

BY: Appropriations Committee

AMENDMENTS TO HOUSE BILL 1090
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 13, after “circumstances;” insert “providing that a State correctional officer who receives a certain recommendation with respect to disciplinary or punitive action has certain appeals rights; requiring a State correctional officer to be granted release time for certain purposes; requiring the Department of Public Safety and Correctional Services to bear the cost of certain expenses;”; strike beginning with “establishing” in line 16 down through “persons;” in line 17; and in line 21, strike “10-914” and substitute “10-913”.

AMENDMENT NO. 2

On page 2, strike beginning with “WHOSE” in line 12 down through “INMATES” in line 14 and substitute “WHO SERVES IN THE CLASSIFICATION OF CORRECTIONAL OFFICER I, II, SERGEANT, LIEUTENANT, CAPTAIN, OR MAJOR, AND INCLUDES:

- (1) A CORRECTIONAL DIETARY OFFICER;
- (2) A CORRECTIONAL MAINTENANCE OFFICER;
- (3) A CORRECTIONAL LAUNDRY OFFICER;
- (4) A CORRECTIONAL RECREATION OFFICER; AND
- (5) A CORRECTIONAL SUPPLY OFFICER”;

(Over)

in line 17, after “EVIDENCE” insert “, OR A CONTESTED CASE PROCEEDING BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS, ELECTED BY THE CORRECTIONAL OFFICER”; and in line 24, strike “ARTICLE” and substitute “TITLE”.

On page 3, in line 23, before “THE” insert “(A)”; in the same line, after “ESTABLISH” insert “EXCLUSIVE”; in line 24, after “INVESTIGATION” insert “AND DISCIPLINE”; strike beginning with “BY” in line 24 down through “DEPARTMENT” in line 25; in line 25, strike “MISCONDUCT THAT” and substitute “MISCONDUCT.”; strike in its entirety line 26; after line 26, insert:

“(B) THE DISCIPLINARY ACTIONS AUTHORIZED UNDER THIS SUBTITLE ARE THOSE AUTHORIZED UNDER §§ 11-104 AND 11-105 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.”;

in line 28, before “EXCEPT” insert “(A)”; in line 29, after “LAW” insert “, INCLUDING § 11-106 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.”; and after line 30, insert:

“(B) THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF THE APPOINTING AUTHORITY TO REGULATE THE COMPETENT AND EFFECTIVE OPERATION AND MANAGEMENT OF A STATE CORRECTIONAL FACILITY BY REASONABLE MEANS INCLUDING THE TRANSFER AND REASSIGNMENT OF EMPLOYEES IF:

(1) THAT ACTION IS NOT PUNITIVE IN NATURE; AND

(2) THE APPOINTING AUTHORITY DETERMINES THAT ACTION TO BE IN THE BEST INTERESTS OF THE INTERNAL MANAGEMENT OF THE CORRECTIONAL FACILITY.”.

AMENDMENT NO. 3

On page 4, strike in their entirety lines 2 and 3; in lines 4, 10, and 18, strike “(B)”, “(C)”, and “(D)”, respectively, and substitute “(A)”, “(B)”, and “(C)”, respectively; in line 9, after “LAW” insert “OR THE INFORMATION IS NECESSARY TO INVESTIGATE A POSSIBLE CONFLICT OF INTEREST WITH RESPECT TO THE PERFORMANCE OF THE CORRECTIONAL OFFICER’S DUTIES”; strike in their entirety lines 21 through 23 and substitute:

“(D) A CORRECTIONAL OFFICER MAY WAIVE ANY OR ALL OF THE RIGHTS UNDER THIS SUBTITLE IF:

(1) THE WAIVER IS SIGNED AND ACKNOWLEDGED BY THE CORRECTIONAL OFFICER; AND

(2) THE WAIVER IS GIVEN AFTER THE CORRECTIONAL OFFICER IS GIVEN AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL SELECTED BY THE CORRECTIONAL OFFICER OR A REPRESENTATIVE FROM THE CORRECTIONAL OFFICER’S EMPLOYEE ORGANIZATION.”;

in line 25, after “INTERROGATION” insert “BY THE APPOINTING AUTHORITY OR”; in line 30, after “UNIT” insert “OR A DESIGNEE OF THE APPOINTING AUTHORITY”.

On page 5, strike in their entirety lines 1 through 11; in lines 12 and 27, strike “(D)” and “(E)”, respectively, and substitute “(C)” and “(D)”, respectively; in line 12, strike “BEFORE” and substitute “AT LEAST 24 HOURS BEFORE”; in line 15, strike “INTERNAL INVESTIGATIVE UNIT MEMBER” and substitute “PERSON”; in line 23, after “INVESTIGATION;” insert “AND”; strike line 24 in its entirety; and in line 25, strike “(III)” and substitute “(II)”.

AMENDMENT NO. 4

On page 6, in lines 1, 5, 11, 12, and 20, strike “(F)”, “(G)”, “(5)”, “(H)”, and “(I)”, respectively, and substitute “(E)”, “(F)”, “(3)”, “(G)”, and “(H)”, respectively; in line 7, after “ROOM;” insert “OR”; strike lines 8 through 10, inclusive; in line 13, strike “INTERROGATING OFFICER” and substitute “PERSON”; strike beginning with the colon in line 15 down through “(II)” in line 18; and strike in their entirety lines 23 through 28, inclusive, and substitute:

“(I) (1) IF REQUESTED BY OR ON BEHALF OF THE CORRECTIONAL OFFICER UNDER INVESTIGATION, THE CORRECTIONAL OFFICER MAY NOT BE QUESTIONED OR INTERROGATED, AND ANY CURRENT QUESTIONING OR INTERROGATION MUST CEASE, UNLESS:

(I) 1. THE CORRECTIONAL OFFICER IS REPRESENTED BY LEGAL COUNSEL SELECTED BY THE CORRECTIONAL OFFICER;

2. THE CORRECTIONAL OFFICER IS REPRESENTED BY AN AGENT OF THE EXCLUSIVE REPRESENTATIVE OF THE CORRECTIONAL OFFICER DESIGNATED UNDER § 3-406 OF THE STATE PERSONNEL AND PENSIONS ARTICLE; OR

3. THE CORRECTIONAL OFFICER CHOOSES AN AGENT OF THE EMPLOYEE ORGANIZATION SELECTED BY THE CORRECTIONAL OFFICER FOR AN INVESTIGATION UNDER THIS SUBTITLE IF THE CORRECTIONAL OFFICER IS NOT WITHIN THE BARGAINING UNIT FOR WHICH AN EXCLUSIVE REPRESENTATIVE IS DESIGNATED; AND

(II) THE LEGAL COUNSEL OR THE AGENT SELECTED BY THE CORRECTIONAL OFFICER IS PRESENT AND AVAILABLE FOR CONSULTATION AT ALL TIMES DURING THE INTERROGATION.”

On page 7, strike in their entirety lines 1 through 7, inclusive; in line 20, after “RECORD” insert “OUTSIDE THE PRESENCE OF THE CORRECTIONAL OFFICER”; in line 22, strike “(L)” and substitute “(J)”; and after line 29, insert:

“(K) (1) THE PERSON ASSIGNED TO CONDUCT THE INVESTIGATION MAY ORDER THE CORRECTIONAL OFFICER UNDER INVESTIGATION TO SUBMIT TO BLOOD ALCOHOL TESTS, BLOOD, BREATH, OR URINE TESTS FOR CONTROLLED DANGEROUS SUBSTANCES, POLYGRAPH EXAMINATIONS, OR INTERROGATIONS THAT SPECIFICALLY RELATE TO THE SUBJECT MATTER OF THE INVESTIGATION.

(2) IF THE CORRECTIONAL OFFICER IS ORDERED TO SUBMIT TO A TEST, EXAMINATION, OR INTERROGATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION AND THE CORRECTIONAL OFFICER REFUSES TO DO SO, THE APPOINTING AUTHORITY MAY COMMENCE AN ACTION THAT MAY LEAD TO DISCIPLINE AS A RESULT OF THE REFUSAL.

(3) IF A CORRECTIONAL OFFICER IS ORDERED TO SUBMIT TO A TEST, EXAMINATION, OR INTERROGATION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, THE RESULTS OF THE TEST, EXAMINATION, OR INTERROGATION ARE NOT ADMISSIBLE OR DISCOVERABLE IN A CRIMINAL PROCEEDING AGAINST THE CORRECTIONAL OFFICER.

(L) (1) IF THE CORRECTIONAL OFFICER IS ORDERED TO SUBMIT TO A POLYGRAPH EXAMINATION, THE RESULTS OF THE POLYGRAPH EXAMINATION MAY NOT BE USED AS EVIDENCE IN A HEARING BOARD OR AN ADMINISTRATIVE HEARING UNLESS THE APPOINTING AUTHORITY AND THE CORRECTIONAL OFFICER AGREE TO THE ADMISSION OF THE RESULTS.

(Over)

(2) THE CORRECTIONAL OFFICER'S COUNSEL OR REPRESENTATIVE NEED NOT BE PRESENT DURING THE ACTUAL ADMINISTRATION OF A POLYGRAPH EXAMINATION BY A CERTIFIED POLYGRAPHER IF:

(I) THE QUESTIONS TO BE ASKED ARE REVIEWED WITH THE CORRECTIONAL OFFICER OR THE COUNSEL OR REPRESENTATIVE BEFORE THE ADMINISTRATION OF THE EXAMINATION;

(II) THE COUNSEL OR REPRESENTATIVE IS ALLOWED TO OBSERVE THE ADMINISTRATION OF THE EXAMINATION; AND

(III) A COPY OF THE FINAL REPORT OF THE EXAMINATION BY THE CERTIFIED POLYGRAPHER IS MADE AVAILABLE TO THE CORRECTIONAL OFFICER OR THE COUNSEL OR REPRESENTATIVE WITHIN A REASONABLE TIME, NOT EXCEEDING 10 DAYS, AFTER COMPLETION OF THE EXAMINATION."

AMENDMENT NO. 5

On page 8, in line 6, after "THE" insert "APPOINTING AUTHORITY OR THE"; strike in their entirety lines 27 and 28; in line 30, before "THE" insert "(A)"; strike beginning with "IMPOSE" in line 30 down through "MORE" in line 31 and substitute "BRING CHARGES RECOMMENDING THE IMPOSITION OF DISCIPLINE MORE THAN 90 DAYS"; and after line 33, insert:

"(B) AN APPOINTING AUTHORITY MAY NOT RECOMMEND DISCIPLINARY ACTION AGAINST A CORRECTIONAL OFFICER FOR EXCESSIVE USE OF FORCE AGAINST AN INMATE BASED SOLELY ON THE UNCORROBORATED STATEMENT OF THE INMATE UNLESS THE APPOINTING AUTHORITY DETERMINES THAT THERE EXISTS ANY INDICIA OF RELIABILITY TO SUPPORT THE INMATE'S ALLEGATION.

(C) THIS SECTION DOES NOT LIMIT THE RIGHT OF THE DEPARTMENT TO INVESTIGATE CLAIMS OF EXCESSIVE FORCE AGAINST INMATES TO ENSURE THE SAFETY AND SECURITY OF ITS CORRECTIONAL FACILITIES, OR FOR ANY OTHER LEGITIMATE PURPOSE.”.

AMENDMENT NO. 6

On page 9, after line 1, insert:

“(A) IF THE APPOINTING AUTHORITY BRINGS CHARGES RECOMMENDING DISCIPLINE AGAINST A CORRECTIONAL OFFICER, THE CHARGES SHALL CONTAIN:

(1) A STATEMENT OF FACTS AND OFFENSES ALLEGED; AND

(2) NOTICE OF THE CORRECTIONAL OFFICER’S APPEAL RIGHTS.

(B) THE APPOINTING AUTHORITY SHALL PROVIDE THE CHARGES AND NOTICE REQUIRED UNDER SUBSECTION (A)(2) OF THIS SECTION TO THE CORRECTIONAL OFFICER AND TO THE CORRECTIONAL OFFICER’S LEGAL COUNSEL OR THE AGENT OF THE EMPLOYEE ORGANIZATION SELECTED BY THE CORRECTIONAL OFFICER UNDER § 10-907 OF THIS SUBTITLE.

(C) ON RECEIVING CHARGES WHICH RECOMMEND TERMINATION, DEMOTION, OR SUSPENSION WITHOUT PAY OF 10 DAYS OR GREATER, A CORRECTIONAL OFFICER MAY:

(1) FILE AN APPEAL UNDER § 11-109 OF THE STATE PERSONNEL AND PENSIONS ARTICLE; OR

(Over)

(2) WITHIN 15 DAYS AFTER RECEIVING THE CHARGES, FILE A REQUEST FOR A HEARING BY A HEARING BOARD.

(D) IF A CORRECTIONAL OFFICER RECEIVES CHARGES WHICH RECOMMEND DISCIPLINE OTHER THAN TERMINATION, DEMOTION, OR SUSPENSION WITHOUT PAY OF 10 DAYS OR GREATER, BEFORE THE APPOINTING AUTHORITY TAKES ACTION ON THE DISCIPLINE, THE CORRECTIONAL OFFICER MAY APPEAL ONLY UNDER § 11-109 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

(E) AN EMERGENCY SUSPENSION IS NOT SUBJECT TO APPEAL.

(F) AN ACTION WHICH DOES NOT CONSTITUTE DISCIPLINE UNDER § 11-107 OF THE STATE PERSONNEL AND PENSIONS ARTICLE IS NOT SUBJECT TO APPEAL.

10-909.”;

strike in their entirety lines 2 through 8, inclusive; in lines 9 and 13, strike “**(2)**” and “**(3)**”, respectively, and substitute “**(A)**” and “**(B)**”, respectively; strike in their entirety lines 15 through 19, inclusive; and strike beginning with “MEMBERS,” in line 21 down through “MAINTAINED” in line 34 and substitute “MEMBERS.”

1. FOR CORRECTIONAL OFFICERS HOLDING THE RANK OF SERGEANT OR BELOW, THE HEARING BOARD SHALL BE COMPOSED OF TWO CORRECTIONAL OFFICERS WHO ARE MEMBERS OF THE BARGAINING UNIT, ONE OF WHOM IS THE SAME RANK AS THE CORRECTIONAL OFFICER FACING CHARGES, AND ONE CORRECTIONAL OFFICER RANKED LIEUTENANT OR HIGHER.

2. FOR CORRECTIONAL OFFICERS HOLDING THE RANK OF LIEUTENANT AND ABOVE, THE HEARING BOARD SHALL BE COMPOSED OF ONE CORRECTIONAL OFFICER OF EQUAL RANK, ONE CORRECTIONAL OFFICER OF EQUAL OR LOWER RANK, AND ONE CORRECTIONAL OFFICER OF EQUAL OR HIGHER RANK.

(II) CORRECTIONAL OFFICERS ASSIGNED TO SERVE ON A HEARING BOARD SHALL BE RANDOMLY SELECTED FROM A ROTATING LIST OF CORRECTIONAL OFFICERS ELIGIBLE TO SERVE ON DISCIPLINARY HEARING BOARDS MAINTAINED BY THE DEPARTMENT.

(III) THE DEPARTMENT, AFTER CONSULTATION WITH THE EXCLUSIVE REPRESENTATIVE FOR THE CORRECTIONAL OFFICERS WHO ARE COVERED BY THIS SUBTITLE, SHALL DETERMINE:

1. THE MANNER OF SELECTION OF CORRECTIONAL OFFICERS WHO ARE ELIGIBLE TO SERVE ON A ROTATING LIST; AND

2. THE MANNER OF THE SELECTION OF CORRECTIONAL OFFICERS FOR A HEARING BOARD.

(IV) CORRECTIONAL OFFICERS ASSIGNED TO SERVE ON A HEARING BOARD SHALL BE FROM A FACILITY OTHER THAN THE FACILITY TO WHICH THE CORRECTIONAL OFFICER FACING CHARGES IS REGULARLY ASSIGNED, AND MAY NOT HAVE HAD A ROLE IN THE INVESTIGATION OR THE INTERROGATION OF THE CORRECTIONAL OFFICER AGAINST WHOM THE CHARGES ARE FILED, OR BE INVOLVED IN ANY WAY WITH THE INCIDENTS THAT ARE THE SUBJECT OF THE COMPLAINT.

(V) 1. THE HIGHEST RANKING MEMBER OF THE HEARING BOARD SHALL SERVE AS THE HEARING BOARD CHAIR.

2. THE CHAIR OF THE HEARING BOARD:

A. SHALL PARTICIPATE IN ANY DELIBERATIONS; BUT

B. MAY ONLY VOTE ON THE DECISION IN THE EVENT OF A TIE; AND

C. MAY FILE A STATEMENT OF POSITION FOR THE RECORD.

3. THE CHAIR OF THE HEARING BOARD SHALL BE FROM A DIFFERENT FACILITY THAN THE OTHER BOARD MEMBERS.”.

On page 10, strike in their entirety lines 1 and 2, inclusive; in line 3, strike “(II)” and substitute “(VI)”; in line 6, after “BOARD” insert “FOR MEMBERS OF THE COLLECTIVE BARGAINING UNIT”; strike in their entirety lines 6 through 14, inclusive; and in line 15, strike “(4)” and substitute “(2)”.

On page 11, in lines 11 and 12, strike “INTERNAL INVESTIGATIVE UNIT” and substitute “DEPARTMENT”; in line 14, after “(3)” insert “(I)”; in line 15, after “BY” insert “LEGAL”; in the same line, after “COUNSEL” insert “THEY EACH MAY SELECT”; and after line 15, insert:

“(II) IN THE ALTERNATIVE, A CORRECTIONAL OFFICER MAY BE REPRESENTED:

1. BY AN AGENT OF THE EXCLUSIVE REPRESENTATIVE OF THE CORRECTIONAL OFFICER DESIGNATED UNDER § 3-406 OF THE STATE PERSONNEL AND PENSIONS ARTICLE; OR

2. IF THE CORRECTIONAL OFFICER IS NOT WITHIN THE BARGAINING UNIT FOR WHICH AN EXCLUSIVE REPRESENTATIVE IS DESIGNATED UNDER § 3-406 OF THE STATE PERSONNEL AND PENSIONS ARTICLE, BY ANY PERSON CHOSEN BY THE CORRECTIONAL OFFICER.”

AMENDMENT NO. 7

On page 12, strike in their entirety lines 15 through 20, inclusive, and substitute:

“(1) (1) A CORRECTIONAL OFFICER SHALL BE GRANTED RELEASE TIME FROM THE CORRECTIONAL OFFICER’S NORMAL WORK SCHEDULE TO ATTEND A CONFERENCE OR HEARING AS A WITNESS.

(2) EXPENSES INCURRED IN CONNECTION WITH ATTENDANCE BY A CORRECTIONAL OFFICER AT CONFERENCES OR HEARINGS, WHETHER AS A GRIEVANT, AS A GRIEVANT’S REPRESENTATIVE, OR AS A WITNESS, SHALL BE BORNE BY THE DEPARTMENT.”;

in line 26, strike “10-909” and substitute “10-910”; and in line 28, strike “10-908” and substitute “10-909”.

AMENDMENT NO. 8

On page 13, in line 4, strike “CLEAR AND CONVINCING” and substitute “A PREPONDERANCE OF THE”; strike beginning with “FAULT” in line 4 down through “ACTIONS” in line 5 and substitute “THAT THE CORRECTIONAL OFFICER ENGAGED IN MISCONDUCT ON ANY OF THE CHARGES”; after line 5, insert:

“(5) THE HEARING BOARD SHALL MAKE A SEPARATE FINDING OF GUILTY OR NOT GUILTY AS TO EACH OFFENSE ALLEGED.”;

in lines 6, 13, and 17, strike “(5)”, “(6)”, and “(7)”, respectively, and substitute “(6)”, “(7)”, and “(9)”, respectively; in line 11, after “PERFORMANCE” insert “, THE RELATION OF THE CONTEMPLATED DISCIPLINARY ACTION TO ANY PRIOR DISCIPLINARY ACTION,”; in line 13, strike “DECIDE” and substitute “RECOMMEND”; in line 14, after “INCLUDING” insert “DISCIPLINARY SUSPENSION WITHOUT PAY,”; after line 16, insert:

“(8) FOR THE PURPOSES OF THIS SUBSECTION, PERFORMANCE-BASED OFFENSES SHALL BE CONSIDERED ONE TYPE OF OFFENSE AND ATTENDANCE-BASED OFFENSES SHALL BE CONSIDERED ANOTHER TYPE OF OFFENSE.”;

in line 20, strike “OR” and substitute “AND”; and strike in their entirety lines 25 through 31, inclusive, and substitute:

“(B) (1) WITHIN 30 DAYS AFTER RECEIPT OF THE RECOMMENDATIONS OF THE HEARING BOARD, THE APPOINTING AUTHORITY SHALL:

(I) REVIEW THE FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF THE HEARING BOARD; AND

(II) ISSUE A FINAL ORDER.

(2) THE FINAL ORDER AND DECISION OF THE APPOINTING AUTHORITY IS BINDING, BUT MAY BE APPEALED IN ACCORDANCE WITH § 10-911 OF THIS SUBTITLE.

(3) THE RECOMMENDATION OF A PENALTY BY THE HEARING BOARD IS NOT BINDING ON THE APPOINTING AUTHORITY.

(4) THE APPOINTING AUTHORITY SHALL CONSIDER THE CORRECTIONAL OFFICER'S PAST JOB PERFORMANCE AND THE RELATION OF THE CONTEMPLATED DISCIPLINARY ACTION TO ANY PRIOR DISCIPLINARY ACTION BEFORE IMPOSING A PENALTY.

(5) BEFORE TERMINATING A CORRECTIONAL OFFICER UNDER THIS SUBSECTION, THE APPOINTING AUTHORITY SHALL OBTAIN APPROVAL FROM THE SECRETARY.

(6) WITH THE APPROVAL OF THE SECRETARY, THE APPOINTING AUTHORITY MAY INCREASE THE RECOMMENDED PENALTY OF THE HEARING BOARD IF THE APPOINTING AUTHORITY:

(I) REVIEWS THE ENTIRE RECORD OF THE PROCEEDINGS OF THE HEARING BOARD;

(II) MEETS WITH THE CORRECTIONAL OFFICER AND ALLOWS THE CORRECTIONAL OFFICER TO BE HEARD ON THE RECORD;

(III) AT LEAST 10 DAYS BEFORE THE MEETING, DISCLOSES AND PROVIDES IN WRITING TO THE CORRECTIONAL OFFICER ANY ORAL OR WRITTEN COMMUNICATION NOT INCLUDED IN THE RECORD OF THE HEARING BOARD ON WHICH THE DECISION TO CONSIDER INCREASING THE PENALTY IS WHOLLY OR PARTLY BASED; AND

(Over)

(IV) STATES ON THE RECORD THE SUBSTANTIAL EVIDENCE ON WHICH THE APPOINTING AUTHORITY RELIED TO SUPPORT THE INCREASE OF THE RECOMMENDED PENALTY.

AMENDMENT NO. 9

On page 14, in line 1, strike “(E)” and substitute “(C)”; in line 8, strike “10-910” and substitute “10-911”; in line 9, strike “10-909” and substitute “10-910”; in line 14, strike “10-911” and substitute “10-912”; in line 15, strike “(1)”; in the same line, strike “WRITTEN”; in lines 18, 20, 22, 24, and 26, strike “(I)”, “1.”, “2.”, “(II)”, and “(2)”, respectively, and substitute “(1)”, “(I)”, “(II)”, “(2)”, and “(B)”, respectively; and strike in their entirety lines 28 through 31, inclusive.

On page 15, strike in their entirety lines 1 through 8, inclusive; in line 9, strike “10-912” and substitute “10-913”; in line 10, after “SUSPENSION” insert “WITH PAY”; and in line 22, after “BOARD” insert “OR THE OFFICE OF ADMINISTRATIVE HEARINGS”.

On page 16, strike in their entirety lines 1 through 18, inclusive.