

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 930
Appropriations

(Delegate Proctor, *et al.*)

Finance

Correctional Services - Correctional Officer - Emergency Suspension Rescinded

This bill specifies that a State correctional officer who receives an emergency suspension without pay after being charged with a felony and who is not convicted of the felony must have the emergency suspension rescinded and any lost time, compensation, status, and benefits restored. The bill does not apply to a correctional officer who resigns before disposition of the criminal matter for which the emergency suspension was imposed or is no longer employed by the Division of Correction (DOC) when a determination on that criminal matter is made by a court.

Fiscal Summary

State Effect: Potential increase in general fund expenditures to cover back salary and benefits for each correctional officer placed on emergency suspension without pay due to a felony charge and who is not convicted of the charge. Under one set of assumptions, State expenditures increase by approximately \$22,300 for each emergency suspension rescinded.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Chapter 194 of 2010 enacted the State Correctional Officers' Bill of Rights (COBR) which provides for rights of a State correctional officer relating to the employment, investigation, and discipline of correctional officers who are employees of DOC working in a State correctional facility whose duties relate to the investigation,

care, custody, control, or supervision of inmates. Under Chapter 194, if a correctional officer is charged with a felony, the appointing authority may impose an emergency suspension of correctional powers without pay.

Background: During calendar 2011, 16 correctional officers received an emergency suspension without pay in accordance with COBR. Four are identified as employees of DOC, 1 at Patuxent, and the remaining 11 at the Division of Pretrial Detention and Services. These suspensions ranged in length from 6 days to 245 days, averaging 115 days. Five of the DPDS suspensions continue at present, with all 5 being at the 245-day mark as of February 13, 2012. Of the total of 16 emergency suspensions, all but 2 (due to being of a higher rank) had an average daily salary of \$160 per day. All 16 persons had been charged with a felony, which is the only circumstance by which the Department of Public Safety and Correctional Services (DPSCS) may place a correctional officer on emergency suspension.

State Fiscal Effect: This bill will allow employees placed on an emergency suspension without pay due to a felony charge to have an emergency suspension rescinded and to recover lost time, compensation, status, and benefits if the employee is not convicted. The Department of Budget and Management advises that the bill creates an operational difficulty because of expected delays for the judicial resolution of any felony charge when the affected employee has already been legally terminated from the State position. The standard of proof for a legal termination through an administrative procedure under COBR is by a preponderance of evidence rather than by criminal trial standards of beyond a reasonable doubt.

In addition, some criminal cases may result in a plea bargain on the criminal felony charge, or the charges may have been dropped due to insufficient proof. These cases would also result in the employee under emergency suspension to be entitled to compensation for lost time, status, and benefits. Most of the 16 criminal cases cited above are still pending. For those cases going to trial, no administrative action will be taken until there is a final disposition in the criminal case. DPSCS reports that at least one of the correctional officers placed on emergency suspension has resigned and others await administrative action. If a felony charge is reduced by prosecutors, or pled down, to a misdemeanor, the correctional officer may be returned to employment to await administration sanctions (such as a term suspension).

Without much experience under COBR, it is difficult to know if the 16 correctional officers charged with a felony and placed on emergency suspension in calendar 2011 will be typical in any future year. In any case, Legislative Services advises that, assuming an average of 115 days on emergency suspension and an average pay of \$160 per day, each person whose emergency suspension is rescinded under the bill may be entitled to \$18,400 in back pay plus fringe benefits. For fiscal 2013, fringe benefit costs for regular

State employees is 21.3%. Under this scenario, in fiscal 2013, the State cost for back pay and benefits compensation for each such affected correctional officer would total approximately \$22,300. However, these costs will not occur in circumstances where the correctional officer under emergency suspension has resigned or is no longer employed by DOC when the court disposes of the criminal case.

Additional Information

Prior Introductions: None.

Cross File: SB 899 (Senator Gladden, *et al.*) - Finance.

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

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