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(As Passed by the General Assembly)

Reps. Coughlin, Tiberi, Hood, Evans, Womer Benjamin, Myers, Willamowski, Jolivette, Haines, Brading, Winkler, Young, Salerno, Calvert, Hoops, Carey, Terwilleger, Amstutz, Harris, Metzger, Grendell, Maier

Sens. Latta, Drake, Spada

Effective date: *

ACT SUMMARY

- Requires the Director of Rehabilitation and Correction to adopt rules and the warden of a state correctional institution to adopt regulations governing the form, medium, and quantity of materials that each prisoner at the institution may receive and retain.
- Requires the Director to adopt a rule establishing a standard for determining whether material is a prohibited inflammatory material.
- Permits each prisoner to receive a reasonable number of materials directly from publishers or other distributors, or possibly from other sources, subject to security inspections and withholding under the act.
- Requires the warden of a state correctional institution or the warden's designee to inspect a prisoner's mail to determine whether that mail is a "prohibited inflammatory material" and whether to withhold material of that nature from delivery.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Requires the Director to appoint a Publication Review Committee to review decisions of wardens and warden's designees to withhold material from delivery.
- Provides a procedure by which the prisoner who is the intended recipient of withheld prohibited inflammatory material may have the withholding determination reviewed by the Publication Review Committee.
- Authorizes a warden or warden's designee to dispose of withheld prohibited inflammatory material in specified manners.

CONTENT AND OPERATION

Overview

The act requires the "warden" of a state correctional institution or the "warden's designee" to inspect a prisoner's mail to determine whether that mail is a "prohibited inflammatory material" (see "Definitions," below). It authorizes the warden or the warden's designee to withhold that type of mail from delivery and provides an appeal procedure by which that decision may be reviewed. If the material is determined to be a prohibited inflammatory material, the act also specifies methods for disposing of that material.

Adoption of rules that govern the types and maximum amount of materials sent to the prisoner

The act requires the Director of Rehabilitation and Correction (DRC) to adopt rules, and each warden to adopt regulations that govern the form, medium, and quantity of "materials" (see "Definitions," below) that each prisoner confined in the warden's institution is permitted to receive and retain. The rules and the regulations must be consistent with the provisions of the act, and the regulations must be consistent with those rules. (R.C. 5120.426(A).)

The Director of DRC must adopt a rule establishing a standard for determining whether material is a prohibited inflammatory material. In establishing that standard, the Director must consider all relevant information, including, but not limited to, the standard established for material that is "harmful to juveniles" in R.C. 2907.01, but the Director is not governed or limited by that standard (see **COMMENT**). (R.C. 5120.426(B).)

Security inspection procedure

Under the act, each prisoner confined in a state correctional institution may receive a reasonable number of materials directly from the publishers or other distributors of those materials. With the prior approval of the warden of the institution in which the prisoner is confined, each prisoner also may receive a reasonable number of materials from a source other than the publisher or other distributor of those materials.

A prisoner's receipt and retention of materials is subject to security inspections conducted by the institution in which the prisoner is confined and to the rules and regulations adopted by DRC's director and the warden that govern the types and maximum amount of materials that each prisoner confined in the institution is permitted to receive and retain. Subject to a contrary decision with respect to a material's nature by the Publication Review Committee following a review under the act's review procedures (see "**Review of withholding decision**," below), a prisoner is not entitled to receive or retain any material that a warden or the warden's designee determines during the course of a security inspection to be a prohibited inflammatory material. (R.C. 5120.427(A).)

The act provides that, for each state correctional institution, the warden or the warden's designee must inspect each incoming material to determine whether the material is a prohibited inflammatory material or another type of material. The warden or designee is prohibited from determining a material to be a prohibited inflammatory material solely on the basis of its appeal to a particular ethnic, racial, or religious audience. (R.C. 5120.427(B)(1).)

If the warden or the warden's designee determines that an incoming material is not a prohibited inflammatory material, the warden or designee must cause the material to be promptly forwarded to the prisoner who is the intended recipient. If the warden or designee determines that an incoming material is a prohibited inflammatory material, the warden or designee must cause the material to be withheld and promptly provide the prisoner who is the intended recipient with a written withholding notice containing all of the following: (1) a general description of the withheld material, (2) the reason why the material has not been forwarded to the prisoner, and (3) a statement of the prisoner's right to have the Publication Review Committee review the withholding decision of the warden or designee. (R.C. 5120.427(B)(2).)

Request for review and disposal of materials

Within five working days after a prisoner's receipt of the written withholding notice described in the preceding paragraph, the prisoner may submit to the warden a written request for a review of the withholding decision. A

prisoner's failure to submit a timely written request for a review constitutes the prisoner's acceptance of the withholding decision, and the warden or the warden's designee must cause the material to be disposed of in the manner that the warden or designee considers to be most appropriate under the circumstances. (R.C. 5120.427(B)(3).)

Review of withholding decision

If a prisoner submits a timely written review request as described in the preceding paragraph, the warden of the state correctional institution in which the prisoner is confined or the warden's designee promptly must forward the withheld material to the Publication Review Committee. The Publication Review Committee is one or more persons appointed by the Director of DRC to review withholding determinations. (R.C. 5120.428(A), 5120.425(D), and 5120.426(C).)

As soon as is practicable after receipt of the withheld material, the Publication Review Committee must review the material to determine whether it is prohibited inflammatory material or another type of material. If the Committee determines that the withheld material is not a prohibited inflammatory material, the Committee must cause the withheld material to be promptly forwarded to the prisoner who requested the review. If the Committee determines that the withheld material is a prohibited inflammatory material, the Committee must forward the material to the warden or the warden's designee for disposal in the manner considered to be most appropriate under the circumstances. (R.C. 5120.428.)

Definitions

The act defines the following terms that it uses:

"Warden" means the resident head of the institution and the person immediately in charge of the institution, whether designated warden, superintendent, or any other name by which the head is known (R.C. 5120.425(A) and (E), by reference to R.C. 2967.01(F)--not in the act).

"Material" means a prerecorded magnetic audio or video tape, book, drawing, magazine, newspaper, pamphlet, poster, print, photograph, or other similar printed, written, recorded, or otherwise produced item (R.C. 5120.425(B)).

"Prohibited inflammatory material" means a material that, in the determination of the warden or the warden's designee, is detrimental to, or poses a threat to, the rehabilitation of the inmates or the security, good order, or discipline within or on the grounds of the institution for any reason, including, but not limited to, that it is material with a sexually explicit nature (R.C. 5120.425(C)).

"Warden's designee" means a person or a panel of persons designated by a warden to perform a responsibility that the act generally otherwise imposes upon that warden (R.C. 5120.425(F)).

COMMENT

Under the existing Sex Offenders Law, any material or performance is "harmful to juveniles," if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following apply (R.C. 2907.01(E))--not in the act):

- (1) It tends to appeal to the prurient interest of juveniles.
- (2) It contains a display, description, or representation of sexual activity, masturbation, sexual excitement, or nudity.
- (3) It contains a display, description, or representation of bestiality or extreme or bizarre violence, cruelty, or brutality.
- (4) It contains a display, description, or representation of human bodily functions of elimination.
- (5) It makes repeated use of foul language.
- (6) It contains a display, description, or representation in lurid detail of the violent physical torture, dismemberment, destruction, or death of a human being.
- (7) It contains a display, description, or representation of criminal activity that tends to glorify or glamorize the activity, and that, with respect to juveniles, has a dominant tendency to corrupt.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 95
Reported, H. Criminal Justice	02-17-99	p. 213
Passed House (83-9)	03-23-99	pp. 336-337
Reported, S. Judiciary	06-10-99	p. 566
Passed Senate (30-3)	06-15-99	pp. 599-600
House concurred in Senate amendments (86-7)	06-23-99	pp. 907-908

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