burdensome to DOC. DOC does not believe that the promulgation requirements of publication and opportunity for public comment would be beneficial to the implementation of policies and rules concerning these matters, inasmuch as they constitute matters of internal prison administration.

The Division of Pretrial Detention and Services and the Patuxent Institution are separate units of DPSCS and are not departmental entities within DOC.

Additional Comments: On January 27, 2006, Legislative Services received proposed changes to the Code of Maryland Regulations (COMAR) that publish existing practices and procedures of DOC and the Patuxent Institution related to discipline. Those changes would not take effect until approved by the AELR Committee. The provisions of this emergency bill may alleviate the need for COMAR changes.

Additional Information

Prior Introductions: HB 782 of 2005, an identical bill, received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): Office of Administrative Hearings, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2006
ncs/jr

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