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Bill Analysis
Legislative Service Commission

Am. Sub. H.B. 62
123rd General Assembly
(As Passed by the House)

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

BILL SUMMARY

- Requires the Director of Rehabilitation and Correction to adopt rules and the head 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 obscene or other sexually oriented material.
- Requires the head of a state correctional institution or the head's designee to review a prisoner's mail to determine whether that mail is a "prohibited inflammatory material" or a "prohibited obscene or other sexually oriented material" and to withhold material of that nature from delivery.
- Requires the Director to appoint a Publication Review Committee to review decisions of heads of correctional institutions to withhold material from delivery.
- Provides a procedure by which the prisoner who is the intended recipient of withheld prohibited inflammatory material or withheld prohibited obscene or other sexually oriented material may have the withholding determination reviewed by the Publication Review Committee.

- Authorizes a state correctional institution to dispose of withheld prohibited inflammatory material and prohibited obscene or other sexually oriented material in specified manners.

CONTENT AND OPERATION

Overview

The bill authorizes the head of a state correctional institution or the head's designee to review a prisoner's mail to determine whether that mail is a "prohibited inflammatory material" or a "prohibited obscene or other sexually oriented material" (see "Definitions," below). It authorizes the head of the state correctional institution or the head'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 or a prohibited obscene or other sexually oriented material, the bill 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 bill requires the Director of Rehabilitation and Correction (DRC) to adopt rules and the head of a state correctional institution to adopt regulations that govern the form, medium, and quantity of "materials" (see "Definitions," below) that each prisoner confined in the institution is permitted to receive and retain. The rules and the regulations must be consistent with the provisions of the bill, and the regulations must be consistent with those rules.

The head of a state correctional institution must forward proposed regulations that the head of the institution wishes to adopt to DRC's Director for the Director's review and approval prior to the implementation of the regulations. The Director promptly must review and approve or disapprove of the proposed regulations. If the Director approves the proposed regulations, the head of the institution must adopt the regulations, post them in appropriate locations throughout the institution, and implement them. (Sec. 5120.426(A).)

The Director of DRC must adopt a rule establishing a standard for determining whether material is obscene or is other sexually oriented material. The standard for determining whether material is obscene must comport with the standard for determining obscenity established by the United States Supreme Court. In establishing the standard for determining whether material is sexually oriented material, the Director must consider the standard established for material

that is "harmful to juveniles" in section 2907.01, but the Director is not governed or limited by that standard (see **COMMENT**). (Sec. 5120.426(B).)

Security inspection procedure

Under the bill, 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 head of the state correctional institution in which a 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 adopted and the regulations adopted, reviewed, and approved 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 bill's review procedures (see "**Review of withholding decision**," below), a prisoner is not entitled to receive or retain any material that the head of the state correctional institution or the head's designee determines during the course of a security inspection to be a prohibited inflammatory material or a prohibited obscene or other sexually oriented material (prohibited material). (Sec. 5120.427(A).)

The bill requires the head of each state correctional institution or the head's designee to inspect each incoming material to determine whether the material is prohibited material or another type of material. The head of the institution or the head's 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. (Sec. 5120.427(B)(1).)

If the head of the institution or the head's designee determines that an incoming material is not prohibited material, the head of the institution or the head's designee must cause the material to be promptly forwarded to the involved prisoner. If the head of the institution or the head's designee determines that an incoming material is prohibited material, the head of the institution or the head's designee must cause the material to be withheld and promptly provide the involved prisoner 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 head of the institution or the head's designee. (Sec. 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, the prisoner may submit to the head of the institution 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 head of the institution or the head's designee must cause the material to be disposed of in the manner that the head of the institution or the head's designee considers to be most appropriate under the circumstances. (Sec. 5120.427(B)(3).)

Review of withholding decision

If a prisoner submits a timely written review request, the head of the state correctional institution or the head's designee must promptly 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. (Secs. 5120.428(A), 5120.425(F), and 5120.426(C).)

As soon as is practicable after receipt of the withheld material or, if possible, within five working days after that receipt, the Publication Review Committee must review the material to determine whether it is prohibited material or another type of material. In making that determination, the Publication Review Committee may conduct a hearing and may permit the prisoner who requested the review to be present at the hearing and to present objections to the decision of the head of the institution or the head's designee to withhold the material. If the Publication Review Committee determines that the withheld material is not prohibited material, the Committee must cause the withheld material to be promptly forwarded to the involved prisoner. If the Publication Review Committee determines that the withheld material is prohibited material, the Committee must forward the material to the head of the institution or the head's designee for disposal in the manner the head of the institution or the head's designee considers to be most appropriate under the circumstances. (Sec. 5120.428(A) to (C).)

Definitions

"Head of a state correctional institution" or "head of the institution" 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 (sec. 5120.425(A) by reference to sec. 2967.01(F)--not in the bill).

"Head's designee" means a person or a panel of persons designated by the head of a state correctional institution to perform a responsibility that the bill generally otherwise imposes upon that individual (sec. 5120.425(B)).

"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 (sec. 5120.425(C)).

"Prohibited inflammatory material" means a material that, in the determination of the head of a state correctional institution or the head'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 (sec. 5120.425(D)).

"Prohibited obscene or other sexually oriented material" means a material that, in the determination of the head of a state correctional institution or the head's designee, meets the standard for obscene or other sexually oriented material adopted by the Director of DRC (sec. 5120.425(E)).

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 (sec. 2907.01(E)--not in the bill):

- (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

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