

PROPOSED RULEMAKING

DEPARTMENT OF CORRECTIONS

[37 PA. CODE CH. 91]

Administration

The Department of Corrections (Department) acting under the authority conferred upon it by The Administrative Code of 1929 (71 P. S. §§ 51—720.13) and Executive Order 1996-1 (4 Pa. Code §§ 1.371—1.382), and as required by 45 P. S. § 1201, hereby gives public notice of its intention to amend its media relations regulations contained at § 91.5 (relating to media relations).

Background and Need for Amendment

The Department's media relations regulations establish procedures that members of the news media must follow to interview inmates housed in State correctional institutions or community corrections centers. The media interview procedures are more cumbersome than the procedures individual members of the public must follow to visit with inmates. For example, the current regulations require members of the news media to explain the purpose of a proposed interview. Institutional superintendents then determine whether to permit the interview. The Department believes such a review is inappropriate, unnecessary and potentially unconstitutional.

The Department has grown tremendously since the media relations regulations were promulgated. This growth has made it increasingly difficult to have the media relations regulations applied uniformly among institutions. This inconsistency makes it difficult for members of the media to know the standards the Department will apply in a particular situation. Conversely, the Department finds that its inmate visitation policies are applied consistently. Accordingly, the Department seeks to amend its media relations regulations so that members of the news media will be able to communicate and visit with inmates under the same visitation policies which govern inmate communications with other members of the public and the inmate's immediate family.

Proposed amendment of the regulations is consistent with the provisions of Executive Order 1996-1. Specifically, the proposed amendment is intended to improve the internal management of the Department in regard to inmate visitation and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Commonwealth, its agencies, its officers or any person. See 4 Pa. Code § 1.180(b).

Fiscal Impact

Proposed amendment of the media relations regulations is not expected to have any negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

Paperwork Requirements

Proposed amendment of the media relations regulations is expected to reduce paperwork for the Commonwealth and the general public. The Department does not expect the amendment to have any effect on the paperwork requirements of the Commonwealth's political subdivisions.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendment to the Independent Regulatory Review Commission (IRRC), the Chairperson of the House Judiciary Committee and the Chairperson of the Senate Judiciary Committee on September 10, 1997. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to the proposed amendment, it will notify the Department within 10 days of the close of the Committee's comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of objections raised.

Statutory Authority

The Department's authority to amend regulations is contained in section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Effective Date

The proposed amendment of the media relations regulations shall be effective upon closure of the public comment period, the regulatory review process and subsequent publication in the *Pennsylvania Bulletin*.

Public Comment Period/Contact Person

Written comments concerning the Department's proposal to amend its media relations regulations shall be submitted to Press Secretary Roger Baumgarten, Pennsylvania Department of Corrections, 2520 Lisburn Road, P. O. Box 598, Camp Hill, PA 17001-0598. Written comments must be received within 30 days of this publication of notice of public rulemaking in the *Pennsylvania Bulletin*.

MARTIN F. HORN,
Commissioner

Fiscal Note: 19-2. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART III. AGENCIES AND OFFICES

Subpart B. DEPARTMENT OF CORRECTIONS

CHAPTER 91. ADMINISTRATION

§ 91.5. Media relations.

[(a) *Requests for interviews of inmates in institutions*] *Inmate visitation by media representatives.*

(1) [**All news media requests for interviews with individuals or groups shall be addressed to the Superintendent of the institution in which the inmate is confined. All news media requests for interviews shall be governed by this section and by other Bureau and institution procedures relating to news media. All requests shall be reviewed by the Superintendent to determine the subject of the**

interview, the inmates' emotional stability and whether or not the interview would present a clear and present danger to the security and good order of the institution. Each inmate's written consent for an interview is required. If the Superintendent approves the interview, the reporter may seek each inmate's written consent by sending a letter, telegram or mailgram to the inmate—with a copy to the Superintendent—containing the following information:] Media representatives will have the same visiting privileges that are granted to the immediate family members of an inmate as described in § 93.3 (relating to inmate visiting privileges).

[(i) An explanation of the purpose of the interview and how it will be used.

(ii) A request that the inmate respond directly to the reporter either refusing or agreeing to the interview.

(iii) A request that the inmate notify the Superintendent's office if he agrees to be interviewed.]

(2) [The reporter, after receiving the inmate's consent, may then contact the institution to arrange a date and time. Prior to the start of the interview, the Bureau Waiver Form shall be signed by the inmate and witnessed by an employe of the facility. If the Superintendent denies the request for the interview, he will, upon request, notify the media representative in writing of his decision and the reasons for it.] Upon request, media representatives will be provided with a copy of the Department of Corrections' policy regarding inmate visitation.

(3) [Interviews with inmates in the Diagnostic and Classification Center will not be granted during the initial 15-day medical quarantine period.] Media representatives and inmates shall abide by all applicable rules, regulations and policies of the Department of Corrections while on State correctional institution property. Violations of any rules, regulations or policies of the Department of Corrections may result in the visit being denied, termination of the visit, suspension of visiting privileges or revocation of visiting privileges.

(4) [Requests for inmate interviews by telephone will be approved at the discretion of the Superintendent. The procedure for obtaining the inmate's written consent will be the same as paragraph (1).] For inmates under a sentence of death and prior to the Governor's warrant being issued, media representatives will only be permitted to have noncontact visits with an inmate. After the Governor's warrant has been issued, noncontact visits will only be entertained if the media representative has obtained an order of a court of competent jurisdiction granting relief and has properly served the Department of Corrections with the court documents seeking or requesting, or both, relief prior to obtaining the order.

(5) [Requests to interview inmates sentenced to death will be handled as outlined in this subsection, unless the Governor's Warrant has been issued. In such a case, an interview may be permitted only upon court order.] Media representatives for the purpose of this section include representatives

of general circulation newspapers, magazines of general circulation sold through newsstands or mail subscriptions to the general public; national/international news services or radio/television stations holding a Federal Communications Commission license.

[(b) *Requests for interviews of residents confined in Community Service Centers.*

(1) News media requests for interviews with individual Community Service Center residents or groups of residents shall be directed to the Regional Director, who shall determine the purpose of the interview, the emotional stability of the individuals to be interviewed and whether or not the interview would present a clear and present danger to the security and good order of the Community Service Center. The Regional Director will also consider whether or not the interview could adversely affect the resident's ability to continue successful participation in the Community Service Center program.

(2) Before starting the interview, the Bureau Waiver Form shall be signed by the resident and witnessed by an employe of the Community Service Center.

(c) *Institution visits by media representatives.*

(1) Representatives of the news media with proper credentials may visit facilities under the jurisdiction of the Bureau with the permission of the Superintendent or Regional Director.

(2) Reporters entering a Bureau facility shall be subject to the same security procedures and regulations which govern any other visitor—that is, personal searches, registration of vehicle, and the like, as circumstances may warrant. Violations of regulations or security procedures may result in termination of the reporter's visit by the Superintendent. Future visits to institutional property may be restricted by the Superintendent with approval of the Commissioner of Correction. Within a reasonable period of time following imposition of such a restriction, the reporter shall be notified of the action and the reasons for it, in writing, by the Superintendent.

(3) For purposes of identification, both photo identification, such as a driver's license, and an identification card issued by the reporter's place of employment are required. If the reporter's employer does not issue identification cards, a letter from a supervisor on company stationery will suffice. Any doubts should be dispelled by placing a call to the reporter's place of employment to verify that he is in fact a representative of that news organization.

(4) Media representatives for the purpose of this section are defined as: Representatives of general circulation newspapers, magazines of general circulation sold through newsstands or mail subscriptions to the general public; national/international news services or radio/television stations holding a Federal Communications Commission license.]

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