

Department of Legislative Services  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

House Bill 924  
Appropriations

(Delegate Shank, *et al.*)

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**Correctional Services - State Correctional Officers' Bill Of Rights**

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This bill provides for rights of a State correctional officer relating to the employment, investigation, and discipline of correctional officers who are employees of the Division of Correction (DOC) working in a State correctional facility whose duties relate to the investigation, care, custody, control, or supervision of inmates. The bill's provisions are similar to the Law Enforcement Officers' Bill of Rights and the Cecil County Correctional Officers' Bill of Rights.

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**Fiscal Summary**

**State Effect:** Potential significant operational impact on the Department of Budget and Management (DBM) and the Office of Administrative Hearings (OAH). Potential operational and fiscal impacts on the Department of Public Safety and Correctional Services (DPSCS) stemming from additional overtime costs. Any future impacts arising from decisions of hearing boards cannot be reliably predicted.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** The bill's provisions supersede any inconsistent provisions of any other State or local law that conflicts with its provisions to the extent of the conflict. These provisions do not limit the authority of the managing official to regulate the competent and efficient operation and management of a State correctional facility by any reasonable means including transfer and reassignment if that action is not punitive in nature and the

managing official determines it to be in the best interests of the internal management of the correctional facility.

**Current Law:** The Law Enforcement Officers' Bill of Rights was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of specified State and local agencies, but does not extend to any correctional officers in the State.

The Cecil County Correctional Officers' Bill of Rights was enacted by Chapter 689 of 2008.

**Background:** DOC employs 7,207 correctional officers who are assigned to 26 correctional facilities in the State.

The current collective bargaining agreement for State employees (under Title 3 of the State Personnel and Pensions Article) and a Memorandum of Understanding (MOU) between the State and the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, and the Teamsters include an agreement of the parties on the standards of wages, hours and other terms and conditions of employment for State employees in the State Personnel Management System (SPMS). Disciplinary matters for all covered employees, including State correctional officers, are addressed under Articles 21 and 22 of the agreement.

**State Fiscal Effect:** Because the required disciplinary processes are significantly different from the current collective bargaining agreement, this bill will have a significant operational impact on DPSCS for the following reasons:

- Except for when an officer is charged with a felony, the bill requires that the officer be kept on the job or suspended with pay pending an appeal hearing process, which can be lengthy. SPMS does not require the employer to keep the officer on payroll while appeal of termination goes through the process.
- The bill limits the employer's ability to investigate misconduct by restricting questioning of the officer through a formal interrogation process only. SPMS grants greater flexibility to management in conducting investigations.
- The bill does not permit the employer to seek judicial review of a finding of not guilty by the trial board. The employer is bound by the trial board's finding. SPMS permits the employer to appeal not guilty findings.
- The bill does not permit the employer to initiate an investigation and charges of a complaint of brutality unless a sworn complaint is filed by, or on behalf of, the alleged victim, or by a witness to the incident. DPSCS believes that this is not appropriate within the prison context as inmates are often unwilling to cooperate

in cases against correctional officers for fear of retaliation by that officer or other officers.

DPSCS also advises that the binding MOU currently in effect specifically governs the discipline and appeal rights of State correctional officers. DPSCS believes that this bill would have implications to a “term and condition of employment” which must be negotiated with the correctional officers’ exclusive bargaining representative, AFSCME/Teamsters. These negotiations can be costly as they are conducted by high ranking officials and can be lengthy. In addition, failure to conduct the negotiations may result in the filing of an unfair labor practice charge against DPSCS.

However, DPSCS is unable to quantify the actual fiscal impact of such operational effects. The actual fiscal impact depends on the number of incidents or complaints, the length of any given appeal hearing process, the number of formal interrogations, the number of any convened trial boards, and the length of negotiations with AFSCME/Teamsters. Assuming that the bill would impact overtime costs for DOC employees, this would tend to exacerbate continuing overtime deficiencies for DPSCS. Approximately \$6 million is needed in the current budget to cover underfunding for overtime in fiscal 2009, which increases DOC’s overtime appropriation to \$37.6 million, approximately 6.8% above fiscal 2008 actual spending and 26.3% above the fiscal 2010 allowance.

According to DBM, in calendar 2008, there were a total of 766 disciplinary actions which were not withdrawn or settled at the agency level before being forwarded to DBM for the purpose of hearings by OAH. Of that number, 468 cases (61%) involved State correctional officers. DBM indicates that this bill will have an operational impact on the agency since it duplicates current SPMS processes, while also expanding disciplinary protections beyond the current MOU (as discussed above).

In any case, the extent to which the bill’s requirements provide greater protections and additional or lengthier processes than are currently provided to any affected State employees under State law and/or collective bargaining agreements may result in an operational impact on DPSCS and DBM. The new procedures would likely incur significant additional overtime costs for DPSCS. However, any such impact cannot be reliably estimated without actual experience under the bill. In addition, any future impacts arising from decisions of hearing boards cannot be reliably predicted.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Budget and Management, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 6, 2009  
ncs/hlb

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