

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 176

(Delegate Guzzone)(Chair, Special Joint Commission on
Public Safety and Security in State and Local Correctional
Facilities)

Appropriations

Judicial Proceedings

Correctional Services - Correctional Facilities - Officers and Inspection Standards

This bill authorizes the appointing authority of a State correctional facility to impose an emergency suspension without pay on a State correctional officer if the officer is charged with a misdemeanor contraband violation involving an alcoholic beverage, a controlled dangerous substance, a telecommunication device, or contraband that is (1) money or a money equivalent or (2) an item or substance intended to cause physical injury. With certain exceptions, a correctional officer who is not convicted of the violation for which the emergency suspension was imposed must have the suspension rescinded and any lost time, compensation, status, and benefits restored.

The bill also requires the Secretary of Public Safety and Correctional Services to require the Department of Public Safety and Correctional Services (DPSCS), in collaboration with the exclusive representative for State correctional officers, by December 1, 2014, to study certain issues related to correctional standards, adopt related regulations, and submit a related report.

Fiscal Summary

State Effect: Potential decrease in general fund expenditures, but only to the extent that emergency suspensions without pay increase. Such a future potential impact cannot be reliably predicted or quantified. The Office of Administrative Hearings can handle any increase in hearings with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: DPSCS, in collaboration with the exclusive representative for State correctional officers, must study standards set by the Maryland Commission on Correctional Standards (MCCS) and accreditation standards established by the American Correctional Association (ACA). By December 1, 2014, the Secretary must (1) adopt regulations amending the commission's standards in accordance with the results of the study; (2) provide a proposed implementation schedule for ACA accreditation at each State correctional facility; and (3) report on the study findings and accompanying regulatory changes to the Governor and the General Assembly.

Current Law/Background: In light of the April 2013 federal grand jury indictment which alleged that correctional officers helped leaders of the Black Guerilla Family smuggle contraband into State correctional facilities, the Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities, in its December 2013 final report to the General Assembly, made several specific recommendations. This bill addresses two areas of concern raised in the commission's report.

Contraband and the Correctional Officers' Bill of Rights

Chapter 194 of 2010 enacted the Correctional Officers' Bill of Rights (COBR), which provides for the employment, investigation, and discipline of State correctional officers working in a State correctional facility. COBR extends uniform investigatory and disciplinary protections to officers whose duties relate to the investigation, care, custody, control, or supervision of inmates.

Under Chapter 194, the appointing authority may authorize the emergency suspension of an officer (with pay) if the suspension is in the best interest of the public, inmates, and the correctional facility. However, if an officer is charged with a felony, the appointing authority may impose an emergency suspension of correctional powers without pay. Felonies related to contraband include contraband for purposes of escape and weapons.

Under COBR, when an emergency suspension of a correctional officer without pay is imposed, the correctional officer is entitled to a prompt hearing, held no more than 90 days after the suspension.

The following misdemeanor contraband offenses are not eligible for an emergency suspension without pay:

- **Contraband – In General:** A person may not (1) deliver any contraband to a person detained or confined in a place of confinement or (2) possess any contraband with intent to deliver it to a person detained or confined in a place of confinement. A person may not knowingly possess contraband in a place of confinement.
- **Alcoholic Beverages:** A person may not (1) deliver an alcoholic beverage to a person detained or confined in a place of confinement or (2) possess an alcoholic beverage with the intent to deliver it to a person detained or confined in a place of confinement. A person detained or confined in a place of confinement may not knowingly possess or receive an alcoholic beverage. These prohibitions do not apply to an alcoholic beverage delivered or possessed in a manner authorized by the managing official.
- **Controlled Dangerous Substances:** A person may not (1) deliver a controlled dangerous substance to a person detained or confined in a place of confinement or (2) possess a controlled dangerous substance with the intent to deliver it to a person detained or confined in a place of confinement. A person detained or confined in a place of confinement may not knowingly possess or receive a controlled dangerous substance.
- **Telecommunication Devices:** A person may not deliver a telecommunication device to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited. A person may not possess a telecommunication device with the intent to deliver it to a person detained or confined in a place of confinement with signs posted indicating that such conduct is prohibited. A person may not deposit or conceal a telecommunication device in or about a place of confinement with signs posted indicating that such conduct is prohibited or on any land appurtenant to the place of confinement with the intent that it be obtained by a person detained or confined in the place of confinement. A person detained or confined in a place of confinement may not knowingly possess or receive a telecommunication device.

A violator of any of these misdemeanor contraband offenses is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000. A sentence imposed for a misdemeanor or felony contraband offense may be imposed as consecutive to or concurrent with a sentence for any crime based on the act establishing the offense.

The appointing authority of a State correctional facility may not bring charges recommending the imposition of discipline more than 90 days after Internal Investigations Unit or the appointing authority acquires knowledge of the action that gives rise to the discipline. The special joint commission found that DPSCS should have the ability to authorize the suspension (without pay) of a correctional officer charged with

bringing contraband into a correctional facility (regardless of whether the offense is a misdemeanor). To that end, the commission made the following specific recommendations:

- that State law be amended to authorize the appointing authority of a correctional facility to impose an emergency suspension without pay when a correctional officer is charged with bringing contraband into a correctional facility, irrespective of whether it is a misdemeanor violation; and
- that nonofficer personnel charged with bringing contraband into a correctional facility be suspended (without pay) pending the resolution of the disciplinary matter.

This bill implements these recommendations of the special joint commission relating to contraband and suspensions without pay.

Correctional Standards

MCCS was created in 1980 and currently functions to develop standards and enforce regulations for the operation of Maryland's prisons, detention centers, and community correctional centers and exercise regulatory and licensing authority over private home detention monitoring agencies. The 12-member commission includes the Attorney General, the Secretary of General Services, and the Secretary of Budget and Management. All mandatory minimum standards and approved standards adopted must be consistent with State and federal law.

ACA is a private, nonprofit organization that administers the only national accreditation program for all components of correctional operations. ACA's purpose is to address the management of correctional agencies through the use of a voluntary accreditation program and the ongoing development and revision of relevant standards. A visiting committee composed of two or more auditors conducts the ACA audit. To become accredited by ACA, the facility must achieve 100% of the mandatory standards and at least 90% of the nonmandatory standards. ACA accreditation is awarded for a period of three years.

Chapter 688 of 2013 repealed a prohibition on the use of State funds to implement standards for State correctional facilities that are adopted or proposed by ACA.

Currently, DPSCS requires 18 hours of in-service training annually, although the nationally recognized standard from ACA requires 40 hours annually. The correctional training curriculum was altered in 2012 to include the topic of fraternization; however, the current level of training is still insufficient, particularly in light of DPSCS's expressed

intentions to achieve ACA accreditation at each of its facilities. The special joint commission specifically recommended that DPSCS increase the annual in-service training requirement for correctional staff to 40 hours annually. According to the special joint commission, this increase should be implemented as quickly as is feasible and pursued independent of achieving ACA accreditation.

MCCS reported to the special joint commission that the Secretary of Public Safety and Correctional Services has tasked the department with reviewing commission standards to make recommendations as to how the standards can better align with ACA standards to prevent duplication of efforts. The special joint commission recommended that MCCS continue to work toward ensuring that all correctional facilities are in compliance with the mandatory standards established by MCCS. The commission also recommended that the State should work toward aligning standards at all correctional facilities. Finally, the commission recommended that the Secretary of Public Safety and Correctional Services submit a report to the Governor and the General Assembly by December 1, 2014, outlining (1) the results of the department's review of how MCCS and ACA standards can be better aligned and (2) the proposed implementation schedule for ACA accreditation at each correctional facility. The commission also recommended that DPSCS promulgate regulations amending the MCCS standards in accordance with the results of the study.

State Expenditures: According to DPSCS, if the provisions of this bill had been in place during and after the indictments in 2013 for corruption at State correctional facilities, and emergency suspensions of correctional officers involved in the corruption had been implemented, a savings of about \$276,100 in salary expenditures would have been realized. While it is assumed that such widespread corruption is unlikely to recur in the near future, any future impacts cannot be reliably predicted or quantified.

Additional Information

Prior Introductions: None.

Cross File: SB 205 (Senator DeGrange)(Chair, Special Joint Commission on Public Safety and Security in State and Local Correctional Facilities) - Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services, Office of Administrative Hearings, Department of Legislative Services

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