

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 255
Appropriations

(Allegany County Delegation)

Judicial Proceedings

Allegany County - Correctional Officers' Bill of Rights

This bill establishes rights of a correctional officer relating to the employment, investigation, and discipline of correctional officers in Allegany County. The bill's provisions are the same as the provisions of the Correctional Officers' Bill of Rights applicable in Cecil, Garrett, and St. Mary's counties.

Fiscal Summary

State Effect: None.

Local Effect: The bill's changes do not significantly affect Allegany County's operations or finances. Any future impacts arising from decisions of hearing boards cannot be reliably predicted.

Small Business Effect: None.

Analysis

Bill Summary: Similar to the Correctional Officers' Bill of Rights (COBOR) for State correctional officers (Chapter 194 of 2010, SB 887), this bill does not limit the authority of the managing official of Allegany County to regulate the competent and effective operation and management of the local 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.

Under both COBOR and this bill, a correctional officer may not be required or requested to disclose an item of the correctional officer's property, income, assets, source of income, debts, or personal or domestic expenditures, including those of a member of the correctional officer's family or household, unless the disclosure is required by federal or State law or the information is necessary to investigate a possible conflict of interest with respect to the performance of the correctional officer's duties. Although under both COBOR and this bill, a correctional officer may waive in writing any rights granted under the statute, the right of a correctional officer to bring suit arising out of the officer's duties may not be abridged.

However, unlike the State provisions, this bill does not enumerate or define "misconduct." This bill specifies procedures for complaints of brutality and COBOR does not, *per se*. However, COBOR does specify that 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. Under COBOR, at least 24 hours before an interrogation, the correctional officer under investigation must be informed of the name, rank, and command of (1) the person in charge of the investigation; (2) the interrogating officer; and (3) each individual who will be present during the interrogation. Under this bill, there is no specified timeframe for that notification.

Under COBOR and this bill, a correctional officer is entitled to counsel and results of a polygraph examination may not be used as evidence in an administrative hearing without agreement from both parties. Timeframes for notification of all charges and witnesses against a correctional officer differ. Under COBOR, it must be made at least 20 days prior to a hearing. Under this bill, notification must be made at least 10 days before a hearing.

Though the details differ, procedures for the issuance of subpoenas exist under both COBOR and this bill. Any decision, order, or action taken by a hearing board must be in writing and accompanied by findings of fact. The decision of the hearing board is final if the managing official is an eyewitness to the underlying incident or if the managing official has agreed with a recognized and certified bargaining representative of the county correctional officers.

A finding of not guilty terminates the action. For a finding of guilty, the procedures for determination of penalty differ. However, an appeal from a decision may be taken to the circuit court for the appropriate county under Maryland Rule 7-202. A decision by the circuit court may be appealed to the Court of Special Appeals. Provisions for emergency suspensions, with or without pay, are included under the bill and COBOR.

Current Law: Chapter 689 of 2008 (HB 1245) provided for rights of a correctional officer relating to the employment, investigation, and discipline of correctional officers in Cecil County. Chapter 128 of 2011 (HB 522) and Chapter 190 of 2012 (SB 205) included correctional officers in St. Mary's County and Garrett County, respectively, under these same provisions. A separate Correctional Officers' Bill of Rights in Charles County was enacted by Chapter 441 of 2012 (HB 1457).

Chapter 194 of 2010 (SB 887) provides for rights of a State correctional officer relating to the employment, investigation, and discipline of correctional officers who are employees of the Department of Public Safety and Correctional Services working in a State correctional facility. COBOR established exclusive procedures for the investigation and discipline of a State-employed correctional officer for alleged misconduct.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Allegany County, Department of Public Safety and Correctional Services, Department of Legislative Services

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