IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

JABARI ISSA MANDELA,	)	
	)	
Plaintiff/Appellant,	)	
	)	Davidson Chancery
	)	No. 95-3300-III
VS.	)	
	)	Appeal No.
	)	01A01-9607-CH-00332
DONAL CAMPBELL,	)	
Commissioner of the Tennessee	)	
Department of Correction,	)	
	)	
Defendant/Appellee.	)	

FILED

December 20, 1996

Cecil W. Crowson
Appellate Court Clerk

DISSENTING OPINION

Other panels of this court have held on two prior occasions that the Department of Correction's policies affecting the custody and control of inmates need not be promulgated as rules under the Uniform Administrative Procedures Act. I respectfully disagree because these policies are not merely statements concerning the internal management of state government that do not affect the private rights, privileges or procedures available to the public.

For the past twenty-two years, state administrative agencies have been required to promulgate their rules using the rule-making procedures contained in the Uniform Administrative Procedures Act [Tenn. Code Ann. §§ 4-5-201, -225 (1991 & Supp. 1996)]. Our UAPA defines a "rule" as an "agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency." *See* Tenn. Code Ann. § 4-5-102(10) (1991). The General Assembly has carved out seven exceptions to the rule-making procedures, including an exception for "[s]tatements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public." See Tenn. Code Ann. § 4-5-102(10)(A).

In 1992, this court approved a trial court's holding that a Department of Correction's policy relating to the calculation of release eligibility dates fit within the rule-making exception in Tenn. Code Ann. § 4-5-102(10)(A) because it related to the internal management of the department and did not affect the rights, privileges, or procedures available to the public. *Green v. Tennessee Dep't of Correction,* 01A01-9110-CH-00352, 1992 WL 14123, at *2-3 (Tenn. Ct. App. Jan. 31, 1992), *perm. app. denied concurring in results only* (Tenn. July 20, 1992). Despite the fact that the Tennessee Supreme Court concurred only in the results of the *Green* decision, another panel of this court followed it two years later. *Hitson v. Bradley,* App. No. 01A01-9403-CH-00129, 1994 WL 420912, at *3 (Tenn. Ct. App. Aug. 12, 1994).

These two decisions are inconsistent with the Model State Uniform Administrative Procedures Act and with decisions from other jurisdictions construing similar provisions. The Uniform Administrative Procedures Act should be broadly construed in order to bring uniformity to state administrative procedure. *See* Tenn. Code Ann. § 4-5-103(a) (1991). Thus, the courts should be reluctant to find exceptions to the Act's requirements unless they are plainly evident in the statutes themselves.

Our UAPA is patterned after the Model State Uniform Administrative Procedures Act promulgated in 1961 by the National Conference of Commissioners on Uniform State Laws. *See* Model State Administrative Procedures Act, 15 U.L.A. 137 (1961). Tenn. Code Ann. §§ 4-5-102(10) and 4-5-102(10)(A) are substantially similar to Section 1(7) of the Model Act. Recognizing that the original definition of "rule" was broad enough to apply to policies relating to inmates in correctional facilities, the drafters of the 1981 model act included a provision specifically exempting from the rule-making procedures

> a rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.

Model State Administrative Procedure Act § 3-116(7), 15 U.L.A. 55 (1981). While the General Assembly has not excluded the Department of Correction from

the UAPA's rule-making requirements, it has exempted certain of the department's proceedings involving inmates from the UAPA's contested case requirements. *See* Tenn. Code Ann. § 4-5-106(b) (1991) (exempting disciplinary and job termination proceedings for prisoners under the supervision of the department of correction). The Act contains no similar exemption from the rule-making requirements.

Other courts facing the same issue confronting us in this case have held that prisoners are members of the "public" and that prison rules, regulations, or policies affecting prisoners' rights or status must be promulgated using the UAPA's rule-making procedures. *Malumphy v. MacDougall,* 610 P.2d 1044, 1044 (Ariz. 1980); *Stoneham v. Rushen,* 188 Cal. Rptr. 130, 135 (Ct. App. 1982); *Martin v. Department of Corrections,* 384 N.W.2d 392, 395 (Mich. 1986); *Jones v. Smith,* 478 N.E.2d 191, 192 (N.Y. 1985). Since the General Assembly has not exempted the Department of Correction's institutional policies from the UAPA, I find these decisions highly persuasive and would follow them.

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WILLIAM C. KOCH, JR., JUDGE