

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1090
Appropriations

(Delegate G. Clagett, *et al.*)

Correctional Services - State Correctional Officers' Bill of Rights

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.

Fiscal Summary

State Effect: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase by at least \$2.7 million in FY 2011, not including costs for arbitration services and overtime. Significant operational impact on the Department of Budget and Management (DBM) and potential savings for the Office of Administrative Hearings (OAH). Any future impacts arising from decisions of hearing boards cannot be reliably predicted.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	2,724,600	2,248,000	2,346,500	2,449,900	2,558,500
Net Effect	(\$2,724,600)	(\$2,248,000)	(\$2,346,500)	(\$2,449,900)	(\$2,558,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

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. However, the Cecil County Correctional Officers' Bill of Rights was enacted by Chapter 689 of 2008, which applies to correctional officers in the county's detention center.

Background: DOC employs about 7,200 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.

The current Internal Investigative Unit (IIU) of DPSCS has 22 authorized full-time positions, of which 18 are full-time investigators and 7.35 are contractual positions. IIU handles primarily criminal investigations within DOC and very few administrative/misconduct investigations.

State Fiscal Effect: According to DBM, in calendar 2008 and 2009, there were approximately 600 disciplinary appeals for the State Personnel Management System. Of those appeals, about 70% each year (430) were exclusively from DPSCS. In calendar 2008 and 2009 respectively, DBM resolved 56% and 64% of the appeals without the need for an adversarial hearing by OAH. DBM advises that this bill will have an operational impact on the agency since it duplicates current disciplinary appeals processes, while also expanding disciplinary protections beyond the current MOU (as discussed above).

Because the required disciplinary processes are significantly different from the current collective bargaining agreement, the bill will also have a significant operational impact on DPSCS because it:

- requires IIU to conduct certain administrative investigations involving correctional officers different from other classifications and criminal investigations;
- restricts the abilities of appointing authorities to conduct investigations of misconduct and impose discipline on correctional officers;
- provides procedural time limits for investigative steps, interviews and places limitations on interviewing techniques otherwise permissible by law;
- restricts investigation of correctional officer misconduct to IIU with provisions and timeframes significantly different from criminal investigations and other administrative investigations now performed;
- eliminates the ability of IIU to assign certain administrative investigations back to appointing authorities for completion, subject to IIU review;
- requires that the officer be kept on the job or suspended with pay pending an appeal hearing process, except in instances when an officer is charged with a felony [SPMS does not require the employer to keep the officer on payroll while appeal of termination goes through the process];
- limits the employer's ability to investigate misconduct by restricting questioning of the officer through a formal interrogation process only;
- does not permit the employer to seek judicial review of a finding of not guilty by the trial board and requires that the employer is bound by the trial board's finding; and
- 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 last provision 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. The department believes that, because of the investigatory timelines mandated under the bill, it would require the opening of a separate misconduct investigation to be done concurrently with each criminal investigation involving a correctional officer.

In any case, DPSCS indicates that the bill will affect its Human Resources Services (HRS) Division to the extent that general fund expenditures increase by \$295,500 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring four personnel officers and one personnel administrator to serve as hearing officers on approximately 450 annual disciplinary appeals, assuming that the

current hearing officers of the Employee Relations Unit would represent DPSCS in hearings conducted during the investigations by IIU. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$266,639
Additional Equipment	19,635
Other Operating Expenses	<u>9,223</u>
Total FY 2011 HRS Expenditures	\$295,497

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses.

In addition, DPSCS will need to establish an administrative investigation unit within IIU to handle all investigations generated as a result of the bill. Accordingly, general fund expenditures will increase by an additional \$2.4 million in fiscal 2011. Because the training of investigators takes three to six months, there is no start-up delay for these costs. This estimate reflects the cost of hiring 18 investigators, 2 investigation captains, and 2 office secretaries to conduct timely internal investigations on an estimated 450 annual misconduct complaints by IIU. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$1,573,775
Automobile Purchases	464,120
Automobile Operations	127,370
Additional Equipment	120,457
Fixed Charges	36,000
Other Operating Expenses	<u>107,430</u>
Total FY 2011 IIU Expenditures	\$2,429,152

Legislative Services advises that the additional personnel for the HRS Division and the Internal Investigative Unit may be low if the total number of misconduct complaints is significantly higher. DPSCS believes that this is very possible and may lead to the need for as many as 51 new investigative personnel above current resource levels.

DBM reports that the cost of arbitration services is \$1,200 to \$4,800 per day. This does not include administrative support or recording costs, which may be as high as \$160 per day, witness costs at \$100 per day, or overtime pay for correctional officers. It is

assumed that such costs will be borne by the employer. DBM advises that the bill's hearing board process would not replace DBM's current disciplinary appeal procedure for employees in classifications other than correctional officer that are covered by the State Personnel and Pensions Article., Title 11 and for correctional officers with any disciplinary appeal other than for a termination, demotion, or suspension over 10 days.

According to DBM, the average length per correctional officer disciplinary case currently referred to OAH is about 17 hours. Accordingly, some new hearing panel costs for DPSCS could be offset by reduced payments from DPSCS to OAH for hearings, since they would be handled in-house. However, unless OAH eliminates the positions and reduces other operating costs as a result of this bill, any reduction in charges to DPSCS would be offset by an increase in charges for other OAH users. DPSCS appeals for terminations, demotions, or suspensions over 10 days will still be able to be appealed to OAH by these employees. Such an impact cannot be reliably estimated.

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.

Additional Information

Prior Introductions: HB 924 of 2009, a similar bill, was withdrawn.

Cross File: SB 887 (Senator Munson, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services, Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2010
ncs/hlb

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