

Regulatory Analysis Form		This space for use by IRRC RECEIVED
(1) Agency Department of Corrections		2008 JUL -3 PM 12: 06
(2) I.D. Number (Governor's Office Use) 19-7		INDEPENDENT REGULATORY REVIEW COMMISSION IRRC Number: 2544.
(3) Short Title County Correctional Institutions		
(4) PA Code Cite 37 Pa. Code Chapter 95.	(5) Agency Contacts & Telephone Numbers Primary Contact: David B. Farney Assistant Counsel (717) 731-0444 Secondary Contact: Randall N. Sears Deputy Chief Counsel (717) 731-0444	
(6) Type of Rulemaking (Check One) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and non-technical language. The regulation modernizes outdated minimum standards for county prisons with regard to the physical facilities, safety and security standards, treatment programs and other correctional practices so that the standards are consistent with the current, recognized professional standards for adult local detention facilities. This regulation completely replaces 15 sections of minimum standards that have remained unchanged since promulgated in 1979. The final rulemaking also creates a new section regarding telephone communication (Section 95.233a) while deleting an obsolete section of standards regarding community involvement (Section 95.244). Additionally, 6 other sections of minimum standards are amended in order to make those sections consistent with current, recognized professional standards for adult local detention facilities. In addition to updating outdated standards, the final rulemaking also accomplishes a number of other important objectives. First, the final rulemaking establishes a formalized inspection and inspection report procedure. Second, the final rulemaking specifically identifies minimum standards considered essential to the safety and security of the county prison, prison staff, inmates and the public. Third, the final rulemaking allows the Secretary to act in circumstances		

that require more immediate action than the annual inspection process. The rulemaking allows the Secretary to order a vulnerability analysis of the county prison when a final inspection report finds violations of the essential safety and security standards and finds that those violations may immediately impact the safety and security of the county prison, prison staff, inmates or the public. Fourth, a hearing process is established so that the Department can fairly and clearly meet its statutory duty to determine if a county prison should be classified as ineligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years. The final rulemaking limits use of the hearing classification process to when a county prison has been in repeated violation of the same essential safety and security standards for 3 consecutive annual inspections or when a vulnerability analysis reports finds violations of the essential safety and security standards may present an immediate threat to the safety and security of the facility, the staff, inmates or the public.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Section 506 of the Administrative Code of 1929 (71 P.S. §186).

Section 3 of the Act of December 27, 1965 (P.L. 1237) (61 P.S. §460.3[3-4]).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Under Section 3 of the Act of December 27, 1965 (P.L. 1237) (61 P.S. §460.3[3]), the Department is mandated to establish standards for county jails and prisons, including physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates. The Department is also mandated to inspect county jails and classify them in accordance with the standards adopted. (61 P.S. §460.3[4]).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments are justified by the compelling public interest in the safe and secure operation of county prisons. The amendments update the minimum standards to bring them in line with recognized professional standards for adult local detention facilities. The Department believes the revised standards, the inspection process and the hearing classification process will help ensure that county prisons are operated in a safe and secure manner.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The public health, safety and welfare risks associated with non-regulation include the operation of unhealthy, unsafe and unsecured county prisons. The amendments are designed to ensure that county prison staff, inmates and visitors who work, live and visit the facilities are safe and secure.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All persons associated with county prisons, including staff, inmates and visitors, will benefit from the amendments in that county prisons will be required to meet minimum standards in the operation of the facilities. The public also benefits from the operation of the county prisons in the most secure manner possible and in accordance with the current recognized professional standards.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

The Department does not anticipate that anyone will be adversely affected by the amendments.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The persons, groups or entities that will be required to comply with the amendments include county prison administrators and staff working in the county prisons.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department solicited and received input from county prison administrators and county commissioners from across the Commonwealth in the development and drafting of the proposed amendments. Over 30 sets of public comments were received following publication of the proposed rulemaking. The Department also received valuable input from the County-State Liaison Committee, which is a joint effort between the Department and the County Commissioners Association of Pennsylvania. The committee served as a venue for review of the public comments and discussions for improving the regulation.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Department cannot provide a specific estimate of the cost and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. The regulations are designed to give county officials discretion in meeting the minimum requirements that the amendments mandate. Therefore, the Department is unable to quantify any costs and/or savings associated with the amendments. However, the Department designed the amendments to enable county officials to meet minimum requirements with due consideration being given to budgetary constraints.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Department cannot provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. The regulations are designed to give county officials discretion in meeting the minimum requirements that the amendments mandate. The final regulations contain a number of changes as a result of the public comments and discussions with the County-State Liaison Committee which are designed to reduce or eliminate any added costs to local government as a result of the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures which may be required.

The Department cannot provide a specific estimate of the costs and/or savings to the state government associated with the amendments. The state government would incur costs should a vulnerability assessment of a county prison be ordered or requested. The Department could realize savings should the number of counties achieving full compliance with the minimum standards increase. Under the regulation, a county prison in full compliance with all of the minimum standards would be subject to biannual inspections rather than annual inspections.

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(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

As stated previously, the Department cannot estimate what costs will be incurred by counties in implementing the amendments. Many of the amendments will not require a county prison to incur any discreet costs. The amendments are designed to give county officials sufficient discretion to meet the minimum requirements in the most cost effective manner and in a way most appropriate to that county prison.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3	FY-2	FY-1	Current FY
General Government Operations	\$31,195,000	\$31,492,000	\$34,195,000	\$36,614,000
State Correctional Institutions	\$1,086,505,000	\$1,101,381,000	\$1,154,473,000	\$1,313,674,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Since the Department is unable to provide any costs/benefit information, it is unable to explain how the benefits of the regulation outweigh the adverse effects and costs. However, the Department does not believe that the amendments will have any adverse effects on the regulated community.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Department did not consider any non-regulatory alternatives or the costs associated with any such alternatives because the Department is mandated by statute to establish standards for county prisons and to inspect and classify them in accordance with those standards. (61 P.S. §460.3).

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Department did not consider any alternative regulatory schemes or any costs associated with such schemes.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. There are no federal standards for the operation of county prisons.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The amendments are consistent with generally accepted professional standards for the operation and administration of adult local detention facilities. The amendments will not put Pennsylvania at a competitive disadvantage with other states since this is a regulation of a government function.

(25) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The Department does not believe that the regulations will effect any existing or proposed regulations of the promulgating agency or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department does not anticipate holding any public hearings or informational meetings concerning the amendments. The amendments are not effective for 12 months after publication. This time period will permit the Department to discuss compliance issues and offer assistance to county prison administrator and to discuss these issues with the County-State Liaison Committee.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. The reporting requirements will mostly formalize what has been the Department's practice regarding reporting requirements. Section 95.242(1) will require submission of population information on a county data monthly report form supplied by the Department. The Department created this form and has requested the filing of this report by the counties since the mid-1990's. That practice arose out of the Data and Reporting Requirements for Automated County Jail Statistics Committee which included representatives from the Department, Pennsylvania Commission on Crime and Delinquency (PCCD) and the Counties of Allegheny, Blair, Cumberland, Dauphin, Erie, Lebanon, Monroe and Philadelphia. This committee was established as part of a grant received by the Department from PCCD to establish procedures to automate the reporting of county prison and jail statistics to the Department. Subsection (3) will require the submission of an annual county prison general information report on a form supplied by the Department. The Department created this form and requested the filing of this report approximately 5 years ago. Subsection (2) relieves the existing reporting requirement that county prisons file an extraordinary occurrence report within 48 hours of an incident. Such reports may now be filed at the end of each month.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The amendments do not contain any special provisions which have been developed to meet the particular needs of the effected groups or persons including, but not limited to, minorities, elderly persons, small business and farmers.

(29) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The amendments become effective 12 months after publication in the Pennsylvania Bulletin. Compliance will be expected within the year following the effective date of the amendments.

(31) Provide the schedule for continual review of the regulation.

The amendments, once effective, will be reviewed on an annual basis.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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Copy below is hereby approved as to
form and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

Department of Corrections
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 19-7

DATE OF ADOPTION: _____

BY: Jeffrey A. Beard, Ph.D.

TITLE: Secretary of Corrections
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independ-
ent Agencies.

BY: Andrew C. Clark

JUN 25 2008

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

NOTICE OF FINAL RULEMAKING
DEPARTMENT OF CORRECTIONS
37 PA CODE CHAPTER 95
COUNTY CORRECTIONAL INSTITUTIONS
Subchapter B, Administrative Standards,
Regulations and Facilities

RULES AND REGULATIONS

DEPARTMENT OF CORRECTIONS

37 Pa. Code Chapter 95

County Correctional Institutions

The Department of Corrections (Department) hereby amends Chapter 95, relating to county correctional institutions, to read as set forth in Annex A.

A. Statutory Authority

The Department is acting under the authority of section 506 of the Administrative Code of 1929 (71 P.S. §186). Under section 506 of the Administrative Code of 1929, the Department is empowered to prescribe rules and regulations for the performance of the Department's business. A portion of the Department's business includes establishing standards for county jails and prisons, including physical facilities and standards for correctional programs of treatment, education and rehabilitation of inmates. See section 3(3) of the act of December 27, 1965 (P.L. 1237, No. 502) (Act 502) (61 P.S. §460.3(3)). The Department is also empowered by section 3(4) of Act 502 to inspect county jails and to classify them, in accordance with the standards for county jails and prisons the Department adopted, as eligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years.

B. Purpose of the Regulation

This final rulemaking represents the second phase of the Department's modernizing outdated minimum standards for county prisons with regard to the physical facilities, safety and security standards, treatment programs and other correctional practices. This final rulemaking completely replaces 15 sections of minimum standards that have remained unchanged since promulgated in 1979. Those sections are replaced with standards consistent with current, recognized professional standards for adult local detention facilities. The final rulemaking also creates a new section regarding telephone communication (Section 95.233a) while deleting an obsolete section of standards regarding community involvement (Section 95.244). Additionally, 6 other sections of minimum standards are amended in order to make those sections consistent with current, recognized professional standards for adult local detention facilities.

In addition to updating outdated standards, the final rulemaking also accomplishes a number of other important objectives. First, the final rulemaking establishes a formalized inspection and inspection report procedure. Second, the final rulemaking specifically identifies minimum standards considered essential to the safety and security of the county prison, prison staff, inmates and the public. Third, the final rulemaking allows the Secretary to act in circumstances that require more immediate action than the annual inspection process. The rulemaking allows the Secretary to order a vulnerability analysis of the county prison when a final inspection report finds violations of the essential safety and security standards and finds that those violations may immediately impact the safety and security of the county prison, prison staff, inmates or the public. Fourth, a hearing process is established so that the Department can fairly and clearly

meet its statutory duty to determine if a county prison should be classified as ineligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years. The final rulemaking limits use of the hearing classification process to when a county prison has been in repeated violation of the same essential safety and security standards for 3 consecutive annual inspections or when a vulnerability analysis reports finds violations of the essential safety and security standards may present an immediate threat to the safety and security of the facility, the staff, inmates or the public. In summary, the inspection report process and the hearing procedures are intended to assist county prisons in meeting the essential minimum safety and security standards, encourage county prisons in meeting all of the minimum standards and to limit a classification of ineligibility to receive longer sentenced prisoners to only the most serious of safety and security violations.

C. Public Comment

The Department received over 30 sets of public comments. A number of the public comments submitted were from local officials directly involved in the management of county prisons such as county prison administrators, county prison boards and county commissioners, as well as statewide organizations representing those officials that included the County Commissioners Association of Pennsylvania (CCAP), the Pennsylvania County Prison Warden's Association (PCPWA) and the Pennsylvania Sheriff's Association. Public Comments were also received from prisoner advocate organizations including the The Pennsylvania Prison Society, Pennsylvania Institutional Law Project and Justice and Mercy, Inc., as well as, individuals working inside some of the county prisons. The Independent Regulatory Review Commission (IRRC) and four state legislators also submitted comments.

Through a cooperative effort between CCAP and the Department, a County-State Liaison Committee was previously established to discuss issues of shared concern between the Department and county prisons and to foster a productive working relationship between the state and local prison officials. The committee meets quarterly. Since the close of the public comment period, the committee provided a venue for review of the proposed rulemaking, the public comments and suggestions for improvements to the regulations. The public comments and the committee discussions were tremendously helpful in developing the final-form regulation.

D. Summary of Comments, Responses and Major Changes to Proposed Rulemaking

Following is a summary of the major comments received following publication of the proposed rulemaking and the Department's response to those comments. A summary of major changes from the proposed rulemaking is also included.

1. Fiscal Impact of the Regulation –

A number of commentators disagreed with the Department's statement in the Preamble that the proposed rulemaking is not expected to have a significant fiscal impact upon the Commonwealth, its political subdivisions or the general public. The most numerous comments regarding the

fiscal impact of the proposed rulemaking concerned *Section 95.241(1) (ii)* and *Section 95.243(2)* and (6).

Comment - Section 95.241(1) (ii) – This sub-paragraph required that the county prison conduct an initial staffing analysis to determine the staffing allotment and post assignments to safely operate the prison. The proposed language further required that the “results of this annual staffing analysis must serve as the required staffing allotment designated for the prison.” The commentators objected to this language because they believe it would have a significant fiscal impact by requiring the hiring of additional staff.

Response - The Department agreed that the final determination as to the number of staff hired by the prison should ultimately be a local decision based on resources and all other relevant factors. The next to the last sentence of this sub-paragraph in the proposed rulemaking was therefore deleted. The prison administrator, or designee, is free to conduct that analysis in the manner they deem most appropriate to the local prison provided relief factors for each classification of staff are considered.

Comment - Section 95.243 (2) – Numerous comments were received regarding the requirement in sub-paragraph (2) that treatment services must include programming in the four areas of education, social services, alcohol and other drug and counseling. The comments all asserted that these requirements represented an unfunded mandate for counties to provide various treatment services and that the decisions as to what services to provide should be left to the local prison authorities.

Response- The Department believes that the requirements of sub-paragraph (2) do not represent a significant departure from the existing minimum requirements of Chapter 95 regarding treatment programming or from the current practice in virtually all of the 64 counties operating county prisons in Pennsylvania. More importantly, the Department believes these requirements allow greater flexibility to the county prison in providing treatment services than the existing standards by permitting local prison authorities to allocate financial resources for the services most appropriate to the county prison’s inmate population.

When comparing the existing standards to the final-form regulation, it must be noted that the term “counseling services” is defined very broadly in paragraph (1) of the existing standard. The third sentence of that paragraph states “[C]ounseling shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholic Anonymous and similar groups; testing and clinical psychological services; and psychiatric services.” That broad description of “counseling” essentially includes some aspect of the four areas of treatment services required by sub-paragraph (2) of the final-form regulation as those four areas are defined in Section 95.220a. For example, “[E]ducation” is defined as “[A]a treatment service using formal academic education or a vocational training activity designed to improve knowledge or employment capability, or both.” (emphasis added) “[S]ocial services” is defined as “[A]a treatment service designed to promote the welfare of the community and inmate, as through aid for physically and mentally handicapped, health maintenance, family development and employment opportunities.”

“[A]lcohol and other drugs treatment” is defined as “[A]a treatment service designed to address the impact and ramifications of use or abuse of alcohol and other drugs so as to prevent illegal and/or destructive conduct and avoid addiction.” “[C]ounseling” is defined as “[A]a treatment service using planned interpersonal relationships to promote social adjustment and provide opportunities to express feelings verbally with the goal of resolving the individuals problems.” An element of all of these four treatment service areas is part of the definition as to what must be included in “counseling” under the existing standard.

The existing standard mandates the specific number of hours of “counseling” (again, as broadly defined) that must be provided based solely on the inmate population of the facility. The existing standard also mandates, to some degree, the treatment staff that must be available to provide the counseling services. Conversely, the final-form regulation does not mandate the number of hours these different treatment services must be provided, but only that some form of programming must be provided in these areas. Additionally, the final-form regulation does not mandate the manner in which the treatment services in these four areas must be provided. As with the existing standard, the final-form regulations allows these services to be provided by a treatment professional employed by the prison, someone under contract or a volunteer.

The Department believes that this new standard is not only consistent with the current recognized professional standards for adult local detention facilities, but also with the current practices in most all of the Commonwealth’s county prisons. For example, all county prisons currently have some form of alcohol and other drug programming, at a minimum, in the form of 12 step programs for alcohol and/or drug addiction. All county prisons currently have some form of counseling services. Perhaps not all inmates, particularly short-term inmates, would have access to those services, but the final-form regulation does not mandate that. The final-form regulation leaves the decision as to which inmates receive what services largely up to the county prison.

Regarding education services, all county jails would currently be meeting the standard in the final-form regulation because all county jails make programming available to inmates less than twenty-one years of age to prepare for the general education development examination as mandated by state law.

Comment - Section 95.243 (6) A number of commentators objected to the requirement that a comprehensive treatment needs assessment be conducted on each inmate within 14 days following admission to the jail. The commentators asserted that such a requirement was inappropriate to the nature of short-term offenders housed in county jails and would necessitate the hiring of additional staff thereby significantly increasing the costs to the county without funding to pay for such additional expenses.

Response - Upon review of these comments and additional discussions with the County-State Liaison Committee, the Department has substantially revised the minimum requirements for conducting a treatment needs assessment. The Department concurs that requiring an exhaustive treatment needs assessment for short-term inmates may strain county resources and result in the opposite of the intended purpose which is to make treatment services available to as many

inmates as appropriate and possible. The final-form standard has therefore been changed so that Paragraph (6) only requires that a treatment needs assessment be conducted within 90 days of an inmate's admission. Additionally, the follow-up treatment services recommended by the needs assessment must begin within 45 days of the needs assessment. The Department and members of the County-State Liaison Committee reached a consensus that this revision will appropriately exclude short-term inmates (those with sentences under 3 months) from the requirement. The revision will substantially reduce or avoid any additional financial burden to the counties in conducting treatment needs assessments.

The Department also simplified the conducting of a treatment needs assessment by eliminating the more prescriptive requirements of what must be included in an assessment as listed in subparagraphs (6)(i-v). The elimination of the prescriptive requirements gives the counties flexibility in determining how those assessments should be conducted.

Comment – Additional paperwork requirements – Some commentators asserted generally that the proposed rulemaking would cause a significant burden because of required additional paperwork.

Response - There are some new provisions in the final-form regulation that require documentation of a review, action, inspection or event. The intent of these provisions, in part, is to require that the county prison record or confirm in writing that the required action took place. In most instances, that recording or written confirmation can be done in the location, manner or form that the county prison deems appropriate. The below listed provisions do not require a separate report or that the documentation take any particular form. The Department believes the county prisons can comply with the following documentation requirements with a minimal investment of time or effort and without any significant, additional paperwork requirements:

Section 95.221 (1) – requires documentation of the training of all corrections personnel in each employee's personnel file.

Section 95.224 (6) - requires documentation of the annual review of inmate rules and staff procedures.

Section 95.223 (2) – requires documentation in an inmate's file that the inmate received orientation in the prison's rules, procedures and programs listed in the paragraph (1).

Section 95.230 (2) – requires documentation that the person in charge of food services on any given shift, if not certified, has been trained as to food safety and sanitation procedures established in written local policy.

Section 95.241 (1)(vi) – Warden Wetzel commented that this documentation requirement would increase paperwork.

Section 95.241 (3)(iii) – requires documentation of an annual review of the county prison's emergency plans.

These requirements can be met by something as simple as a notation, signature and date at the bottom of a policy or on a separate sheet following the policy stating that the required review has taken place. Regarding *Section 95.241 (1)(vi)*, the documentation could be as simple as a notation and signature in a block logbook that a visit or inspection has taken place. The requirement to document the training or qualification of personnel (*Sections 95.221 (1), 95.230 (2) and 95.241 (2)(ii)(H)*) and the orientation of inmates can be met by having the appropriate personnel sign a receipt, acknowledgement or certification and placing that in the employee's personnel file. A similar practice would meet the requirement to document orientation of all inmates under *Section 95.223 (2)*.

The documentation provisions listed below may require a greater investment of time to complete than the above provisions.

Section 95.241 (2)(ii)(E) – requires a documented monthly inventory of the stored restraints, chemical agents, stun devices, batons and firearms.

Section 95.241 (4)(iv) – requires documentation of a quarterly inspection of the keys, access card or other security devices.

Section 95.248 (2),(3),(8) and (9) – these provisions require documentation of the required, periodic sanitation inspections, inspections of the physical plant and equipment, testing of the emergency back-up power system, fire/smoke alarms or detectors and the conducting of fire drills.

The Department believes that any additional investment of time to complete these documentation requirements is not substantial, nor unreasonable in light of the nature of the information. It is vitally important to the safe and secure operations of the prison that prison management know whether the restraints and weapons are accounted for and in usable condition. The same consideration is true for the keys, access cards or other security devices. Again, the regulation does not mandate the manner or form of the documentation. Whether the county prison creates checklists for these inventories or requires written reports to the prison administrator or some other method is a decision left to the county prison. The Department has found that most county prisons have service contracts for the maintenance and testing of major physical plant equipment such as boilers, any emergency back-up power system or the fire/smoke alarm system. The requirement to document the testing of these systems does not represent a change from the way almost all county prisons currently operate. The outside vendor's service or testing report would be sufficient documentation to meet the requirements of *Section 95.248 (3), (8) and (9)*.

Section 95.246 (1)(v) and (2)(v) – requires the documentation and reporting of any death and any sexual assault or alleged sexual assault to the United States Department of Justice. Federal law mandates these additional reporting requirements.

Section 95.242 in the final-form regulation formalizes some additional informational reporting requirements beyond the existing regulation. Paragraphs (1) and (3) will require county prisons to submit a Monthly County Prison and Jail Data report and an Annual County Prison General Information Report. These paragraphs will put into regulation the Department's long-standing practice of collecting statistical information from the county prisons. With only a few exceptions, all county prisons in the Commonwealth provide this information to the Department. The Department will provide the reporting forms. The county prisons are not responsible for creating the forms. Also, the regulation has been written so that electronic filing of the information can be implemented. In that the county prisons have this information readily available and most all of the counties have been reporting this information, this requirement will not require any additional paperwork beyond existing practices.

In order to relieve some reporting requirements, Paragraph (2) of the final-form regulation eliminated the requirement that extraordinary occurrence reports (EOR) be submitted to the Department within 48 hours of the event. The final-form regulation now requires that a County Extraordinary Occurrence Monthly Report be submitted within 30 days of the end of the reporting month. Again, the Department will supply the report form to the county prisons. The monthly report will be more of a statistical compilation of events qualifying as extraordinary occurrences as defined in Paragraph (2) requiring less detail than a single EOR. The Department believes this change in reporting practice will be substantially easier for county prisons than the current 48-hour reporting provision.

2. *Reasonableness of the regulation*

Comment - Noting that a number of commentators disagreed with the Department's assertion that the amendments afford county prison administrators with greater flexibility, IRRC requested that the Department explain "how amendments to each section provide County Correctional Institutions (local prison) with greater flexibility in carrying out their duties."

Response - The Department's intent in revising the Chapter 95 regulations is first and foremost to modernize outdated standards so that the minimum requirements for county prisons in Pennsylvania are consistent with the current recognized professional standards for adult local detention facilities. In many important ways, as described below, the revised standards in the final-form regulation do provide greater flexibility to county prison administrators than existing standards. As with the Phase 1 revisions promulgated in February 2000, the new standards require county prisons to develop written local policy that incorporates the minimum requirements of Chapter 95. The Department's intent is to permit county prisons maximum flexibility in establishing the details of policy and procedures most appropriate for that facility.

The Department does not assert that all of the revisions in the final-form regulation afford greater flexibility to county prison administrators than existing standards. Prison operations and administration have evolved significantly in the almost 30 years since the existing standards were promulgated. A number of the existing standards are outdated to the point of no longer providing meaningful standards for current-day prison operations. In the process of modernizing those standards, some of the revised standards are necessarily more prescriptive than existing

standards. The Department's intent is to limit the instances of somewhat more stringent requirements to those standards that directly impact on safety and security. The Department does not believe that any of the more stringent requirements are unduly burdensome either operationally or financially given the importance of this goal.

Described below are instances where the revised standards in the final-form regulation provide greater flexibility to county prison administrators than the existing standard:

Section 95.241 – Security. The existing language of paragraph (1) requires staffing levels for a county prison based solely on the inmate population, specifically requiring a minimum staffing ratio of one officer per shift for every 15 inmates. The revised standard in paragraph (1) of the final-form regulation contains no required, specific ratio of officers to inmates. The revised provision instead requires only that the county prison conduct an initial staffing analysis, thereafter reviewed on an annual basis, which takes into consideration the logical relief and leave factors. The revised provision does not limit this determination to only a mathematical calculation, but instead allows the county prison to consider any other factors administrators deem relevant to the analysis.

Subparagraph (1)(iii) in the final-form regulation gives greater flexibility to the county prison in making male and female staff assignments generally requiring that reasonable accommodation to inmate privacy be maintained. The existing standard is more restrictive by specifically limiting the movement of male officers to enter female housing only in the presence of a “matron.”

One commentator objected to the requirements of subparagraph (1) (v) listing the specific job duties for staff assigned to the 24 hour control center. The Department concurs with these comments. The second sentence of the provision listing specific job duties has been deleted from the provision.

Paragraph (4) *Access Control* is a prime example of how the revised standards in the final-form regulation replaced seriously outdated standards (see Paragraph (3) of the existing standard). The existing standards concern only keys. The revised standard recognizes that many facilities now use other means of accessing secure areas.

Paragraph (6) *Tool/Equipment Control* is another example of how the revised standards replace outdated and inadequate existing standards (see Paragraph (8) of the existing standard). The existing standard does not include any minimum requirement for a county prison to inventory and safely secure tools instead addressing those issues only under “recommended guidelines.”

Two commentators submitted comments objecting to the tool control provisions Section 95.242 (6)(v) in the proposed rulemaking as being cumbersome and likely to require the hiring of additional staff. Upon further discussion of the issue with the County-State Liaison Committee, the Department concurred with this concern. Subparagraph (6) (v) in the final-form regulation has therefore been revised to eliminate the text that established “how” a tool inventory and receipt system had to operate. The final-form provision now only requires that an inventory and

receipt system must be established by written local policy leaving the specifics as to how to implement that system to the discretion of the county prison.

Section 95.243 – Treatment services. A number of comments were received concerning this provision. Most of those are discussed in the context of the comments under paragraph 14 below. With regard to the issue of whether the revised standards are overly prescriptive, the Department asserts that, taken as a whole, the provisions of Section 95.243 in the final-form regulation, are consistent with the current recognized professional standards for adult local detention facilities while still allowing county officials and prison administrators sufficient flexibility to make decisions appropriate to their facility.

The Department's statutory mandate found at 61 P.S. §460.3(3) includes establishing standards for county jails that include "standards for correctional programs of treatment, education and rehabilitation of inmates." The Department believes the treatment services requirements in the final-form regulation provide significantly more flexibility to county jails in meeting inmate treatment needs than the existing requirements of Section 95.243. The existing treatment section sets very specific requirements for the number of hours of counseling services that must be provided per week as well as specific staffing requirements based solely on the jails average daily inmate population. This numbers-only approach is in fact inflexible and fails to afford county prisons with sufficient discretion to meet the treatment needs of the inmate population based on other relevant factors.

It is important to note that the term "counseling services" as used in Paragraph (1) of the existing section is defined broadly so that it "shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholics Anonymous and similar groups; testing and clinical psychological services; and psychiatric services." "Counseling services" in the existing regulation encompasses, in more specific terms, much of the four areas for treatment services required in Section 95.243 of the final-form regulation.

Most importantly, and contrary to the concerns of the commentators, the final-form regulation does not require *how* these treatment services must be provided. Section 95.243 does not specify the amount of hours that must be provided in these treatment areas, which inmates must be provided which services, nor the manner in which the treatment services are to be provided. Those decisions are left to judgment of the county jail administrators and treatment staff. As with the existing standard, the final-form regulation permits a county prison to provide these services through a person employed by the prison, someone under contract with the prison, through a volunteer or any combination thereof.

The final-form regulation also provides county prisons greater flexibility in terms of who must deliver those services. Paragraph (3) allows these services to be delivered by a treatment professional (defined in Section 95.220a) or a person certified, licensed or trained to provide such programming. The existing standard requires that a qualified counselor who preferably possesses a Master's Degree, but no less than a Bachelor's degree in behavioral sciences deliver the services. Furthermore, if the treatment services are delivered by a contracting agency or a

professional volunteer, those persons must still meet the standards for qualified counselor. The existing standard also requires all county jails with populations over 75 inmates, but below 175, to have two full-time treatment personnel, one of whom must be a treatment supervisor. For jails with average daily populations of 175 inmates or more, the existing standard requires providing an additional qualified counselor for every 75 inmates over the first 75. Those specific staffing mandates have all been eliminated in the final-form regulation. The Department believes the existing standards provide more of a mandate to county jails as to *how* to provide the required counseling services than the revised standards in the final-form regulation. The intent of the final-form treatment services provision is to establish the required areas in which treatment services must be provided, but to leave the decisions as to the level of services and how those services are provided up to the county jail administrators.

Section 95.244 – Community involvement. Upon further review of this section, the Department determined that neither the existing standards nor the requirements in the proposed rulemaking advance important interests in safety and security, programming or other operational standards and, therefore, this section is being deleted in its entirety.

Additional Comments: Section 95.222(1)(iv) – Admissions. One commentator objected to the requirement that an unclothed search of an arrestee take place only when there is reasonable belief or suspicion that the arrestee be in possession of an item of contraband. The commentator stated that the requirement was impractical and unnecessary due to the unique operational considerations of that county prison system noting that all arrestees are admitted into that system post-arraignment unlike other county prisons.

Response: The Department concurred that the new standard should not adversely impact the unique circumstances of that county prison system. For this reason, the specific requirements regarding the use of strip searches were eliminated and the final-form regulation now requires that written local policy state the type of search to be performed and any restrictions on the use of strip searches.

3. *Implementation procedures*

Comment - Effective date – The Preamble to the proposed rulemaking stated that the regulation shall be effective upon final-form publication in the *Pennsylvania Bulletin*. IRRC recommended that the Department consider an effective date that occurs six to twelve months after final-form publication to allow county prisons time to implement the new standards.

Response - The Department concurs with this recommendation. The final-form publication will establish the effective date for the new standards as twelve months after final-form publication.

Comment - Written local policy – IRRC stated its understanding of the Department’s intent as requiring the county prisons to develop their own written policy that reflects the minimum requirements of Chapter 95. IRRC recommended that each paragraph begin with the phrase “Written local policy must provide ...”, or similar phrasing.

Response - The Department concurs with the recommendation. These changes have been made in the final-form regulation where necessary in *Sections 95.222, 95.224, 95.229, 95.230, 95.232, 95.233, 95.233a, 95.235, 95.237, 95.239, 95.240, 95.241, 95.242, 95.243 and 95.248.*

4. *Section 95.220a. Definitions – Reasonableness; Implementation procedures; Clarity*

Comment - IRRC listed 18 definitions that contained substantive provisions suggesting that those substantive provisions either be deleted or placed in the body of the regulation. One commentator also objected to many of the definitions as being substantive in nature.

Response - The Department concurs with this recommendation. The following changes to definitions in the final-form regulation have been made:

Bed Capacity – the substantive language “and that are only utilized in areas approved for residential occupancy by the Pennsylvania Department of Labor and Industry or local code authority” has been deleted from the definition.

Community resources - the second sentence of the definition has been deleted.

Counseling – the second sentence and the three types of counseling have been deleted.

Financial audit – the second sentence of the definition has been placed in the body of the regulation at the end of Section 239 (3).

Health care screening – the substantive provisions in the second and third sentences of the definition have been placed in the body of the regulation in Section 232 (1).

Health care training - the second sentence of the definition has been deleted.

Major infraction – the definition has been deleted and some of the substantive language has been placed in the body of the regulation in Section 240 (2)(i).

Minor infraction – the definition has been deleted and some of the substantive language has been placed in the body of the regulation in Section 240 (2)(ii).

Noncontact visitation – the second sentence of the definition has been deleted.

Preinspection audit – the definition has been deleted. As described below under Comment No. 5, the inspection process set forth in Section 220b has been revised so that preinspection audits have been eliminated.

Prison inspection – the second sentence of the definition has been deleted and the first sentence revised to conform to the revisions to Section 220b.

Procedures – the second and third sentences of the definition have been deleted.

Security perimeter – the second sentence of the definition has been deleted.

Segregation – the second sentence of the definition has been deleted.

Training – the second sentence of subparagraph (i) has been placed in the body of the regulation as the second sentence in Section 221 (5). All of subparagraph (ii) in the definition has been deleted.

Treatment professional – the first sentence of the definition has largely been deleted.

Treatment training – the second sentence of the definition has been deleted.

Vulnerability analysis – the second and third sentences of subparagraph (i) have been deleted and the remaining text of the definition has been combined into one sentence.

Comment - Alcohol and other drugs treatment - IRRC recommends that the phrase “or both” be deleted from the definition.

Response - The Department concurs and the phrase has been deleted.

Comment - Bed capacity - IRRC recommends that since the phrase “recognized professional standards” is referenced in the definition, the specific standards should be referenced in the definition.

Response - The Department concurs and reference has been made to the American Correctional Association’s standards for Adult Local Detention Facilities.

Comment - Building code – IRRC recommends that since the definition references “Federal, state and local regulations that dictate construction of a prison”, the definition should specifically reference the regulations that should be followed.

Response - This definition has been deleted as the term is used in only one instance and its usage is self-explanatory. Furthermore, each local prison would need to identify and comply with any applicable building codes separate from the applicability of this regulation.

Comment - Contraband – IRRC recommends that the phrase “or on prison grounds” be deleted from the definition since the “prison grounds” are by definition part of the prison.

Response - The Department concurs and the phrase has been deleted.

Comment - Force, use of – IRRC and numerous commentators stated that the use of force to effect compliance with an order is an accepted standard in correctional practice and should be included in the definition. The commentators further noted that this omission would make it difficult to maintain order in county prisons.

Response - This omission was an oversight. The phrase “to effect compliance with the rules and regulations of the facility when other methods of control are ineffective or insufficient” has been added to the definition. The definition is now consistent with accepted correctional practice and the Department’s own use of force definition and policy.

Comment - Life safety code - IRRC recommends that the last sentence of the definition, which states, “Two chapters are devoted to correctional facilities.” be deleted.

Response - The Department concurs and the sentence has been deleted.

Comment - Major infraction and minor infraction – IRRC noted that a number of commentators believed that these definitions do not provide county prisons with sufficient flexibility regarding inmate misconducts. More specifically, several commentators stated that the definitions were not consistent with common jail practices that allow for some rule violations being sanctioned in an informal manner and without hearings. IRRC also requested that the Department explain the need for including major and minor rule infractions in the regulation.

Response - As a result of discussions with the County-State Liaison Committee and review of the public comments, the Department has revised Section 240 (2) to allow county jails greater flexibility to respond to inmate rule violations. The revision allows a county jail to define a third category of rule infractions in its written local policy by defining a category of rule infractions that do not rise to the level of major or minor infractions. A new paragraph (7) has been added allowing for informal resolution of this third category of rule infractions. Paragraph (7) also requires that an inmate’s participation in the informal resolution of these rule infractions be on a voluntary basis only.

The concept of breaking down inmate rule violations into major and minor infractions is consistent with the current recognized professional standards for adult local detention facilities and in fact gives county jails greater flexibility in responding to inmate rule violations. The current standard in Section 95.240 required that discipline for the violation of any prison rule could not be imposed unless the basics of due process were provided to the inmate. Those basic due process requirements found in Paragraph (2) are that the inmate be informed of the offense charged in writing, has had an opportunity to present a defense and has been found guilty of the charge by an impartial party or board designated by the prison administrator. The existing standard requires these procedures regardless of the gravity of the rule violation or the level of the sanction imposed. The final-form regulation eliminates the across-the-board procedural requirements by tying the level of procedure due for a rule violation to the seriousness of the violation and the level of the sanction that can be imposed.

Comment - Prison administrator - IRRC recommended that the phrase “regardless of local title” be deleted from the definition as unnecessary.

Response - The Department concurs and the phrase has been deleted.

Comment - Restraints – Since the definition references devices as “authorized”, IRRC recommends that the term should either be deleted or the regulation specify how a device is authorized.

Response - The Department concurs. The phrase “authorized by written local policy that is” has been added to the definition to clarify that the written local policy needs to specify which restraints are authorized for use in the county jail.

Comment - Treatment service(s) – IRRC recommends that this term be defined since it is used throughout the proposed rulemaking.

Response - The Department concurs with this recommendation. A definition of the term has been added to the final-form regulation.

5. *Section 95.220b. Scope – Statutory authority; Reasonableness; Implementation procedures; Clarity*

The Department received extensive comments on *Section 95.220b* from IRRC and a number of commentators. All of the comments were submitted under the three general topics discussed below:

Comment – Inspection and declassification process – IRRC and/or the commentators stated six common objections to the inspection and declassification process described in the proposed rulemaking:

(a) IRRC and a number of commentators suggested that the term ‘declassification’ was unclear and should be defined.

(b) Commentators objected to the lack of consultation with, and an appeal process for, county prisons found to be in non-compliance of the standards. IRRC noted its agreement with the commentators and recommended that both a consultation and appeals process be included in the final-form regulation.

(c) Two commentators and IRRC objected to the proposed rulemaking because it allowed for the possibility that a county prison could be declassified for noncompliance with standards not related to security. It was recommended that ‘declassification’ be limited to noncompliance with the same safety and security-related standards that could trigger a vulnerability analysis under paragraph (6) of the proposed rulemaking. IRRC also recommended that the final-form regulation specify that declassification occur only in instances where there is noncompliance with security standards.

(d) IRRC recommended that the language of the final-form regulation describe who will pay for mandatory and voluntary vulnerability analyses.

(e) A number of commentators objected to the proposed rulemaking because it failed to clarify what would happen with pretrial detainees and inmates if a local prison is 'declassified.'

(f) IRRC commented that this section lacked specificity regarding pre-inspection audits and time frames for certain actions in the inspection and declassification process.

Response - Inspection and declassification process - The Department found the public comments and the subsequent discussions with the County-State Liaison Committee on these issues to be extremely valuable. That process resulted in important revisions to this section that the Department believes clarify the intent of the process and the procedures themselves. The Department's overriding goal in establishing the inspection and classification procedures is to ensure that county prisons are meeting the minimum standards that it believes are essential to the safe and secure operation of those facilities. The Department is fully cognizant that these are the same goals of the county prison administrators, county prison boards and the staff working at those facilities. A second objective of the inspection and classification procedures, as revised, is to assist county prisons in complying with the minimum standards so that the common goal of safe and secure correctional facilities is achieved. To that end, *Section 95.220b* in the final-form regulation has been revised as explained below:

(a) The Department concurs with the comments that use of the term "declassification" in the proposed rulemaking has caused confusion, particularly since that specific term is not used in the authorizing statute itself. The term "declassification" is therefore not used in the final-form regulation. The Department believes the section is clarified by instead using the language of the authorizing statute. Paragraphs (11), (12) and (13) now describe the purpose of a hearing as determining whether a county prison should be 'classified as ineligible to receive prisoners with a sentence of six months or more but less than five years.'

(b) The Department agrees with the recommendations of IRRC and the commentators to include an appeal and/or consultation process in the final-form regulation. Paragraph (3) of the final-form regulation establishes a procedure that allows for input from the county prison before a final inspection report is issued. Specifically, the regulation requires the Department's inspector to issue the preliminary findings of the inspection to the county prison administrator and the governing county prison authority. The governing county prison authority or designee will then have up to 30 days to submit a written reply to the preliminary findings to the Deputy Secretary for Administration. The Deputy Secretary then has preliminary findings and a response from the county prison, which may include any relevant documentation, before issuing a final inspection report. The Department agrees that allowing input from the county prison will result in a fairer and more complete process. The written response offers the county prison an opportunity to dispute the preliminary findings or to explain other policies or practices that could mitigate the preliminary findings of the inspector. The regulation does not include an appeal from the final inspection report issued by the Deputy Secretary. A county prison cannot be classified as ineligible to receive certain inmates based solely on the findings in an inspection report. That classification cannot happen without a hearing and resulting order with specific findings by the Secretary. Should such an order be issued, the county prison would have the right

to appeal that order to the Commonwealth Court under 42 Pa. C.S.A. §5105. The Department also believes that the changes permitting a response by the county prison to preliminary findings, including the submission of documentation, allows the Department to consider any unique circumstances faced by a particular county before issuing inspection report findings.

(c) The Department agrees with the recommendation of IRRC and various commentators to limit an 'ineligibility' classification of a county prison to noncompliance with safety and security related standards. Paragraph (2) of the final-form regulation now lists the specific sections and paragraphs of Chapter 95 that are deemed to be essential to the safety and security of the county prison, prison staff, inmates and the public. The provisions that follow establish that only a violation of an essential standard could lead to a classification hearing by the Department. The final-form regulation limits the possibility of a classification hearing even further by requiring not only a violation of an essential safety and security standard, but a finding by that this violation constitutes an "immediate threat to the safety and security of the county prison, prison staff, inmates or the public."

(d) The Department agrees with IRRC's recommendation that the final-form regulation describe who is responsible for paying the costs of a mandatory or voluntary vulnerability analysis (VA). Under Paragraph (8) of the final-form regulation, the Department bears the costs of the VA when the Department orders the VA. Under Paragraph (10) of the final-form regulation, the county bears the costs of the VA when it is requested by the county. The Department has offered several training sessions to teach county prison officials how to conduct a VA. A number of county prison officials and staff have been participating with the Department in planning and offering additional VA training sessions.

(e) The statute (61 P.S. §460.3 (3) and (4)) authorizes the Department to establish standards, inspect and classify the county jails according to those standards as eligible to "receive prisoners sentenced to maximum terms of six months or more but less than five years." The statute does not specifically address what happens to those inmates should a jail be classified as ineligible to receive these prisoners. The Department believes that the appropriate reading of the statute restricts a classification action to limiting a county prison from receiving *additional* prisoners with the defined sentences. The statute does not authorize that all prisoners with the defined sentences already in the prison be removed. In discussions with the County-State Liaison Committee, the Department stated that should a county prison be classified as ineligible to receive these prisoners, that county remains responsible for arranging for incarceration of individuals sentenced by the county's court of common pleas in another facility. Pennsylvania law (61 P.S. §72) permits the transfer of inmates in a county prison to another county "upon such terms and conditions as the counties may determine." It is not an uncommon practice for a one county to pay another county to house a prisoner sentenced by the initial county's court of common pleas when there is no space in the county prison.

(f) The Department agrees with IRRC's recommendation to provide for specific steps and timeframes for the inspection and declassification process. As described in part in paragraph (b) of the above response, the final-form regulation contains specific timeframes that define each step of the inspection process (see paragraphs (1), (3), (4) and (9)). The inspection procedures

have also been greatly simplified by eliminating the differing prison inspection cycles consisting of pre-inspection audits and prison inspections, which were described in paragraphs (1) through (4) of the proposed rulemaking. Each county prison is now subject to an annual prison inspection. County prisons are only subject to a bi-annual inspection if the county prison is in full compliance with all of the minimum requirements of Chapter 95.

Comment – (2) - Statutory authority – A number of commentators questioned the Department’s statutory authority to promulgate standards for county jails generally and to establish declassification procedures specifically. The commentators stated that the Department’s promulgating standards and a scheme to declassify county jails for violation of those standards directly conflicts with statutory provisions granting local prison boards the authority to operate county jails. Similar objections were made regarding the Department’s authority to order a vulnerability analysis.

Response - Statutory authority – The Department is empowered by Section 506 of The Administrative Code of 1929 (71 P.S. §186) to prescribe rules and regulations for the performance of the Department’s business. The Department’s business includes establishing standards for county jails and prisons, including physical facilities and standards for correctional programs for treatment, education and rehabilitation of inmates. See section 3(3) of the Act of December 27, 1965 (P.L. 1237, No. 502) (Act 502) (61 P.S. § 460.3(3)). Section (3), paragraph (4) of Act 502 empowers the Department to inspect county jails and to classify them, in accordance with the standards the Department adopted, as eligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years. The language of these statutory provisions is straightforward and unambiguous. The statute states that the Department has the duties of establishing standards, inspecting according to those standards and classifying them in accordance with those standards. The Department’s authority to classify county jails is limited to determining if the jail is eligible “to receive prisoners” with sentences within the parameters designated in the statute.

The Department disagrees with the commentators’ assertion that the Department necessarily lacks these powers because they conflict with the statutory authority granted to local prison boards to operate county jails. These various statutory provisions are not in conflict either logically or according to the rules of statutory construction. The object of statutory construction is to give effect to the intent of the General Assembly. Section 1921 of the Statutory Construction Act of 1972, 1 Pa. C.S.A. §1921, states that “every statute shall be construed, if possible, to give effect to all its provisions.” It is not problematic to give full meaning to the above-cited duties of the Department and the statutory provisions granting a local prison board the authority to operate and manage the county jail. Act 502 grants the Department oversight on county prisons that is limited to the establishment of standards, inspection according to those standards and classifying the jails as eligible to receive the defined class of inmates. The local prison boards are empowered with operating and managing county jails within those standards established by the Department. These differing statutory powers are not incompatible.

The Department also disagrees with the commentators’ assertion that the Department does not have the authority to conduct a VA. The final-form regulation has been intentionally structured

so that the VA process is an extension of the inspection process. A VA is authorized based on findings of noncompliance with the essential standards and a finding that the noncompliance may present an immediate threat to the safety and security of the facility. The Department believes the VA process provides a very important supplement to the routine inspection-classification process by allowing the Department to respond quickly to those situations when a final inspection report finds serious and immediate safety and security problems at a facility. A VA report will, in the short term, identify actions the county prison can take to mitigate or eliminate any immediate threat to safety and security. Should the county prison be unable or unwilling to take those actions, the VA process allows the Department to move to a classification hearing, if necessary, far more quickly under paragraph (11) instead of proceeding through the three-year, progressive inspection process described in paragraphs (6) and (7). More importantly, the Department believes that the issuance of a VA report is more likely to result in identifying practices and actions that can be taken by the county prison to mitigate or eliminate any immediate threats to safety and security, thus avoiding the need for a classification hearing.

Comment – (3) - Elimination of ADA/NCCHC accreditation waiver – The proposed rulemaking eliminated a waiver of the subchapter in its entirety for those counties achieving American Correctional Association (ACA) accreditation using Adult Local Detention Facilities standards. Also eliminated was a waiver of the requirements of Section 95.232 (relating to medical and health services) for those counties achieving National Commission on Correctional Health Care (NCCHC) accreditation. A number of commentators objected to the elimination of these waivers claiming that the standards for both ACA and NCCHC accreditation were far more exacting than the standards of this chapter. They claimed that the standards were therefore unnecessary for those counties achieving either of these accreditations.

Response – There are several reasons for eliminating the waiver provisions. Foremost, the Department believes that its statutory duty is to establish standards and inspect according to those standards and that those duties should not be relinquished to a non-government entity. While the ACA and NCCHC standards are equivalent to or exceed the standards established by the Department, the accreditation process takes place every three years. The accreditation process may therefore not discover newer, problematic developments. Additionally, only one county prison in the Commonwealth has ever sought and received ACA accreditation. Although a number of counties are accredited by the NCCHC, the Department believes there is value to conducting a full inspection of all aspects of a county prison's operations including its health care facilities.

6. *Section 95.224. Inmate rules and staff procedures – Reasonableness*

Comment - Paragraph (2) stated that new or revised rules shall be disseminated to staff, and when appropriate, to inmates prior to implementation. IRRC recommended that the final-form regulation specify when it would not be appropriate to disseminate new or revised rules to inmates.

Response - The phrase “when appropriate” has been deleted so that new inmate rules shall be disseminated to inmates in all instances.

7. *Section 95.229. Bedding – Reasonableness*

Comment - As noted by IRRC, some commentators expressed concern that these provisions fail to recognize the need for temporary bedding when a county prison must process a large number of inmates in a short period of time. In those circumstances, the county prison may need to use temporary bedding that does not meet the requirement that the bedding be at least 12 inches off the floor. IRRC recommended that the regulation include an exception to the 12-inch requirement for a limited time to manage a dramatic increase in population.

Response - The Department concurs with this recommendation. The final-form regulation contains a new paragraph (2) that allows for an exception to the requirements of paragraph (1) in emergency circumstances. Consistent with the intent of the Chapter 95 regulation, the revised provision requires the county prison to establish written local policy that defines the emergency circumstances that would require the use of temporary bedding. As a result of discussions with the County-State Liaison Committee, the revised regulation places two reasonable time limits on the use of the emergency exceptions to the bedding requirements. No individual inmate shall be subject to temporary bedding for a period exceeding 30 days. The regulation limits the use of any temporary bedding arrangements to no more than 90 consecutive days in recognition that long-term use of temporary bedding arrangements by a county jail may create additional operational problems.

8. *Section 95.230. Food services – Clarity*

Comment - IRRC suggests that Paragraph (2) of the regulation specify what type of certification will be acceptable.

Response - The Department concurs and the regulation has been revised. The fourth sentence of Paragraph (2) has been revised to specify that the certification be “in accordance with the Food Employee Certification Act (3 Pa. C.S.A. §§6501-6510).”

9. *Section 95.232. Medical and health services – Clarity*

Comment - IRRC recommended that the reference to “certifying health organization” under Paragraph (8) be more specific.

Response - The Department concurs and the regulation has been revised. County jails utilize various health organizations to directly conduct basic first aid and cardiopulmonary resuscitation training to its employees or to certify county jail employees as trainers. To allow county jails the choice of obtaining these training services from different organizations, the last sentence of Paragraph (2) was revised to state that all corrections personnel be certified “by the organization that conducts the training.”

Comment - IRRC also recommended that the references to state and federal law in Paragraph (9)(ii) include specific citations to the applicable laws.

Response - The Department concurs with this recommendation. The appropriate statutory reference has been added to Paragraph (9) (ii).

10. Section 95.235. Work Programs – Clarity

Comment - Paragraph (3) requires local prisons to provide “some form of compensation” to inmates participating in work programs. IRRC noted that since the term compensation is defined, the phrase “some form of” should be deleted.

Response - The Department concurs with the recommendation. The phrase “some form of” has been deleted from Paragraph (3).

Comment - Paragraph (4) states that inmate working conditions comply with “all applicable federal, state or local work safety laws and regulations.” Also, Paragraph (5) references “applicable law.” IRRC recommends that the regulation should include references specific citations to those laws and regulations.

Response - Upon further review of the Department’s inspection practice, reference to inmate working conditions complying with all applicable federal, state, or local work safety laws and regulations has been deleted from the final-form regulation. The Department believes that the applicability of various federal, state and local laws is open to interpretation and may vary from county to county. Department inspectors would not be qualified to resolve those questions of law. The Department’s interests in conducting inspections in this area is to insure that the county prison’s written local policy address that inmates be issued appropriate clothing and tools for particular work and that they are given appropriate direction on the proper use of equipment and tools.

Comment - Two commentators objected to the last sentence of Paragraph (5) believing that it required county jails to have the same work programs for both male and female inmates and that it would not be possible to comply with such a requirement.

Response - The Department recognizes that county prisons housing both male and female inmates cannot practically offer identical work programs for male and female inmates. In order to clarify that Paragraph (5) does not establish such a requirement, the Department has deleted the second sentence of Paragraph (5). The remaining language requires that county prisons establish a written local policy prohibiting discrimination regarding access to a work program.

11. Section 95.237. Religion – Need; Implementation procedures

Comment - Some commentators objected to the language in Paragraph (1) of the proposed rulemaking as too broad and possibly establishing an inmate’s right to participate in any religious activities a matter of choice.

Response - The Department concurred with the commentators concerns that the above requirement of Paragraph (1) was too broadly stated. The first sentence of Paragraph (1) was therefore revised to revert to the existing standard with added language requiring that the requirement be put into written local policy. This change will result in keeping the decision-making process as to accommodating religious activities requests with the local prison management.

Comment - Numerous commentators questioned the need for the Paragraph (2) requirement that individuals seeking to provide religious guidance to inmates must have clinical pastoral education or equivalent specialized training and endorsement by the appropriate religious certifying body. The commentators expressed concern that these requirements would limit religious programming in some jails because religious activities are provided by volunteers without such training.

Response - The Department understands and concurs with these stated concerns. The educational, training and certification requirement have been deleted from the final-form regulation.

12. Section 95.240. Inmate disciplinary procedures – Need; Implementation procedures

Comment - As noted in IRRC's comments on the definitions of major and minor infractions, IRRC suggested that the Department explain the need for including two levels of infractions.

Response - See the Response in paragraph No. 4 above – *Major infraction and Minor infraction*

13. Section 95.241. Security – Need; Implementation procedures; Clarity

Comment - Paragraph (1) Supervision of inmates - IRRC noted that Subparagraph (1) (ii) requires an initial staffing analysis to be conducted and that the results of the annual staffing analysis be available at all times. IRRC suggested that the final-form regulation specify who conducts the staff analysis and who has access to it.

Response - The Department concurs with the recommendation. Subparagraph (1) (ii) of the final-form regulation requires that the staffing analysis be conducted by the prison administrator or designee and that the information on the number and type of positions filled and vacant be available for review by the Department's inspectors.

Comment - Paragraph (1) Supervision of inmates - IRRC questioned the need the need for the Subparagraph (1) (v) requirement that local prisons maintain a permanent log to record routine information, as well as other information.

Response - The Department recognizes this concern. In order to allow for the varying practices in county prisons, the specific requirement to maintain a permanent log and shift reports to record the listed information is deleted from the final-form regulation.

Comment: Paragraph (2) (i) Use of Force - As with IRRC's comment regarding the definition of "force, use of", IRRC recommended that Paragraph (2) be amended to allow force to effect compliance with an order.

Response: The Department concurs. See the Response to Comment No. 4 for – *Force, use of.*

Comment: IRRC noted that the terms "authorized equipment" and "recognized certification period" used in Subparagraph (2) (ii) (H) are vague and recommended that those terms be defined.

Response: The Department concurs. Subparagraph (2) in the final-form regulation clarifies the use of those terms. Subparagraph (2)(ii) adds the term "Authorized equipment such as" to clarify that the county prison's written local policy must specify the equipment that prison staff may use in applying force (e.g. the physical restraint(s), chemical agent(s), stun device(s), batons and firearms).

Use of the term "recognized certification period" is deleted and Subparagraph (2)(ii)(H) is revised to clarify that all prison staff authorized to use the equipment listed in policy must demonstrate competency in use of the equipment as per the training or certification standards recommended by the manufacturer of that equipment.

Comment: Paragraph (5) Contraband control. Subparagraph (ii) stated that individuals "entering or leaving" the prison will be subject to search. IRRC asked if the local prison had discretion in this area, or did the Department intend to have individuals searched before "entering and leaving."

Response: The Department's intent in stating the individuals are "subject" to search when entering or leaving the facility is that the local prison has discretion as to when an individual entering or leaving the prison is searched.

14. Section 95.243. Treatment services – Fiscal impact; Need; Clarity

Comment - A number of commentators objected to the treatment mandates of this section. The commentators' objections were directed exclusively at the requirements of Paragraphs (2) and (6).

Paragraph (2) of the proposed regulation required treatment services to include programs in education, social services, alcohol and other drugs and counseling services. The commentators all objected to these requirements as unfunded mandates. Some commentators stated the requirements actually dictated how treatment services should be delivered and that such a decision should be left to the county jail.

Response - The Department is cognizant of the concerns of the commentators. The Department believes that the requirements of Paragraph (2), when read with all of the provisions of Section 95.243 in the final-form regulation, are consistent with the current recognized professional

standards for adult local detention facilities while allowing county officials and jail administrators flexibility to make decisions appropriate to their facility.

The Department's statutory mandate found at 61 P.S. §460.3(3) includes establishing standards for county jails that include "standards for correctional programs of treatment, education and rehabilitation of inmates." The Department believes these treatment services requirements provide significantly more flexibility to county jails in meeting inmate treatment needs than the existing requirements of Section 95.243. The existing section sets very specific requirements for the number of hours of counseling services that must be provided by a county jail per week as well as certain staffing requirements based solely on the jails average daily inmate population.

It is important to note that the term "counseling services" as used in Paragraph (1) of the existing section is defined broadly so that it "shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholics Anonymous and similar groups; testing and clinical psychological services; and psychiatric services." "Counseling services" in the existing regulation encompasses, in more specific terms, much of the four areas for treatment services required in Section 95.243 of the final-form regulation.

Perhaps most importantly, and contrary to the concerns of the commentators, the final-form regulation does not require *how* these treatment services must be provided. Section 95.243 does not specify the amount of hours that must be provided in these treatment areas, which inmates must be provided which services, nor the manner in which the treatment services are to be provided. Those decisions are fully left to discretion of the county prison administrators. As with the existing regulation, the final-form regulation permits a county prison to provide these services through a person employed by the prison, someone under contract with the prison, through a volunteer or any combination thereof.

Section 95.243 in the final-form regulation also provides county prisons greater flexibility in terms of who must deliver those services. Paragraph (3) allows these services to be delivered by a treatment professional (defined in Section 95.220a) or a person certified, licensed or trained to provide such programming. The existing standard requires that the services be delivered by a qualified counselor who preferably possesses a Master's Degree, but no less than a Bachelor's degree in behavioral sciences. If the treatment services are delivered by a contracting agency or a professional volunteer, those persons must still meet the standards for qualified counselor. The existing standard also requires all county jails with populations over 75 inmates, but below 175, to have two full-time treatment personnel, one of whom must be a treatment supervisor. For jails with average daily populations of 175 inmates or more, the existing standard requires providing an additional qualified counselor for every 75 inmates over the first 75. Those specific staffing mandates have all been eliminated in the final-form regulation. While well-intentioned, the existing standards provided far more of a mandate to county jails as to *how* to provide the required counseling services than the new Section 95.243 in the final-form regulation. The intent of the final-form treatment services provision is to establish the required areas in which treatment services must be provided, but to leave the decisions as to the level of services and how those services are provided up to county prison administrators.

As discussed under Comment No. 2 above, significant changes have been made to Paragraph (6). The requirement that all inmates be given a treatment needs assessment within 14 days of admission has been significantly changed so that such an assessment must be conducted within 90 days of an inmate's admission to the jail. Additionally, the treatment services recommended by the assessment must begin within 45 days of the assessment. The Department and member of the County-State Liaison Committee believe that these changes will allow county prisons to focus treatment service resources on those inmates who are there for longer terms of incarceration.

Finally, it should be noted that the significant interest in assuring that treatment services are provided to any inmate, short term or long term, in need of immediate services is met by Paragraphs (4) and (5) of this section.

Comment - IRRC noted that the terms "treatment services" and "treatment programs" are used in this section and recommended that one term be used and defined.

Response - The Department concurs with this recommendation. The provision has been revised so that all references are now to "treatment services." As explained above, that term has also been defined.

15. Section 95.244. Community involvement – Clarity

Comment - IRRC suggested that the Department define the term "community involvement" to assist the regulated community with developing a written policy that would meet the requirements of this section.

Response - For the reasons discussed in the response in paragraph No. 2 above, this section is deleted in its entirety.

16. Section 95.246. Investigations – death sexual assaults/threats – Clarity

Comment - IRRC questioned the need for the language in Subparagraph (1)(ii) requiring written local policy to specify who is responsible for contacting the coroner and law enforcement when Subparagraph (1)(i) specifically required the prison administrator to notify the coroner and appropriate law enforcement agency in the case of a death. IRRC noted similar language in Paragraph (2), pertaining to sexual assaults/threats.

Response: The Department concurs. Both Paragraphs (1) and (2) were revised to state that written local policy shall specify the procedure in the event of a death or an allegation of sexual assault, respectively, involving an inmate, prison employee, volunteer, contractor or visitor. Both paragraphs then list the elements that the written local policy must address.

Comment - IRRC noted an inconsistency between the language of Subparagraph (2)(ii) which requires the reporting of sexual assaults and threats and the statistical/ informational reporting

requirements of Section 95.242. That section requires the reporting of assaults, but not the threat of sexual assaults on a monthly report filed with the Department. IRRC questioned how local prisons are to report the threat of sexual assaults.

Response - The Department concurs. Paragraph (2) of this section was revised to clarify that county prisons establish procedures, through written local policy, to address all *allegations* of sexual assault and not *threats* of assault. Additionally, Section 95.242 (3)(iii) was revised to include the requirement to report sexual assaults and allegations of sexual assaults on the County Extraordinary Occurrence Monthly Report to the Department.

17. *Section 95.248. Sanitation, maintenance and safety – Clarity*

Comment - IRRC recommended that Paragraph (1) be revised to include a specific citation to the “applicable governmental regulations” that must be adhered.

Response - The Department does not believe it is possible or practical to list all of the applicable regulations to sanitation or safety. To add clarity, the revised paragraph references Pennsylvania Department of Labor and Industry regulations and any applicable local code authorities. The existence of any municipal sanitation and safety codes varies from county to county.

Comment - IRRC noted that Paragraphs (2), (3) and (9) required written local policy to “identify” plans or programs related to sanitation, maintenance and fire emergency/evacuation. IRRC asked if the intent was for county prisons to simply identify the plans or programs or must they be incorporated into the written local policy.

Response - The word “identify” was deleted from Paragraphs (2), (3) and (9) to clarify that the county prisons must incorporate the required elements of the identified program or plan into written local policy.

18. *Miscellaneous clarity*

Comment - IRRC recommended that the phrase “including, but not limited to”, as non-regulatory language be deleted from Sections 95.220b(1), 95.221(8), 95.232(12), 95.235(1), 95.241(1)(ii), 95.243(2), 95.243(4) and 95.243(6).

Response - The Department concurs. The phrase has been deleted in each instance.

Comment - IRRC recommended that the reference to “generally accepted accounting procedures” in Section 95.239(3) be changed to “generally accepted accounting principles.”

Response - The Department concurs. The phrase has been changed as recommended.

Comment - IRRC noted that Section 95.241(2)(ii)(F) appeared to be an incomplete sentence.

Response - The Department concurs. Subparagraph (2)(ii)(F) of Section 95.241 has been revised to read "Circumstances and types of force requiring specific authorization and who shall authorize the use of such force."

Comment - IRRC recommended that the phrase "prison administration" in Section 95.241(3)(ii) be revised to "prison administrator."

Response - The Department concurs. The phrase has been changed as recommended in what is now Subparagraph (3)(iii) because of the addition of new language as Subparagraph (3)(ii).

Comment - IRRC recommended that the phrase "or designee" should be added to Section 95.246(1)(i) after the word "administrator."

Response - The Department concurs. The phrase "or designee" has been added as recommended.

Comment - IRRC noted that the second sentence of Section 95.248(9) contained a typographical error in using the word "departments" instead of the singular "department."

Response - The Department has corrected the error.

E. Fiscal Impact

The amendments are not expected to have any significant negative fiscal impact upon the Commonwealth, its political subdivisions or the general public.

F. Paperwork Requirements

The amendments are not expected to have any significant effect on the paperwork requirements of the Commonwealth, its political subdivisions or the public.

G. Contact Person

Interested persons are invited to submit in writing any questions regarding the amendments to David B. Farney, Assistant Counsel, Department of Corrections, Office of Chief Counsel, 55 Utley Drive, Camp Hill, PA 17011, (717)731-0444.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act, (71 P. S. § 745.5(a)), the Department submitted a copy of its notice of proposed rulemaking, published at 36 Pa.B. 3094, on June 24, 2006, to IRRC and the Chairmen of the House Judiciary Committee and the Senate Judiciary Committee for review and comment. In compliance with Section 5(c), 71 P.S. §745.5(c), the Department also provided IRRC and the committees with copies of all comments received.

In preparing this final form regulation the Department has considered all comments received from the Commission, the Committees and the public

This final form regulation was (deemed) approved by the House Committee on _____ and (deemed) approved by the Senate Committee on _____. IRRC met on _____ and (deemed) approved the regulation in accordance with Section 5.1(e) of the Act, 71 P.S. §745.5a (e).

I. *Effective Date*

The amendments shall take effect 12 months after final publication in the *Pennsylvania Bulletin*.

Findings

The Department finds that:

(1) Notice of proposed rulemaking was published at 36 Pa.B. 3094, as required by sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The adoption of these amendments in the manner provided by this order is necessary and appropriate for the administration and enforcement of the authorizing acts identified in Section A above.

Order

(a) The regulations of the Department, 37 Pa. Code Chapter 95, are amended by amending §§ 95.220a, 95.220b, 95.221, 95.222, 95.223, 95.224, 95.229, 95.230, 95.232, 95.233, 95.235, 95.237, 95.239, 95.240, 95.241, 95.242, 95.243, 95.245, 95.246, 95.247 and 95.248; by adding § 95.233a; and by deleting § 95.244 to read as set forth in Annex A.

(b) The Department shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary of Corrections shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* as required by law.

(d) This order shall take effect 12 months after final publication in the *Pennsylvania Bulletin*.

JEFFREY A. BEARD, Ph.D.,

Secretary

Fiscal Note: 19-7 remains valid for the final adoption of the subject regulations.

ANNEX A
TITLE 37. LAW
PART III. AGENCIES AND OFFICES
SUBPART B. DEPARTMENT OF CORRECTIONS
CHAPTER 95. COUNTY CORRECTIONAL INSTITUTIONS

§ 95.220a. Definitions.

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

Alcohol and other drugs treatment – A treatment service designed to address the impact and ramifications of use or abuse of alcohol and other drugs, ~~or both,~~ so as to prevent illegal or destructive conduct, ~~or both,~~ and avoid addiction.

Alternative menu – Meal plans that are prepared and served as an alternative to the regular meal plan.

Bed capacity – The number of beds that a prison may utilize consistent with ~~recognized professional standards~~ THE AMERICAN CORRECTIONAL ASSOCIATION'S STANDARDS FOR ADULT LOCAL DETENTION FACILITIES on unencumbered space and that are only utilized in areas approved for residential occupancy by the Pennsylvania Department of Labor and Industry or local code authority.

Building code – ~~Federal, state or local regulations that dictate the construction of a prison.~~

Classification – A process for determining an inmate's needs and requirements and for assigning the inmate to appropriate housing units and programs according to the inmate's needs and existing resources.

Code of conduct and ethics – A set of rules describing acceptable standards of conduct for all prison staff.

Community resources – Human service agencies, service clubs, citizen interest groups, self-help groups and individual citizen volunteers that offer services, facilities or other functions that

assist inmates. These various resources, which may be public or private, national or local, may assist with material and financial support, guidance, counseling and supportive services.

Compensation – Incentives such as monetary compensation, extra privileges, good time credits, credit toward applicable fines and costs or other items of value that are given for inmate participation in a work program.

Contact visitation – A program inside or outside the prison that permits inmates to visit with designated persons without obstacles or barriers to physical contact.

Contraband – An item possessed by an individual or found within the prison or on prison grounds that is prohibited by law or expressly prohibited by those legally charged with the administration and operation of the prison.

Counseling – A treatment service using planned interpersonal relationships to promote social adjustment. AND Counseling programs provide opportunities to express feelings verbally with the goal of resolving the individual's problems. At least three types of counseling may be provided: individual (a one to one relationship), small group counseling and large group counseling.

Department—The Department of Corrections of the Commonwealth.

Education – A treatment service using formal academic education or a vocational training activity designed to improve knowledge or employment capability, or both.

Financial Audit -- An examination of prison records or accounts to check their accuracy ; which is conducted by persons not directly involved in the creation and maintenance of these records or accounts. An independent audit results in an opinion that either affirms or disaffirms the accuracy of records or accounts.

First aid – Care for a condition that requires immediate assistance from an individual trained in first aid care and the use of the prison's first aid kits.

Force, use of – Physical force used in instances of justifiable self-defense, protection of others, protection of property, or prevention of escape OR TO EFFECT COMPLIANCE WITH THE

RULES AND REGULATIONS OF THE FACILITY WHEN OTHER METHODS OF CONTROL ARE INEFFECTIVE OR INSUFFICIENT.

Force option – Actions beginning with the least amount of force NECESSARY and progressing through the degrees of non-deadly and deadly force, as necessary.

Governing county prison authority – The individual or board, established by law, having administrative oversight and policy-setting responsibility for the county prison.

Grievance – A formal written complaint by an inmate related to a problem encountered during the course of his confinement.

Grievance process – The procedure established to review and respond to inmate grievances.

Health care professional—A medical doctor, doctor of osteopathy, physician’s assistant, registered nurse or licensed practical nurse licensed by the appropriate licensing board of the Department of State, Bureau of Professional and Occupational Affairs.

Health care provider—An employee or contractor of the prison who is responsible for ensuring that adequate health care is provided to inmates.

Health care screening—A process developed by the prison’s health care provider to assess inmates upon admission as set forth in written local policy. ~~The process shall include a structured inquiry and observation designed to identify newly committed inmates who pose a health or safety threat to themselves or others. Screening can be performed by health care professionals or by health trained correctional staff at the time of admission.~~

Health care training—Training required by the county prison’s health care provider as part of the prison’s health care delivery system as set forth in written local policy. ~~Correctional staff may be trained and appropriately supervised to carry out specific duties with regard to the administration of health care screening upon admission.~~

Inmate – An individual who is legally confined in a county prison.

Intake interview – A process developed by the prison’s treatment services provider to assess inmates upon admission as set forth in written local policy.

Life safety code – A manual published and updated by the National Fire Protection Association specifying minimum standards for fire safety necessary in the public interest. Two chapters are devoted to correctional facilities.

Major infraction – A rule infraction involving a grievous loss and requiring use of a hearing procedure for resolution. Major infractions include (1) violations that may result in disciplinary detention or administrative segregation; (2) violations for which punishment may tend to increase an inmate's sentence, such as extending parole eligibility; (3) violations that may result in forfeiture, such as loss of earned time; (4) violations that may be referred for criminal prosecution.

Minor infraction – A violation of a prison's rules of conduct that does not require a hearing procedure and can be resolved without the imposition of serious penalties. Minor infractions do not violate any state or federal statutes and may be resolved informally by reporting staff.

Non-contact visitation – A program that restricts inmates from having physical contact with visitors by the use of physical barriers such as screens or glass, or both. Voice communications between parties are normally accomplished with phones or speakers.

Pre inspection audit – An on-site operational audit of a county prison by one or more Department inspectors consisting of staff and inmate interviews, policy and policy compliance reviews and a physical examination of the prison. The audit is intended to assist the county prison by identifying areas where the prison is not in compliance with the minimum standards and offering other observations prior to the prison inspection approximately six months thereafter.

Preventive maintenance – A system designed to enhance the longevity and usefulness of buildings and equipment in accordance with a planned schedule.

Prison – A place, institution, building (or part thereof), set of buildings or area (whether or not enclosing a building or set of buildings) that is used for the lawful custody of individuals.

Prison administrator – The official, regardless of local title, who has the day-to-day responsibility for managing and operating the county prison.

Prison inspection – An on-site visit of a county prison by one or more Department inspectors as the formal follow-up to the pre-inspection audit. The inspection specifically reviews those areas and practices identified by the pre-inspection audit report to determine whether the county prison is in compliance with the minimum requirements of this chapter.

Procedures – The detailed and sequential actions that must be executed to ensure that a policy is implemented. It is the method of performing an operation or a manner of proceeding on a course of action. It differs from a policy in that it directs action required to perform a specific task within the guidelines of the policy.

Restraints – ANY An authorized device AUTHORIZED BY WRITTEN LOCAL POLICY THAT IS used to prevent escapes, prevent an inmate from injuring himself or other persons or prevent property damage.

Security devices –

(i) Locks, gates, doors, bars, fences, screens, ceilings, floors, walls and barriers used to confine and control inmates.

(ii) The term also includes electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies and other equipment used to maintain prison security.

Security perimeter -- The outer portions of a prison that provide for secure confinement of prison inmates. The design of the perimeter may vary depending upon the security classification of the prison.

Segregation – The separation of an inmate from the general population FOR DISCIPLINARY OR ADMINISTRATIVE REASONS. It provides for separate and distinct conditions of confinement that ensure that medical/mental health and gender requirements of inmates are being met.

Social services – A treatment service designed to promote the welfare of the community and the inmate, as through aid for physically and mentally handicapped, health maintenance, family development and employment opportunities.

Training – (i) An organized, planned and evaluated activity designed to achieve specific learning objectives and enhance the job performance of personnel.

(ii) Training may occur on-site, at an academy or training center, during professional meetings or through supervised on-the-job training. It includes an agenda and is conducted by an instructor, manager or official. The activity must be part of an overall training program.

Training plan -- A set of long-range or short-range training activities that equip staff with the knowledge, skills and attitudes they need to accomplish the goals of the organization.

Treatment professional -- An individual who is assigned to or supervisor of inmate casework, counseling and treatment services. This individual possesses a bachelor's degree and advanced training in the social or behavioral sciences.

TREATMENT SERVICE(S) -- ALCOHOL AND OTHER DRUGS TREATMENT, COUNSELING, EDUCATION OR SOCIAL SERVICES PROVIDED TO AN INMATE DURING HIS CONFINEMENT IN THE COUNTY PRISON.

Treatment services provider -- An employee or contractor of the county prison who is responsible for providing treatment services to inmates.

Treatment training -- Training required by the county prison's treatment services provider as part of the prison's treatment delivery system as set forth in local written policy. Correctional staff may be trained and appropriately supervised to carry out specific duties with regard to the administration of treatment intake screening upon admission.

Unclothed search -- An examination of an inmate's unclothed body for weapons, contraband and physical abnormalities.

Vulnerability analysis -- (i) A systematic and measurable performance-based evaluation of a prison. This approach integrates people, policies, procedures, equipment and detection systems within the overall assessment of a prison in an effort to ascertain potential avenues of escape, inmate violence or contraband vulnerabilities. This evaluation also attempts to identify and test the physical protection systems in place in an effort to prevent or limit opportunity for the threat to occur. (ii) The term THAT includes a prison analysis, planning, prison characterization, threat definition, identification of undesirable events, performance-testing physical protection systems, generation of adversary sequence diagrams, scenario development, timeline development and determination of risk for worst-case scenarios.

Work release – An arrangement sanctioned by law that enables an inmate to be released into the community to maintain approved employment or other approved activity, or both.

Written local policy—Local policy that clearly explains practices and procedures to be followed, requires compliance therewith, and provides for enforcement thereof. The Department will review the policies when inspecting county prisons.

§ 95.220b. Scope.

Each section sets forth minimum requirements, which are mandatory. [For those counties achieving American Correctional Association accreditation using Adult Local Detention Facilities standards, this subchapter will be waived in its entirety. Section 95.232 (relating to medical and health services) will be waived for those counties which achieve National Commission on Correctional Health Care accreditation.]

(1) Every county prison shall be subject to a AN ANNUAL prison inspection cycle. An inspection cycle shall consist of a pre inspection audit and, if necessary, a prison inspection. A pre inspection audit shall be scheduled at least every 24 months. The prison inspection, if necessary, shall be conducted approximately six months after the pre inspection audit. This inspection cycle shall, EXCEPT AS DESCRIBED IN PARAGRAPH (4) BELOW, TO determine if the prison is in compliance with the minimum requirements ESTABLISHED BY THIS CHAPTER. An immediate prison inspection may be ordered by the Secretary OF THE DEPARTMENT following an emergency situation at a county prison, including but not limited to, a riot or disturbance, AN ESCAPE FROM SECURE DETENTION, a fatality following a serious assault or an assault by an inmate using a deadly weapon resulting in serious injury. AN the IMMEDIATE PRISON inspection ORDERED UNDER THESE CIRCUMSTANCES shall be conducted to determine possible violations of IF THE COUNTY PRISON IS IN COMPLIANCE WITH the minimum requirements.

(2) The Department shall issue a Pre inspection Audit Report following the pre inspection audit of the county prison. The report shall be issued to the county prison administrator and the governing county prison authority. The report shall, at a minimum, identify any instances of the county prison failing to comply with the minimum requirements. THE MIMIMUM REQUIREMENTS IN THE SECTIONS AND PARAGRAPHS LISTED BELOW ARE DEEMED TO BE ESSENTIAL TO THE SAFETY AND SECURITY OF THE COUNTY PRISON, PRISON STAFF, INMATES AND THE PUBLIC:

- (i) SECTION 221 – PERSONNEL – (1), (2), (3) AND (8).
- (ii) SECTION 222 – ADMISSION AND RELEASE – (2).
- (iii) SECTION 224 – INMATE RULES AND STAFF PROCEDURES – (1), (3), (4) AND (5).
- (v) SECTION 225 – CLASSIFICATION – (1) AND (2).
- (vi) SECTION 226 – HOUSING – (1), (2), (3) AND (4).
- (vii) SECTION 230 – FOOD SERVICE – (1), (2), (3), (4) AND (5).
- (viii) SECTION 232 – MEDICAL AND HEALTH CARE SERVICES – (1), (2), (3), (4), (8), (9), (10), (11) AND (12).
- (ix) SECTION 240 – INMATE DISCIPLINE PROCEDURES – (1) AND (9).
- (x) SECTION 241 – SECURITY – ALL PARAGRAPHS.
- (xi) SECTION 243 – TREATMENT SERVICES – (4), (5) AND (7).
- (xii) SECTION 248 – SANITATION AND SAFETY – (2), (4), (5), (7), (8) AND (9).

~~(3) If the pre-inspection audit finds that the county prison is in full compliance with the minimum requirements, the subsequent prison inspection will be waived and the county prison will be on a 24-month prison inspection cycle. The next pre-inspection audit shall be scheduled approximately 24 months after the pre-inspection audit.~~ WITHIN 20 DAYS OF COMPLETING ANY PRISON INSPECTION UNDER PARAGRAPH (1), THE DEPARTMENT'S INSPECTOR SHALL ISSUE THE PRELIMINARY FINDINGS OF THE INSPECTION TO THE COUNTY PRISON ADMINISTRATOR AND THE GOVERNING COUNTY PRISON AUTHORITY. THE GOVERNING COUNTY PRISON AUTHORITY OR DESIGNEE MAY SUBMIT A WRITTEN RESPONSE TO THOSE PRELIMINARY FINDINGS TO THE DEPUTY SECRETARY FOR ADMINISTRATION OR DESIGNEE. ANY WRITTEN RESPONSE MUST BE SUBMITTED WITHIN 30 DAYS OF RECEIPT OF THE PRELIMINARY FINDINGS. THE COUNTY PRISON ADMINISTRATOR MAY INCLUDE DOCUMENTATION IN SUPPORT OF THE WRITTEN RESPONSE.

~~(4) A prison inspection shall be conducted any time the pre-inspection audit finds the county prison is not in compliance with the minimum requirements. The Department shall issue a Compliance Report following the prison inspection. The report shall be issued to the county prison administrator and the governing county prison authority. The report shall identify whether the county prison has corrected the instances of non-compliance set forth in the Pre-inspection Audit Report.~~ THE DEPUTY SECRETARY FOR ADMINISTRATION SHALL ISSUE A FINAL INSPECTION REPORT WITHIN 20 DAYS OF RECEIPT OF THE

WRITTEN RESPONSE FROM THE COUNTY PRISON ADMINISTRATOR OR WITHIN 30 DAYS OF ISSUANCE OF THE WRITTEN PRELIMINARY FINDINGS IF NO WRITTEN RESPONSE THERETO IS SUBMITTED. THE FINAL INSPECTION REPORT SHALL STATE FINDINGS ON WHETHER THE COUNTY PRISON IS IN COMPLIANCE WITH EACH OF THE MINIMUM REQUIREMENTS. IF THE FINAL INSPECTION REPORT FINDS THAT A MINIMUM REQUIREMENT HAS NOT BEEN MET, THE REPORT SHALL ALSO INCLUDE REFERENCE TO WHETHER THE COUNTY PRISON ADMINISTRATOR DISPUTED THE PRELIMINARY FINDING OF NON-COMPLIANCE.

~~(i) If the Compliance Report finds that the county prison is in full compliance with the minimum requirements, the county prison shall continue on a 24-month inspection cycle. The next pre-inspection audit shall be scheduled approximately 18 months after the prison inspection.~~

~~(ii) If the Compliance Report finds that the county prison remains in violation of the minimum requirements previously identified in the Pre-inspection Audit Report, the county prison administrator and the governing county prison authority shall be issued a Notice of Deficiency as part of the report and subject to a 12-month inspection cycle. The next pre-inspection audit shall be scheduled approximately six months after the prison inspection.~~

~~(iii) If the Compliance Report finds that the county prison remains in violation of the same minimum requirements for the second consecutive prison inspection, the county prison administrator and the governing county prison authority shall be issued a warning that should the instances of non-compliance not be corrected by the time of the next 12-month prison inspection, a Citation of Non-compliance will be issued.~~

~~(iv) If the Compliance Report finds that the county prison remains in violation of the same minimum requirements for the third consecutive prison inspection, the county prison administrator and the governing county prison authority shall be issued a Citation of Non-compliance.~~

~~(5) Within 60 days of receipt of any Compliance Report citing instances of non-compliance with the minimum requirements, the governing county prison authority shall file a written reply that includes a written plan that describes the actions that will be taken and the timeframe for bringing the county prison into compliance with the minimum requirements.~~ IF THE FINAL INSPECTION REPORT CONCLUDES THAT THE COUNTY PRISON IS IN FULL COMPLIANCE WITH ALL OF THE MINIMUM REQUIREMENTS OF THIS SUBCHAPTER, THE SUBSEQUENT ANNUAL PRISON INSPECTION WILL BE WAIVED AND THE COUNTY PRISON SHALL BE INSPECTED ON A BI-ANNUAL BASIS.

~~(6) The Secretary may authorize the conducting of a vulnerability analysis of a county prison when a pre-inspection audit or prison inspection finds one or more violations of the minimum requirements of the following sections and it is determined those violations may significantly impact the safety and security of the county prison, prison staff, inmates or the public:~~ IF A FINAL INSPECTION REPORT FINDS THAT THE COUNTY PRISON IS IN VIOLATION OF ANY OF THE MINIMUM REQUIREMENTS NOT SET FORTH IN (2) ABOVE, A NOTICE OF DEFICIENCY SHALL BE ISSUED TO THE COUNTY PRISON ADMINISTRATOR AND THE GOVERNING COUNTY PRISON AUTHORITY ALONG WITH THE FINAL INSPECTION REPORT.

~~(i) Section 221 — Personnel.~~

~~(ii) Section 223 — Orientation.~~

~~(iii) Section 224 — Rules and Regulations.~~

~~(iv) Section 230 — Food Service.~~

~~(v) Section 232 — Medical and Health Care Services.~~

~~(vi) Section 240 — Inmate Discipline Procedures.~~

~~(vii) Section 241 — Security.~~

~~(viii) Section 243 — Treatment Services.~~

~~(ix) Section 248 — Sanitation and Safety.~~

~~(7) A vulnerability analysis report shall be issued to the governing county prison authority and the county prison administrator following the vulnerability analysis. The report shall present an analysis of the overall operations of the prison and an analysis of potential threats to the safety and security of the county prison, prison staff, inmates and the public.~~ IF A FINAL INSPECTION REPORT FINDS THAT THE COUNTY PRISON IS IN VIOLATION OF ONE OR MORE OF THE ESSENTIAL MINIMUM REQUIREMENTS SET FORTH IN (2) ABOVE, A CITATION OF NON-COMPLIANCE SHALL BE ISSUED TO THE COUNTY PRISON ADMINISTRATOR AND THE GOVERNING COUNTY PRISON AUTHORITY ALONG WITH THE FINAL INSPECTION REPORT.

(i) IF A FINAL INSPECTION REPORT FINDS THAT THE COUNTY PRISON REMAINS IN VIOLATION OF ANY OF THE SAME ESSENTIAL MINIMUM REQUIREMENT(S) FOR A SECOND CONSECUTIVE PRISON INSPECTION, THE COUNTY PRISON ADMINISTRATOR AND THE GOVERNING COUNTY PRISON AUTHORITY SHALL BE ISSUED A SECOND CITATION OF NON-COMPLIANCE.

(ii) IF A COMPLIANCE REPORT FINDS THAT THE COUNTY PRISON REMAINS IN VIOLATION OF ANY OF THE SAME ESSENTIAL MINIMUM REQUIREMENT(S) FOR A THIRD CONSECUTIVE PRISON INSPECTION, THE COUNTY PRISON ADMINISTRATOR AND THE GOVERNING COUNTY PRISON AUTHORITY SHALL BE ISSUED A THIRD CITATION OF NON-COMPLIANCE.

~~(8) A governing county prison authority may at any time request the Department to conduct a vulnerability analysis to assist in evaluating the operations of the county prison.~~ THE SECRETARY MAY AUTHROIZE THE CONDUCTING OF A VULNERABILITY ANALYSIS OF A COUNTY PRISON WHEN A FINAL INSPECTION REPORT FINDS ONE OR MORE VIOLATIONS OF THE ESSENTIAL MINIMUM REQUIREMENTS SET FORTH IN (2) AND THE REPORT CONCLUDES THAT THOSE VIOLATIONS MAY IMMEDIATELY IMPACT THE SAFETY AND SECURITY OF THE COUNTY PRISON, PRISON STAFF, INMATES OR THE PUBLIC. THE DEPARTMENT SHALL BE RESPONSIBLE FOR THE COSTS OF A VULNERABILITY ANALYSIS AUTHORIZED BY THE SECRETARY.

~~(9) The Secretary may order a hearing on why the county prison should not be declassified and declared ineligible to receive prisoners sentenced to a maximum term of six months or more but less than five years under the following conditions:~~ WITHIN 15 DAYS OF COMPLETING A VULNERABILITY ANALYSIS, A VULNERABILITY ANALYSIS REPORT SHALL BE ISSUED TO THE GOVERNING COUNTY PRISON AUTHORITY AND THE COUNTY PRISON ADMINISTRATOR. THE REPORT SHALL PRESENT AN ANALYSIS OF THE OVERALL OPERATIONS OF THE PRISON AND AN ANALYSIS OF POTENTIAL THREATS TO THE SAFETY AND SECURITY OF THE COUNTY PRISON, PRISON STAFF, INMATES AND THE PUBLIC.

~~(i) If a vulnerability analysis report finds one or more violations of the standards identified in paragraph (6) above and concludes that those violations present a significant threat to the safety and security of the county prison, prison staff, inmates or public safety.~~

~~(ii) If the county prison continues in subsequent prison inspections to violate the minimum standard(s) for which it has been issued a Citation of Non-compliance in accordance with paragraph (4)(iv) above and the governing county prison authority's written response to the Compliance Reports fails to show a good faith effort to correct those violations.~~

~~(10) The hearing shall be scheduled promptly, but in no event sooner than 20 days after receipt of the hearing notice. All proceedings shall be conducted in accordance with the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1 et seq.~~ A GOVERNING COUNTY PRISON AUTHORITY MAY AT ANY TIME REQUEST THE DEPARTMENT TO CONDUCT A VULNERABILITY ANALYSIS TO ASSIST IN EVALUATING THE OPERATIONS OF THE COUNTY PRISON. THE COUNTY PRISON SHALL BE RESPONSIBLE FOR THE COSTS OF A VULNERABILITY ANALYSIS CONDUCTED AT THE REQUEST OF THE GOVERNING COUNTY PRISON AUTHORITY.

~~(11) Following the hearing, a final order shall be issued resulting in one of the following:~~

~~(i) Declassification of the county prison resulting in the prison being ineligible to receive prisoners sentenced to a maximum term of six months or more but less than five years.~~

~~(ii) The Citation of Non-Compliance remains in effect, but the county prison is subject to a 12-month prison inspection cycle as of the issuance of the hearing report. If following the inspection the Compliance Report finds the county prison to be in violation of some or all of the minimum requirements for which the hearing was conducted, the Secretary may order another hearing in accordance with paragraph (9)(ii) above.~~

~~(iii) The Citation of Non-Compliance may be rescinded based on findings that the county prison is now in compliance with the minimum requirements. The county prison shall be returned to a prison inspection cycle consistent with paragraphs (3) and (4) above.~~ THE SECRETARY MAY ORDER A HEARING TO DETERMINE WHETHER A COUNTY PRISON SHOULD BE CLASSIFIED AS INELIGIBLE TO RECEIVE PRISONERS SENTENCED TO A MAXIMUM TERM OF SIX MONTHS OR MORE BUT LESS THAN FIVE YEARS UNDER THE FOLLOWING CONDITIONS:

(i) IF A VULNERABILITY ANALYSIS REPORT FINDS ONE OR MORE VIOLATIONS OF THE ESSENTIAL MINIMUM REQUIREMENTS SET FORTH IN PARAGRAPH (2) ABOVE AND CONCLUDES THAT THOSE VIOLATIONS MAY IMMEDIATELY THREATEN THE SAFETY AND SECURITY OF THE COUNTY PRISON, PRISON STAFF, INMATES OR PUBLIC SAFETY.

(ii) IF THE COUNTY PRISON HAS BEEN ISSUED A THIRD CITATION OF NON-COMPLIANCE IN ACCORDANCE WITH PARAGRAPH (7)(ii) ABOVE.

(12) A HEARING ORDERED UNDER PARAGRAPH (11) ABOVE SHALL BE SCHEDULED PROMPTLY, BUT IN NO EVENT SOONER THAN 20 DAYS AFTER.

RECEIPT OF THE HEARING NOTICE. ALL PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE GENERAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE, 1 PA. CODE §§ 31.1 ET SEQ. THE HEARING SHALL BE HELD TO DETERMINE WHETHER THE CONDITIONS AT THE COUNTY PRISON VIOLATING THE ESSENTIAL MINIMUM REQUIREMENTS CONSTITUTE A SIGNIFICANT AND IMMEDIATE THREAT TO THE SAFETY AND SECURITY OF THE COUNTY PRISON, PRISON STAFF INMATES OR THE PUBLIC. THE COUNTY PRISON SHALL BE PERMITTED TO PRESENT EVIDENCE DISPUTING THAT ANY SUCH THREAT EXISTS, INCLUDING EVIDENCE THAT MEASURES HAVE BEEN TAKEN TO ELIMINATE OR MINIMIZE THE THREAT TO SAFETY AND SECURITY.

(13) THE HEARING SHALL RESULT IN ONE OF THE FOLLOWING:

(i) UPON FINDING THAT CONDITIONS AT THE COUNTY PRISON VIOLATE THE ESSENTIAL MINIMUM REQUIREMENTS AND THAT THOSE VIOLATIONS CONSTITUTE A SIGNIFICANT AND IMMEDIATE THREAT TO THE SAFETY AND SECURITY OF THE COUNTY PRISON, PRISON STAFF, INMATES OR THE PUBLIC, AN ORDER SHALL BE ISSUED CLASSIFYING THE COUNTY PRISON AS INELIGIBLE TO RECEIVE ANY ADDITIONAL PRISONERS SENTENCED TO A MAXIMUM TERM OF SIX MONTHS OR MORE BUT LESS THAN FIVE YEARS UNTIL FURTHER ORDER OF THE DEPARTMENT. SHOULD SUCH AN ORDER BE ISSUED, THE COUNTY PRISON REMAINS RESPONSIBLE FOR ARRANGING INCARCERATION AN ANOTHER CORRECTIONAL FACILITY FOR THOSE INMATES COMMITTED BY THE COUNTY'S COURT OF COMMON PLEAS TO A SENTENCE OF GREATER THAN SIX MONTHS BUT LESS THAN FIVE YEARS TO A COUNTY PRISON UNDER 42 PA.C.S.A. §9762.

(ii) UPON FINDING THAT CONDITIONS AT THE COUNTY PRISON VIOLATE THE ESSENTIAL MINIMUM REQUIREMENTS, BUT THAT THOSE VIOLATIONS DO NOT CURRENTLY CONSTITUTE A SIGNIFICANT AND IMMEDIATE THREAT TO THE SAFETY AND SECURITY OF THE COUNTY PRISON, PRISON STAFF, INMATES OR THE PUBLIC, AN ORDER SHALL BE ISSUED STATING THAT THE CITATION OF NON-COMPLIANCE REMAINS IN EFFECT AND THAT THE COUNTY PRISON IS SUBJECT TO A FOLLOW-UP PRISON INSPECTION IN A TIMEFRAME DEEMED APPROPRIATE TO DETERMINE IF THE COUNTY PRISON HAS CORRECTED THE INSTANCES OF NON-COMPLIANCE WITH THE ESSENTIAL MINIMUM REQUIREMENTS. IF THE SUBSEQUENT FINAL INSPECTION REPORT FINDS THE COUNTY PRISON TO BE IN VIOLATION OF SOME OR ALL OF THE ESSENTIAL MINIMUM REQUIREMENTS FOR

WHICH THE HEARING WAS CONDUCTED, THE SECRETARY MAY ORDER ANOTHER HEARING IN ACCORDANCE WITH PARAGRAPH (10) ABOVE.

(iii) UPON FINDING THAT THE COUNTY PRISON IS NOW IN COMPLIANCE WITH THE MINIMUM REQUIREMENTS, AN ORDER SHALL BE ISSUED RESCINDING THE CITATION OF NON-COMPLIANCE. THE COUNTY PRISON SHALL THEN BE SUBJECT TO AN ANNUAL PRISON INSPECTION CONSISTENT WITH PARAGRAPH (1).

§ 95.221. Personnel.

The following ~~are the~~ minimum requirements apply to personnel at county prisons:

(1) Before being assigned duties, all corrections personnel shall be given training as to the contents/application of this chapter and in their general and specific responsibilities, including the use of force, prohibition on the seeking and dispensing of favors to and from the inmate population and instruction in the [facility's] prison's code of conduct and ethics. A record of this training shall be documented in each employe's personnel file.

(2) Full time corrections personnel shall receive basic training from a training program approved by the Department within 12 months of assuming their duties.

(3) Part-time corrections personnel shall be provided training required under paragraph (1). Part-time corrections personnel who have not completed an approved training program under paragraph (2) may not be permitted to work without close supervisory direction by a person who has received the training.

(4) Written local policy shall provide for training and staff development as described in paragraphs (1)-(3).

(5) An Annual training plan shall be prepared that identifies the subjects and number of hours required for pre-assignment, basic and staff development training. TRAINING MAY OCCUR ON-SITE, AT AN ACADEMY OR TRAINING CENTER, DURING PROFESSIONAL MEETINGS, THROUGH SUPERVISED ON-THE-JOB TRAINING OR COMPUTER-BASED TRAINING. The training plan shall be reviewed annually by THE prison administrator or designee.

(6) Written local policy must provide for a prison personnel policy manual that is available for employee reference. This manual must include, but not be limited to:

- (i) Organizational chart.
- (ii) Recruitment and promotion.
- (iii) Job specifications and qualifications.
- (iv) Code of conduct and ethics.
- (v) Sexual harassment/sexual misconduct.
- (vi) Employee evaluation.
- (vii) Staff disciplinary process.
- (viii) Grievance and appeals process.

(7) The prison administrator or designee shall conduct a documented review of the prison personnel policy manual annually and revise as needed.

(8) Written local policy must mandate a drug-free workplace for all prison staff including but not being limited to- THE FOLLOWING:

- (i) prohibition on the use of illegal drugs.
- (ii) prohibition of possession of any illegal drug except in the performance of job duties.
- (iii) procedures to ensure compliance.
- (iv) availability of treatment or counseling, or both for drug abuse.
- (v) penalties for violation of the policy.

(9) Written local policy must specifically and strictly prohibit sexual misconduct and sexual harassment by prison staff. Written local policy must inform prison staff that they may be subject to disciplinary action or criminal charges, or both, if found to have engaged in such conduct.

§ 95.222. Admission and Release.

The following are the minimum requirements applicable to admissions and releases:

(1) Admission. WRITTEN LOCAL POLICY MUST PROVIDE FOR THE FOLLOWING:

(i) With all admissions to the prison, commitment under proper legal authority and completeness of paperwork shall be verified.

(ii) An inmate may not be admitted into the prison when it is determined that the inmate is in need of medical treatment that cannot be provided by the prison. In those cases, a written verification of treatment from a medical doctor shall be provided by the transporting authority prior to admission.

(iii) Admission procedures relating to [contraband searches,] property disposition, notification and medical assessments and personal hygiene [shall] must be specified in written local policy.

~~(iv) Written local policy shall specify [The type of contraband search to be performed, including a restriction as to the use of an unclothed search on an arrestee. An unclothed search of an arrestee at intake shall only be conducted when there is reasonable belief or suspicion that the arrestee may be in the possession of an item of contraband. Reasonable belief may be based upon:~~

~~(A) Current charges or prior conviction for escape, drugs/weapons or any crimes of violence.~~

~~(B) Current or historical institutional behaviors of contraband possession or refusals to be searched.~~

~~(C) Other factors recognized by courts of competent jurisdiction.~~

(v) As part of the admission process, basic personal information shall be obtained for identification and classification purposes. This basic information [shall] must include:

(A) The name of the inmate.

(B) Date of birth.

(C) Race.

(D) Gender.

(E) Social Security number.

(F) State identification number (SID).

(G) Country of birth.

(H) Citizenship.

(I) Any aliases.

(J) The previous address of the inmate.

(K) A physical description of the inmate, including height, weight, hair, eye color and any scars or tattoos.

(L) The occupation of the inmate.

(M) Education.

(N) Offense committed and a summary of the facts of the crime committed.

(O) Religious affiliation.

(P) The date of commitment.

- (Q) Committing county.
- (R) The authority for the commitment.
- (S) Previous criminal record and any detainers.
- (T) The name and address of the person to be contacted in event of an emergency.
- (U) Marital status and any children.
- (V) Medical history, including any substance abuse.
- (W) The name and address of the inmate's attorney.
- (vi) Upon admission, a copy of the rules of the prison shall be provided to each inmate.
- (vii) ~~Written local policy shall specify h~~How an inmate can notify a relative of the inmate's location.

(viii) When non-United States citizens are detained, the detainee shall be advised of the right to have his/her consular officials notified or the nearest consular officials shall be notified of the detention, if required by the Vienna Convention. Consular officials shall be given access to non-United States citizen detainees and shall be allowed to provide consular assistance. Consular officials shall also be notified in the event of the death of a non-United States citizen detainee.

(2) Release. WRITTEN LOCAL POLICY MUST PROVIDE FOR THE FOLLOWING:

- (i) With all releases from the prison, release under proper legal authority and completeness of paperwork shall be verified.
- (ii) ~~Written local policy must specify r~~Release procedures to MUST include the following:
 - (A) Proper identification of inmate.
 - (B) Review of inmate file for detainers.
 - (C) Disposition of prison and personal property.
 - (D) Information exchange.
 - (E) Medication supply and medication instructions, as required.
 - (F) Victim notification.

§ 95.223. Orientation.

[Minimum requirements. The minimum requirements for the orientation of prisoners shall be as follows:

- (1) Every prisoner upon admission shall be provided with written information about the regulations of the institution.
- (2) If the prisoner is illiterate, the information shall be conveyed to him orally.

- (3) The orientation should include, but not necessarily be limited to, the following:
- (i) Regulations covering the treatment of prisoners.
 - (ii) Rules of conduct for the institution.
 - (iii) Information regarding work programs, education and vocational training, counseling programs, and other institutional programs offered in the jail.
 - (iv) The following provisions apply to communications with the staff:
 - (A) The prisoner should know that he is allowed to make requests or enter complaints to the administrator of the jail or to a jail officer.
 - (B) The prisoner should know that he may make requests or enter complaints to the jail inspector during his inspection. He should be permitted to talk to the inspector without the administrator or other members of the jail staff being present.
 - (C) The prisoner should know that he is allowed to make a request or enter a complaint without censorship as to substance to the administrator, the judiciary or other proper authorities.
 - (D) Unless requests or complaints arising from such communication are obviously frivolous or groundless, the jail staff shall promptly deal with them.
 - (v) Information necessary to enable the prisoner to understand both his rights and his obligations.
 - (vi) Additional information necessary for the prisoner to adapt himself to the life of the institution.]

The following are the minimum requirements applicable to the orientation of inmates:

(1) Written local policy must require orientation for every inmate within 14 days of admission as to the following:

- (i) Prison rules of conduct.
- (ii) Consequences for violation of the rules of conduct.
- (iii) Mail, visiting and telephone procedures.
- (iv) Access to medical care.
- (v) Fees, charges or co-payments that may apply.
- (vi) Prison grievance process.
- (vii) Available treatment programs.
- (viii) Available work programs.

(2) ~~Orientation shall be in written, oral, audio or video format.~~ Written local policy must provide for the orientation of illiterate and non-English speaking inmates. Orientation of each

inmate shall be documented in the inmate file. ORIENTATION MAY BE IN WRITTEN, ORAL, AUDIO OR VIDEO FORMAT.

(3) Written local policy must describe an inmate grievance process. The policy must include:

(i) The methods available for submitting a grievance.

(ii) The staff persons responsible for responding to a grievance. Grievances must have a written response for record.

(iii) An appeal process of at least one level.

(iv) Time frames for responses and appeals.

(4) Written local policy must permit every inmate to make a request or submit a grievance to the prison administration, the judiciary or other proper authorities without censorship as to substance.

§ 95.224. [Rules and regulations] Inmate Rules and Staff Procedures.

[The minimum requirements applicable for institutional rules and regulations are as follows:

(1) Each jail shall have well phrased and reasonable rules and regulations. The rules shall be constructed so that they eliminate confusion in both the staff and the prisoner's mind as to what behavior is correct. The regulations shall be constructed so that they inform the prisoners and staff how things are done in the jail and when and where activities take place.

(2) New prisoners shall be given information about the rules and regulations. Each new prisoner shall be told during orientation the standard of conduct which is expected.

(3) Jail rules and regulations shall be provided to inmates in the form of a printed manual.

(4) Each institution shall insure that its rules and regulations are constructed so that prisoners are assisted in following a course of conduct which is most likely to achieve the individual inmate's correction and insure the security, control and orderly administration of the jail.

(5) An act viewed by jail personnel as inconsistent with the provisions set forth in paragraph (4) is a breach of discipline. The act shall subject the person committing it to some form of corrective measure, not necessarily punitive.

(6) Serious types of misconduct include: escape; introduction of hazardous contraband into the institution; assault with a weapon; agitation of group disturbance; and deliberate disobedience with marked disrespect.

(7) Other offenses may be accidental. They may occur through carelessness, a lack of a sense of values or poor judgment. Even so, the infraction may jeopardize the population, others nearby

or be a threat to orderly administration. On the other hand, such an offense may only affect the individual offender, and, therefore, simply reflect a deficiency on his part.

(8) Jail rules and regulations shall be subject to change when necessary.

(9) The jail administrator should provide written rules for the guidance of all staff members. The information should include copies of all legislative acts pertinent to custody, control and treatment; plans and procedures for emergencies such as fire, escape and riot. A copy of the organizational chart for the institution approved by the jail administrator should also be provided.

(10) Each jail should establish particular assignments for jail officers while on duty.

(11) Specific post orders and duties for each assignment should include at least the following:

- (i) Hours of duty.
- (ii) Specific duties to be performed at particular times.
- (iii) Time, methods and techniques to be followed in making security checks.
- (iv) Time, methods and techniques to be followed in making counts.
- (v) Specific responsibilities in case of fire, disturbances, attempted escapes or other emergencies.]

The following are the minimum requirements applicable to inmate rules and staff procedures:

(1) Written local policy must specify inmate rules that insure the security, control, safety and orderly administration of the county prison. These rules must indicate to both inmates and staff what inmate behavior is unacceptable and the consequences of unacceptable behavior.

(2) WRITTEN LOCAL POLICY MUST SPECIFY THAT inmates and staff shall have access to inmate rules. New or revised inmate rules shall be disseminated to staff and, when appropriate, inmates prior to implementation.

(3) Written local policy must specify procedures that direct staff in the operation and maintenance of the county prison. The procedures must contain general and specific instructions for each duty post for the prison. The instructions must include the methods, techniques and time frames necessary to perform the duties of a particular duty post.

(4) Written local policy must specify procedures that direct staff in the event of fire emergencies, escapes and riots. These procedures must direct staff as to what actions are to be performed in a given duty assignment or duty post in these situations. These procedures must instruct staff as to the methods, techniques and time frames necessary to carry out the assigned duties.

(5) WRITTEN LOCAL POLICY MUST SPECIFY THAT operation and maintenance procedures and emergency procedures shall be disseminated to staff prior to implementation. Staff shall have ongoing access to these procedures.

(6) WRITTEN LOCAL POLICY MUST SPECIFY THAT inmate rules and staff procedures shall be reviewed by the prison administration on an annual basis. This review shall determine if updates are necessary due to operational changes, changes in the law, constitutional standards or recognized professional standards. The annual review and updates shall be documented.

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§ 95.229. Bedding.

[(a) *Minimum requirements.* The minimum requirements regarding bedding for prisoners are as follows:

(1) Each prisoner shall be provided with a bed, mattress, sheets and blankets appropriate for the temperature.

(2) Each prisoner shall be provided a pillow and pillowcase.

(3) Sheets and pillowcases shall be cleaned on a weekly basis and before reissue.

(4) Blankets shall be laundered or sterilized on a regular basis.

(5) Mattresses shall have a waterproof and fire resistant cover and shall be sterilized on a regular basis for the maintenance of good hygiene.

(6) Pillows shall have a waterproof and fire resistant cover and be sterilized on a regular basis for the maintenance of good hygiene.

(b) *Recommended guidelines.* Some jails have canvas bunks. Each jurisdiction having such accommodations for prisoners should immediately take steps to provide the conventional jail bed and mattress. This shall be made a minimum requirement following a reasonable time to allow county authorities, in counties still having canvas bunks, to purchase and install the conventional bedding.]

The following are the minimum requirements applicable to bedding:

(1) Written local policy must specify that inmates be provided a bed, mattress (not to exclude a mattress with integrated pillow), bed sheet, pillow, pillowcase, towel and blanket. The bed must be a sleeping surface and mattress that allows the inmate to be at least 12 inches off the

floor. The mattress and pillow must have a waterproof and fire retardant cover. The bed must be located in an area pre-approved for residential occupancy by the Pennsylvania Department of Labor and Industry or local code authority.

(2) WRITTEN LOCAL POLICY MUST DEFINE EMERGENCY CIRCUMSTANCES THAT WOULD REQUIRE THE USE OF TEMPORARY BEDDING ARRANGEMENTS THAT MAY NOT MEET THE REQUIREMENTS OF PARAGRAPH 1 OF THIS SECTION. AN INMATE SHALL NOT BE SUBJECT TO TEMPORARY BEDDING ARRANGEMENTS FOR A PERIOD EXCEEDING 30 CONSECUTIVE DAYS. TEMPORARY BEDDING ARRANGEMENTS SHALL NOT BE UTILIZED BY THE COUNTY PRISON FOR A PERIOD EXCEEDING 90 CONSECUTIVE DAYS.

(2) (3) WRITTEN LOCAL POLICY MUST PROVIDE THAT the prison administrator has discretion to issue bedding items to or removing bedding items from an inmate when possession of those items by the inmate could compromise the order, security or safety of the prison.

(3) (4) Written local policy must provide that each mattress and pillow is sanitized chemically or by another acceptable method and is in usable condition before reissue to another inmate. Each in-use mattress and pillow shall be sanitized at least annually.

(4) (5) Written local policy MUST shall provide for the laundering of bed sheets, pillowcases, towels and blankets before reissue to another inmate. In-use bed sheets, pillowcases and towels shall be laundered on a weekly basis. In-use blankets shall be laundered at least quarterly.

§ 95.230. Food services.

[(a) *Minimum requirements.* The following minimum requirements are applicable for food services:

(1) Prisoners shall be provided three meals per day at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Jails which hold prisoners in excess of 48 hours shall have an onsite kitchen facility whose supervisor and cook shall be an employe of the facility and is competent to plan, purchase and prepare a nutritionally adequate diet. It is acceptable, however, for adequate food services to be provided by other approved sources, as for example, the county home or an outside caterer.

(3) Jails may contract with an outside firm to provide prepackaged meals on a full-time basis after a complete inspection and written approval from the Bureau of Correction, Division of County Correctional Services.

(4) The jail kitchen shall always reflect the highest standards of cleanliness, safety and sanitation.

(5) Jail staff and inmates shall be given a physical examination and certified to be free of communicable diseases before starting to work in the Food Service Department.

(6) The menus shall be designed to provide a daily diet, well balanced and nutritious. Menus shall be approved by a medical doctor. The services of a local dietician should be consulted, as for example the county home, county hospital or other acceptable facility having a qualified dietician.

(7) Eating utensils should be sterilized at a temperature of 180° F. Preferably a dishwasher should be used where the final rinse sterilizes. In the absence of a dishwasher, a three-compartmented stainless steel sink with a drainboard, one sink for washing, one for rinsing and the third for sterilization, may be substituted.

(8) Menus shall be developed several weeks or a month in advance and arranged in a nonmonotonous manner.

(9) Food shall be served as promptly as possible after it is prepared with hot foods served hot and cold foods cold.

(10) If the serving area is some distance from the kitchen, a heated or insulated food cart shall be used.

(11) If physical facilities permit, all prisoners shall be fed in a dining room or day room to assure good jail sanitation.

(12) Compartmented trays or paper plates and individual cups shall be utilized. More than one type of food should not be served in a noncompartmented tin bowl, or other type of individual container.

(13) If prisoners are fed in their cells, food trays and other eating utensils shall be removed from the cell as soon as the meal is finished.

(14) Food shall be stored in a proper manner to assure its freshness and to prevent spoilage and damage from insects and rodents.

(b) *Recommended guidelines.* Clean white hats, cloth or disposable paper throwaways, and clean white clothing should be worn by all food service workers.]

The following are the minimum requirements applicable to food services:

(1) Written local policy must specify that each inmate be provided a daily diet that is nutritionally adequate for the maintenance of good health. Written local policy must recognize dietary requirements for those inmates whose medical condition requires prescribed therapeutic attention, for those inmates whose religious beliefs require adherence to specified and approved religious dietary law and for those inmates under segregation or disciplinary status or both whose behavior requires a different meal consistency. All regular and alternative menus shall be approved and signed by a registered dietician or licensed physician or both and the prison administrator on an as needed basis, but no less than on an annual basis.

(2) Written local policy must provide that food is prepared and served in a sanitary manner. The prison food preparation area(s) and food distribution area(s) shall be maintained in a safe and clean condition at all times. Food shall be stored and prepared in a proper manner to assure freshness and to prevent spoilage and damage from insects and rodents. Appropriate food service head cover, beard/facial hair cover and gloves shall be worn by staff, food service contractor and inmates engaged in food preparation or distribution or both. Written local policy must require that one supervisory food service employe become certified in food safety and sanitation IN ACCORDANCE WITH THE FOOD EMPLOYEE CERTIFICATION ACT (3 PA. C.S.A. §§6501-6510). There shall always be a "person in charge" present during all hours of operations. If the "person in charge" is not certified, that person shall receive documented training as to the food safety and sanitation procedures as established by written local policy.

(3) Written local policy must provide for the control and use of culinary equipment. All culinary equipment shall be identified and accounted for on an inventory list. In addition, cutlery items shall be documented as to being checked in and out, to control use at all times. When not in use, cutlery shall be stored in a secure manner.

(4) Written local policy must establish pre-assignment and periodic medical clearance for staff, food service contractor and inmate food service workers. All food handlers shall wash their hands upon reporting to duty and after using toilet facilities.

(5) Written local policy MUST shall identify the method(s) available to clean, rinse and sanitize prison-issued eating and drinking utensils at least weekly. These eating and drinking utensils shall be cleaned, rinsed and sanitized before being re-issued to another inmate.

(6) WRITTEN LOCAL POLICY MUST PROVIDE THAT compartmented trays, plastic ware and paper products shall be utilized to serve the food. More than one type of food may not be

served in a non-compartmented container during normal feeding operations. Food shall be served as promptly as possible, at the proper temperature.

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§ 95.232. Medical and health services.

The following are the minimum requirements applicable to medical and health services:

(1) Written local policy MUST ~~shall~~ specify that all inmates admitted to the prison receive a health care screening performed and recorded by a person with health care training within 24 hours of admission. THE HEALTH CARE SCREENING SHALL INCLUDE A STRUCTURED INQUIRY AND OBSERVATION DESIGNED TO IDENTIFY NEWLY-COMMITTED INMATES WHO POSE A HEALTH OR SAFETY THREAT TO THEMSELVES OR OTHERS. SCREENING CAN BE PERFORMED BY HEALTH CARE PROFESSIONALS OR BY HEALTH-TRAINED CORRECTIONAL STAFF AT THE TIME OF ADMISSION. A record of the result of the examination shall be kept as a part of the permanent prison document.

(2) WRITTEN LOCAL POLICY MUST SPECIFY THAT an inmate determined upon admission not to be in good health ~~shall~~ be assessed by a health care professional within 24 hours.

(3) WRITTEN LOCAL POLICY MUST SPECIFY THAT following review of the initial commitment screening by a health care professional, a medical history and physical examination ~~shall~~ be performed by the prison health care provider within 14 days following admission.

(4) Written local policy MUST ~~shall~~ specify routine screening procedures utilized for infectious diseases, acute illness and suicide risk.

(5) Written local policy MUST ~~shall~~ designate a health care provider responsible for control of the delivery of health care services including mental health services. A health care provider or professional shall have sole province on matters involving medical judgment.

(6) Written local policy MUST ~~shall~~ provide that the health care provider report in writing on the health care delivery system to the prison providing information sufficient to demonstrate that

adequate health care is being provided to inmates and review findings with prison administrators annually.

(7) Written local policy ~~shall~~ MUST provide for an annual documented review of a prison's health care delivery system by the prison and when necessary, revisions shall be made to each health care procedure and program by the prison.

(8) Written LOCAL policy [shall] must provide for access to emergency care 24 hours a day for all inmates. A written plan [shall] must outline onsite treatment, evacuation, transportation and security procedures and designate emergency facilities to be utilized. All corrections personnel shall be certified in basic first aid and cardiopulmonary resuscitation in accordance with the time frames established by the certifying health organization ORGANIZATION THAT CONDUCTS THE TRAINING.

(9) Written local policy [shall] must provide for the management of pharmaceuticals. The policy must include:

(i) Formulary and prescription practices.

(ii) Medication procurement, receipt, dispensing, distribution, storage and disposal, as supervised by properly licensed personnel in accordance with state and federal law THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT (35 P.S. §780-101 ET SEQ.).

(iii) Secure storage and inventory of all controlled substances, syringes and needles.

(10) Written local policy [shall] must provide for a suicide prevention and intervention program and [shall] outline the program review mechanisms utilized and staff training procedures for program implementation. Staff training shall occur on an annual basis.

(11) WRITTEN LOCAL POLICY MUST PROVIDE THAT medical and dental instruments, equipment and supplies shall be controlled and inventoried.

(12) Written local policy must specify the scope of dental treatment to be provided to an inmate. This treatment must include extraction, but not necessarily be limited to, and other work of an emergency nature as needed. Written local policy must specify how an inmate is to obtain the available dental treatment.

§ 95.233. Visiting.

[(a) *Minimum requirements.* The following are the minimum requirements relating to visiting prisoners:

(1) The jail shall publish rules and regulations concerning visits, letters and packages. The rules and regulations shall be provided for prisoners for sending to all persons on their approved list.

(2) Prisoners may not be denied visits or mail to family members or approved friends as punishment, unless the reason for the denial is due to serious violation of the visiting or mail rules and regulations or there is an obvious security threat.

(3) The length of a visit shall be no less than ½ hour every week and should be longer and more frequent if conditions permit.

(4) The children of a prisoner shall be able to visit him provided that the accompanying adult supervises them and keeps them under control.

(5) Periodic family visits in an open area shall be arranged if possible, as a privilege for selected prisoners. The selected prisoners shall meet conditions which all jail prisoners have an opportunity to attain.

(6) The jail administrator shall grant special visiting privileges to visitors who have travelled long distances, to those persons visiting seriously ill or injured prisoners and for other unusual circumstances.

(7) Visitors shall sign a register and show identification before being permitted to visit.

(8) The attorney and the minister of a prisoner shall be provided such surroundings during a visit that shall insure the privacy of their conversation.

(b) *Recommended guidelines.* The recommended guidelines governing visiting are as follows:

(1) Physical facilities, prisoner population, staff size and other factors place restrictions on visiting. Nevertheless, every effort should be made to schedule visiting periods 7 days a week and during some evening hours to make maximum use of the visiting room facilities and to enlarge the opportunity of the prisoner to maintain his contacts with the free community.

(2) Security shall be enforced during visits but the maintenance of security should be done in as professional a manner as possible so as not to discourage visiting.

(3) Prisoners should be able to make an occasional phone call, within staff and physical limitations of the jail, to his family, friends and attorney.]

The following are the minimum requirements applicable to inmate visiting:

(1) Written local policy must explain inmate visiting procedures, including:

(i) Availability of contact or non-contact visitation or both.

(ii) Visitor approval procedure.

(iii) Frequency and duration of visits.

(2) Written local policy must require that visitors register upon admission to the prison. Written local policy must describe the circumstances and the types of searches under which visitors are subjected.

(3) WRITTEN LOCAL POLICY MUST REQUIRE THAT each inmate shall be permitted at least 30 minutes of visitation time weekly. Restrictions may be placed on visiting, including denial of a visit, when, in the discretion of the prison administrator, the restrictions are necessary to maintain the safety or security of the prison.

(4) Written local policy must, in accordance with the Official Visitation of Prisons Act (61 P.S. §§1091-1095), provide for visits by official visitors. Written local policy must require that accommodations be made to provide for the privacy of conversation during these official visits.

(5) Written local policy must allow for visits by an inmate's attorney or clergy. Written local policy must require that accommodations be made to provide for the privacy of conversation during these visits.

(6) WRITTEN LOCAL POLICY ~~Inmate visiting information shall~~ MUST be provided to REQUIRE THAT each inmate BE PROVIDED INMATE VISITING INFORMATION upon admission. This information shall MUST also be made available to the public.

§ 95.233a. Telephone communication.

The following are the minimum requirements applicable to telephone communication:

(1) Written local policy must specify whether inmates are permitted telephone communication. If so, the policy must explain telephone procedures, including:

(i) Hours during which telephone communication is available.

(ii) Any limitations on calls.

(iii) Cost/method of payment.

(2) Written local policy must, in accordance with 18 Pa. C.S. §5704 (relating to the Crimes Code), specify whether inmate telephone conversations are subject to intercepting, recording, monitoring or divulging. If so, the policy must establish the guidelines which permit those activities.

(3) WRITTEN LOCAL POLICY MAY ALLOW FOR restrictions may TO be placed on telephone communication, including denial of telephone usage, when, in the discretion of the prison administrator, the restrictions are necessary to maintain the safety or security of the prison.

(4) WRITTEN LOCAL POLICY MUST REQUIRE THAT EACH INMATE BE PROVIDED information about telephone communication shall be provided to each inmate upon admission. This information must also be made available to the public.

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§ 95.235. Work programs.

[(a) *Minimum requirements.* The following minimum requirements shall apply to work programs:

(1) Prisoners waiting trial and not sentenced in the jail shall not be required to work, except to keep their immediate area in the living quarters clean. However, a volunteer work program for unsentenced inmates should be developed.

(2) Prisoners sentenced to the jail shall be assigned work when it is available.

(3) All prisoners who work shall be paid. That pay may take the form of cash or credit toward pending court costs.

(4) The precautions laid down to protect the safety and health of workmen in the free society shall be equally observed in institutions. Proper clothing and tools shall be provided.

(b) *Recommended guidelines.* A good jail administrator shall utilize the furlough concept to enable selected prisoners to seek employment in the community.]

The following are the minimum requirements applicable to inmate work programs:

(1) Written local policy must identify any authorized inmate work programs to include, but not be limited to, such as work assignment program, industries program, public works/community service program or work release program. Written local policy must specifically prohibit prison

staff from using their official position to secure privileges for themselves or others in association with an inmate work program.

(2) WRITTEN LOCAL POLICY MUST IDENTIFY WHETHER sentenced inmates may be required to participate in a work program based upon availability. Unsentenced inmates may not be required to participate in a work program, but may request involvement in a work program.

(3) WRITTEN LOCAL POLICY MUST REQUIRE THAT inmates who participate in a work program (other than personal housekeeping and housing area cleaning) shall receive some form of compensation. Written local policy must specify the type and amount of compensation.

(4) Inmate working conditions shall comply with all applicable federal, state or local work safety laws and regulations. WRITTEN LOCAL POLICY MUST REQUIRE THAT INMATES SHALL BE PROVIDED appropriate clothing, supplies and tools shall be provided to the inmate for any work assignment program, industries program or public works/community service program. The inmate must receive direction on the proper use of any equipment or tools to be used by the inmate during any work assignment program, industries program or public works/community service program.

(5) Written local policy must specify that there is SHALL BE no discrimination regarding access to a work program based on an inmate's race, religion, national origin, gender or disability. If both genders are housed in the prison, all available work programs shall be comparable in accordance with applicable law.

* * *

§ 95.237. Religion.

[(a) *Minimum requirements.* Religion shall be governed by the following minimum requirements:

(1) Each prisoner shall be allowed to satisfy the needs of his religious life consistent with orderly administration of the jail.

(2) Religious services and counseling shall be on a voluntary basis.

(3) Scheduled religious services shall be held at regular intervals, in such a location and in such a manner that the prisoners who do not wish to participate are not exposed to the service.

(4) Prisoners requesting interviews and counseling regarding religious, personal or family problems with accredited clergy, nuns, seminarians and lay persons active in community church affairs shall be afforded this opportunity.

(5) Religious ornaments or medals pertinent to the beliefs of the prisoner shall be permitted in the jail and worn upon the person provided such ornaments or medals do not constitute contraband under the usual rules of the institution. Other religious paraphernalia should be permitted, provided it is kept and utilized in the living quarters of the prisoner and does not interfere with proper housekeeping and further provided that such paraphernalia does not constitute contraband under the usual institutional rules.

(6) Limited use of pork and pork products objectionable to certain religions shall be made in jail menus and menus will clearly indicate which foods contain any pork or pork products or were prepared with pork products.

(7) Insofar as it is possible, the religious activities of all groups shall be scheduled at times consistent with the religious beliefs of the group.

(8) Access to a person who has received ecclesiastical endorsement from his religious authority shall not be refused to any prisoner. If, however, any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

(b) *Recommended guidelines.* The recommended guidelines applicable for religion are as follows:

(1) Family and community participation in special religious activities should be permitted, subject to the requirements of security.

(2) Special food prepared and furnished from outside the jail may be allowed, provided it is required in the celebration of a major religious holiday.]

The following are the minimum requirements applicable to religion:

(1) Written local policy must provide that inmates have access to religious activities. Participation in religious activities shall be a matter of choice on the part of each inmate. Religious activities shall be conducted in a location and manner that does not impinge upon the choice of an inmate not to participate. each prisoner shall be allowed to satisfy the needs of his religious life consistent with the orderly administration of the jail PRISON.

(2) WRITTEN LOCAL POLICY MUST REQUIRE THAT individuals seeking to provide religious guidance to inmates be screened and selected by the prison administrator or designee. Screening and selection shall include qualifications associated with clinical pastoral education or equivalent specialized training and endorsement by the appropriate religious certifying body.

(3) Written local policy must provide for the accommodation of religious practices consistent with the security needs and orderly administration of the prison. The policy must describe the procedure for reviewing an inmate request for accommodation of a religious practice or activity.

(4) Written local policy must provide that inmates are permitted to possess religious objects consistent with the security needs and orderly administration of the prison. The policy must describe the procedure for reviewing an inmate request to possess religious objects that would otherwise be considered contraband.

(5) Written local policy must provide for the accommodation of special foods, diets and fasts as part of an inmate's religious practices consistent with the security needs and orderly administration of the prison. The policy must describe the procedure for reviewing an inmate request for accommodation of these practices.

* * *

§ 95.239. Commissary and other funds.

The following are the minimum requirements that apply to commissaries AND OTHER FUNDS:

(1) County prisons may provide commissary services if the county so chooses.

(2) WRITTEN LOCAL POLICY MUST REQUIRE THAT funds associated with commissary services shall be audited and reported on an annual basis by an independent party using generally accepted accounting principles.

(3) Written local policy must describe a fiscal system that accounts for all income and expenditures on an ongoing basis. Methods for collecting, safeguarding and disbursing moneys must comply with generally accepted accounting principles. A financial audit of the prison shall be conducted annually by a certified, independent party using generally accepted accounting principles. THE FINANCIAL AUDIT SHALL RESULT IN AN OPINION THAT EITHER AFFIRMS OR DISFFIRMS THE ACCURACY OF THE RECORDS OR ACCOUNTS.

(4) WRITTEN LOCAL POLICY MUST REQUIRE THAT funds associated with inmate telephone services shall be audited and reported to the governing county prison authority on an annual basis by an independent party using generally accepted accounting principles.

(5) WRITTEN LOCAL POLICY MUST REQUIRE THAT funds associated with an industries program and a work release program shall be audited and reported to the governing county prison authority on an annual basis by an independent party using generally accepted accounting principles.

§ 95.240. Inmate disciplinary procedures.

The following are the minimum requirements applicable to inmate disciplinary procedures:

(1) WRITTEN LOCAL POLICY MUST IDENTIFY ~~County prisons shall operate a~~ disciplinary process that provides clear notice of prohibited behavior and consistently applied sanctions for violations of prison rules. Disciplinary procedures governing inmate rule violations must address the following:

- (i) Rules.
- (ii) Minor and major infractions.
- (iii) Criminal offenses.
- (iv) Disciplinary reports.
- (v) Pre-hearing actions.
- (vi) Pre-hearing detention.
- (vii) Appeal of disciplinary decisions.

~~(2) Violation of prison rules may result in the imposition of discipline. Violations shall be designated as being either a major infraction or a minor infraction. A major infraction charge requires use of a hearing procedure for resolution. A minor infraction charge may be resolved without a hearing procedure.~~ WRITTEN LOCAL POLICY MUST IDENTIFY VIOLATIONS OF PRISON RULES THAT ARE DESIGNATED AS A MAJOR INFRACTION, A MINOR INFRACTION OR THOSE NOT RISING TO THE LEVEL OF A MAJOR OR MINOR INFRACTION.

(i) A MAJOR INFRACTION INVOLVES A GRIEVOUS LOSS AND REQUIRES USE OF A HEARING PROCEDURE FOR RESOLUTION. MAJOR INFRACTIONS SHALL INCLUDE:

(A) VIOLATIONS THAT MAY RESULT IN DISCIPLINARY DETENTION OR ADMINISTRATIVE SEGREGATION.

(B) VIOLATIONS FOR WHICH PUNISHMENT MAY TEND TO INCREASE AN INMATE'S SENTENCE, SUCH AS EXTENDING PAROLE ELIGIBILITY.

(C) VIOLATIONS THAT MAY RESULT IN FORFEITURE, SUCH AS LOSS OF EARNED TIME.

(D) VIOLATIONS THAT MAY BE REFERRED FOR CRIMINAL PROSECUTION.

(ii) A MINOR INFRACTION CHARGE MAY BE RESOLVED WITHOUT A HEARING PROCEDURE AND WITHOUT THE IMPOSITION OF SERIOUS PENALTIES. MINOR INFRACTIONS DO NOT VIOLATE ANY STATE OR FEDERAL STATUTES AND MAY BE RESOLVED INFORMALLY BY REPORTING STAFF.

(3) WRITTEN LOCAL POLICY MUST PROVIDE THAT discipline for a minor infraction may not be imposed unless a written statement as to the rule violated is prepared and a person not involved in the rule violation reviews said statement and makes a decision as to guilt.

(4) WRITTEN LOCAL POLICY MUST PROVIDE THAT discipline for a major infraction may not be imposed unless the [prisoner] inmate has been informed of the offense charged in writing, has had an opportunity to present a defense and has been found guilty of the charge by an impartial party or board designated by the prison administrator. [(3)] Findings of guilt or innocence [shall be made by an impartial party to be designated by the prison administrator. Findings] shall be expressed in writing and based on information presented. Written findings of guilt must state the reasons for the finding.

(5) WRITTEN LOCAL POLICY MUST PROVIDE THAT disciplinary charges and written findings relative to a major infraction shall be recorded and made a permanent part of an inmate's prison file.

(6) WRITTEN LOCAL POLICY MUST PROVIDE THAT disciplinary sanctions imposed after a finding of guilt for a major infraction may include loss of privileges, segregation or other sanctions as set forth in written local policy.

(7) WRITTEN LOCAL POLICY MAY ALLOW FOR INFORMAL RESOLUTION OF RULE INFRACTIONS NOT RISING TO THE LEVEL OF A MAJOR OR MINOR INFRACTION. PARTICIPATION BY AN INMATE IN INFORMAL RESOLUTION OF A RULE INFRACTION SHALL BE ON A VOLUNTARY BASIS ONLY.

(8) WRITTEN LOCAL POLICY MUST PROVIDE THAT when an inmate in disciplinary status is deprived of any usual authorized items or activity, a report of the action is to be made to the prison administrator. If an inmate in disciplinary status uses food or food service equipment

in a manner that is hazardous to self, staff or other inmates, an alternative meal may be provided, upon the approval of the prison administrator or designee and responsible health care provider.

(9) WRITTEN LOCAL POLICY MUST PROVIDE THAT the imposition of discipline [may] shall not violate an inmate's right to be free from cruel and unusual punishment.

§ 95.241. Security.

[(a) *Minimum requirements.* The minimum requirements applicable for security are as follows:

(1) *Generally.* The following general provisions shall be in effect:

(i) Supervision on a 24-hour basis by trained personnel is required in jails housing any number of inmates. One jail officer with one additional officer on call for assistance shall be the minimum in all jails housing any number of prisoners up to ten. A jail having over ten inmates shall have at least two jail officers present for duty on the premises. In general, the minimum required custody ratio is one officer per shift for 15 inmates. For example, with a population 45, a jail shall have nine officers. An administrator may schedule those nine officers as he sees fit, as for example: four on the first shift; three on the second shift; and two on the third shift, or some other arrangement which would be appropriate to that particular jail. A good administrator, however, shall have a greater ratio than the minimum.

(ii) A matron or other qualified female employe shall be present in the jail, awake and alert at all times, while a female prisoner is in custody. The same minimum ratio for female prisoners as for male prisoners is required.

(iii) Sufficient jail officers shall be present in the jail, awake and alert at all times, to provide adequate supervision while prisoners are in custody.

(iv) A male jail officer shall enter the female area only in the presence of a matron.

(v) In an institution holding both men and women, the part used for women shall be under the authority of a responsible woman officer who shall have the custody of the keys to all that part of the institution.

(vi) Prisoners shall never be permitted to assume any authority whatsoever over other prisoners.

(vii) Prisoners assigned as trustees should be supervised.

(viii) If trustees leave the jail premises for any reason they shall be thoroughly searched upon their return.

(ix) Inmates with detainers should be assigned to trusty status only if jail staff is aware of the circumstances.

(2) *Weapons.* The following provision regarding weapons shall be in effect:

(i) In the event of a general emergency, appropriate emergency plans shall be followed in accordance with previously established procedures.

(ii) The following guidelines shall govern the use of weapons:

(A) Weapons shall not be carried in normal prison operation. Tower or outside security assignments are exceptions.

(B) Adequate weapons, to include batons and chemical mace, shall be available in a locked security area accessible to prison administrator or his designated representative.

(C) The jail administrator or an officer designated by the jail administrator shall determine the need for carrying concealed mace or exposed batons or the use thereof during any movement of prisoners. He shall base his determination upon the physical facilities, type and attitude of the offender, and the personal safety of self and fellow officers.

(D) Any use of the baton or chemical mace upon any prisoner shall be recorded in writing and be reported to the Department of Corrections, Division of County Correctional Services, in accordance with established procedures for extraordinary occurrences reports.

(iii) Personnel shall be trained in security measures and in the handling of special incidents such as assaults, generalized disturbances, fires, escapes, and the like.

(iv) Law enforcement personnel shall be provided with a locked security area for their weapons when visiting the jail. Personnel who normally carry weapons in their usual duties, including law enforcement officers, should be cautioned about leaving weapons inside cars in the prison parking area.

(v) Tear gas shall be used only as last resort to bring one or more prisoners under control. It shall be used only after thoroughly considering the hazards involved, including consideration for the area where it is to be used.

(vi) Permission to use tear gas shall be obtained from the jail administrator or an officer designated by him to supervise the use of tear gas.

(vii) Prisoners affected by tear gas shall be given a medical checkup as soon as possible after the incident is under control.

(viii) The key to the armory shall not be kept on the key board.

(ix) If the jail has a safe, the key to the armory shall be kept in it.

(3) *Key control.* The following provisions shall apply to the control of keys:

(i) Jail keys shall be stored in a secure locker when not in use, and a record of all keys shall be kept.

(ii) In addition to one set of keys in use, one or more sets shall be stored in a safe place.

(iii) Jail officers shall exercise every precaution while carrying keys or potentially dangerous articles in the presence of prisoners.

(iv) Under no circumstances will prisoners be permitted access to jail keys or personnel records or records of other inmates. This should not prevent inmates from having keys to personal lockers and honor cells if provided.

(v) Jail personnel shall be familiar with the locking system of the jail and shall be able to release prisoners in the event of a fire or other emergency.

(vi) If opening and closing cell block doors, all employees shall be alert to possible escape attempts.

(vii) Damaged or malfunctioning keys or locks shall be promptly repaired.

(viii) Ignition keys shall be removed from all motor vehicles in the jail parking area. Doors of motor vehicles shall be securely locked.

(ix) Cell block doors and doors opening into a corridor shall be kept locked, except when necessary to permit admission or exit of prisoners, visitors or employees.

(x) The key control center shall be the only place where keys may be checked in and out. It shall be secure from entry by prisoners.

(xi) The control center shall have a key book containing the following:

(A) The number of each key.

(B) The trade name of each lock and its location.

(C) The number of keys available for each lock.

(xii) Key rings shall contain either inside or outside keys, but not both.

(xiii) Lock malfunctions shall be reported immediately.

(xiv) Lock changes shall be reported immediately.

(xv) Prisoners shall never be permitted to handle keys.

(4) *Control of contraband.* The following shall apply to the control of contraband:

(i) Jail personnel shall understand what articles are considered to be contraband.

(ii) Prisoners shall be searched when they are admitted to the jail and periodically while confined.

(iii) Cells shall also be searched for contraband that has been missed or that somehow has found its way into the cell.

(iv) Prisoners permitted to leave the jail under a work program, to appear in court or for any other reason shall be searched before re-entering the jail.

(v) Both unoccupied and occupied cells shall be searched for contraband frequently but not according to a set and regular routine.

(vi) Unoccupied cells shall be kept locked at all times.

(vii) Eating utensils shall be accounted for and returned to the kitchen after each meal.

(viii) An officer shall be subject to search upon entering or leaving the jail.

(ix) Prisoners may not assist in searching of cells or in other security inspections.

(5) *Use of physical force.* The following shall govern the use of physical force:

(i) Physical force may not be used on prisoners unless necessary, and then only that amount of physical force which is required to achieve the purpose is justified.

(ii) The use of necessary physical force shall be restricted to the following situations:

(A) If absolutely necessary in self-defense or to prevent an assault on staff or other prisoners.

(B) To prevent escapes.

(C) To prevent serious destruction of property.

(iii) When physical force is used, an extraordinary occurrence report shall be written and filed with the Department of Corrections, Division of County Correctional Services.

(6) *Emergency plans.* The following shall govern emergency plans:

(i) Every jail shall have a written emergency plan. It is impossible to develop a single emergency plan that is useful for every jail.

(ii) Each plan shall contain basic information and instructions for all jail officers, to include at least the following:

(A) To whom shall the emergency be reported.

(B) Who is in charge.

(C) A description of duties for each kind of emergency.

(D) How these duties in an emergency are coordinated with the duties of other jail personnel.

(E) How to use emergency equipment.

(F) Outside police or other agencies to be contacted.

(7) *Instruments of restraint.* The following shall govern the use of instruments of restraints:

(i) Instruments of restraint, such as handcuffs, chains, irons, come-a-longs and straitjackets, may not be used as a punishment.

(ii) Instruments of restraint may be used in the following circumstances:

(A) As a precaution against escape during a transfer.

(B) On medical grounds by direction of a medical doctor.

(C) By order of the jail administrator or his appointed representative, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the jail administrator or his representative shall at once consult a medical doctor.

(iii) Instruments of restraint may not be applied for a longer length of time than is absolutely necessary. Use of restraints shall be recorded on inmate's file.

(iv) Whenever instruments of restraint are used outside of the process of prisoner transportation or for medical reasons within a hospital setting, a written extraordinary occurrence

report shall be prepared and submitted to the Department of Corrections, Division of County Correctional Services.

(8) *Tools.* The following shall govern the use of tools:

(i) The work supervisor shall determine that the prisoner knows how to use the tools that are issued to him.

(ii) The work supervisor is responsible for insuring that the prisoners have been instructed in safety procedures.

(9) *Prison provided transportation.* The following shall govern transportation that is provided by prison officials:

(i) Vehicles used to move prisoners shall have adequate ventilation, lighting and shall be safe.

(ii) The prisoner may not be subjected to unnecessary physical hardships during the period of transportation.

(iii) The escort officer shall treat the prisoner firmly, but humanely and with consideration for his dignity and status as a human being.

(iv) The escort officer shall search the prisoner before any restraints are placed upon him.

(v) Restraints used shall be checked at intervals for security.

(vi) Firearms carried by the escorting officer shall be concealed and continuously protected so that they may not be taken by the prisoner.

(vii) Should a prisoner escape, the nearest law enforcement agency shall be notified.

(b) *Recommended guidelines.* The recommended guidelines for security are as follows:

(1) *Generally.* The following general provisions are recommended guidelines:

(i) Trustees should leave the jail proper only when accompanied by an officer.

(ii) Articles which may be converted into weapons should be removed from within reach of prisoners unless the article is being used by an inmate for an authorized purpose. Security type safety razors or battery type razors shall be used and removed from cell areas when not in use.

(iii) Keys should always be kept covered.

(2) *Tools.* The following are the recommended guidelines for tools:

(i) A receipting system for issuance of tools to employes should be maintained.

(ii) Tools of outside maintenance men should be carefully checked upon admittance to the jail and when they depart.

(iii) Prisoners should be allowed to use tools only under supervision.

(iv) Tools used within the jail or belonging to the jail should be numbered and recorded. They should be kept in a locked tool-storage area which is secure and is located outside the security perimeter of the jail.

(v) Tools should be checked out by the work supervisor.

(vi) Tools are returned at the end of the working day.

(vii) Tools should be inspected when returned.

(3) *Counting procedures.* The following are the recommended guidelines regarding counting procedures:

(i) A recorded inmate headcount should be made at least four times daily.

(ii) At least one official count should be made on each shift. In addition, any time there is mass movement of prisoners from one area to another, an official count should be made.

(iii) During the count the recommended guidelines are as follows:

(A) Prisoners should not move about.

(B) The officer making the count should be able to see the prisoner he is counting.

(C) Only a jail officer should conduct a count.

(D) Interruptions should not be permitted during the count.

(iv) Spot checks should be made at irregular intervals, both day and night.]

The following are the minimum requirements applicable to security:

(1) *Supervision of Inmates.* WRITTEN LOCAL POLICY MUST PROVIDE FOR THE FOLLOWING:

(i) The number of staff required to maintain care, custody and control of the inmate population on a 24-hour basis. Staff used to maintain the care, custody and control of the inmate population shall meet the minimum training requirements of § 95.221 (relating to personnel).

(ii) An initial staffing analysis shall be conducted BY THE PRISON ADMINISTRATOR OR DESIGNEE to determine the staffing allotment and post assignments necessary to safely operate the prison. In determining the number of staff needed, relief factors are to be calculated for each classification of staff that is assigned to relieve posts or positions. Consideration shall include, but not be limited to, annual leave, average sick leave usage, holidays, military leave, regular days off and training. The staffing analysis shall be reviewed and documented on an annual basis by the prison administrator. The results of this annual staffing analysis shall serve as the required staffing allotment designated for the prison. Information on the number and type of positions filled and vacant shall be available at all times FOR REVIEW BY THE DEPARTMENT'S INSPECTORS.

(iii) ~~Written local policy shall provide that~~ Assignments/posts shall be staffed without regard to gender except where reasonable accommodation to inmate privacy cannot be maintained. Prison staff of the opposite gender to that of the inmate population may not be given assignments/posts that require continuous and open viewing of unclothed inmates. When both

male and female inmates are housed in the prison, at least one male corrections staff member and one female corrections staff member shall be on duty at all times.

(iv) ~~Written local policy shall require that~~ Inmates may never be permitted to assume any authority over other inmates. Inmates may not be permitted access to prison employe records, the records of other inmates or other prison records.

(v) The prison shall maintain a 24-hour secure control center for monitoring and coordinating the prison's security, life safety and communications systems. ~~Correctional staff assigned to the control center shall maintain a permanent log and shift reports that record routine information, emergency situations and unusual incidents.~~

(vi) ~~Written local policy shall provide that~~ The prison administrator or assistant prison administrator and management staff designated by the prison administrator visit the prison's living and activity areas at least monthly to encourage contact with staff and inmates and observe living and working conditions. The visit shall be documented.

(2) Use of Force. WRITTEN LOCAL POLICY MUST PROVIDE FOR THE FOLLOWING:

(i) Force shall be restricted to instances of justifiable self-defense, protection of others, protection of property and , prevention of escapes, and TO EFFECT COMPLIANCE WITH THE RULES AND REGULATIONS OF THE FACILITY WHEN OTHER METHODS OF CONTROL ARE INEFFECTIVE OR INSUFFICIENT and only the least amount of force necessary to achieve that purpose is authorized. Force shall not be used as a means of punishment or revenge.

(ii) Written local policy must ~~specify~~ SPECIFICALLY IDENTIFY.

(A) Authorized purposes allowing for the use of force.

(B) AUTHORIZED EQUIPMENT SUCH AS physical restraint(s), chemical agent(s), stun device(s), baton(s) and/or firearm(s) permitted for use by prison staff.

(C) The appropriate limitations for the authorized use of force.

(D) A force option, beginning with the least amount of force NECESSARY and progressing through the degrees of non-deadly and deadly force.

(E) Secure storage arrangements for restraints, chemical agents, stun devices, batons and firearms. A written record shall be maintained as to the distribution of these items. A documented inventory of these items shall be conducted on a monthly basis to determine accountability and condition.

(F) Circumstances and types of force requiring specific authorization ~~for use of force~~ and who shall authorize THE USE OF SUCH FORCE.

(G) Medical consultation, review and treatment required when use of force occurs.

(H) Training for staff in the use of force. The training shall occur before staff is assigned to a

post involving the possible use of authorized equipment. This training must cover the use, safety and care of such equipment and the limitations on its use. The prison staff authorized to use the equipment shall demonstrate competency in its use during the recognized certification period PER THE TRAINING OR CERTIFICATION STANDARDS RECOMMENDED BY THE MANUFACTURER OF SUCH EQUIPMENT. Such competency must be documented.

(iii) Law enforcement personnel conducting official business on prison premises who have in their possession equipment or weapon(s) not permitted into the prison shall be provided a locked security area to properly secure the equipment or weapon(s).

(iv) Written local policy shall require that Each prison staff member involved in any use of force for other than routine inmate movement/escort/transportation shall submit a written report to the prison administrator or designee. In addition, this information shall be documented and reported to the Department, as required by § 95.242 (relating to statistical/informational reporting requirements).

(3) Emergency Plans. WRITTEN LOCAL POLICY MUST PROVIDE FOR THE FOLLOWING:

(i) Every prison shall have ESTABLISH emergency plans for responding to emergency incidents, including escape, fire, disturbances, hostage taking, bomb threat, terrorism, biological/chemical incidents, utility outages, natural disasters and evacuation/relocation. The emergency plans must contain basic information and instructions for all prison staff including:

(A) To whom the emergency shall be reported.

(B) Chain of command during an emergency.

(C) Outside agencies to be contacted for response to an emergency.

(D) A description of duties of staff for each type of emergency.

(E) Identification of emergency keys/security devices and access location. There shall be a means for the immediate release of inmates from locked areas and provisions for a back-up system.

(F) Evacuation plan.

(G) How to use emergency equipment.

(H) Training for staff to handle emergencies. Prison personnel shall be trained annually in the implementation of the emergency plans. The training shall be documented.

(I) The written agreements with other jurisdictions for handling emergency incidents and the possible evacuation of inmates.

(ii) TO BE IN ALIGNMENT WITH THE NATIONAL RESPONSE PLAN AND THE COMMONWEALTH OF PENNSYLVANIA EMERGENCY OPERATIONS PLAN, WRITTEN LOCAL POLICY MUST ALSO REQUIRE THE PRISON TO INSTITUTE AN ALL-

HAZARDS APPROACH TO INCIDENT RESPONSE AND INCORPORATE THE PRINCIPLES OF THE NATIONAL INCIDENT MANAGEMENT SYSTEM INTO THEIR OPERATIONS AND OPERATIONS PLANS. ADDITIONALLY, WRITTEN LOCAL POLICY MUST REQUIRE THAT THE PRISON COORDINATE WITH THE COUNTY EMERGENCY MANAGEMENT AGENCY ABOUT THE HAZARDS TO WHICH THE PRISON AND PRISON POPULATION MAY BE VULNERABLE AS KNOWN AND DOCUMENTED IN THE COUNTY HAZARD VULNERABILITY ANALYSIS.

(ii) (iii) Emergency plans shall be reviewed by the prison ~~administration~~ ADMINISTRATOR OR DESIGNEE on an annual basis. This review shall determine if updates are necessary due to operational changes, changes in the law, changes in constitutional standards or in recognized professional standards. The annual review and updates shall be documented.

(iii) (iv) Any emergency shall be documented and reported to the Department, as required by § 95.242.

(4) Access Control. Written local policy must identify:

(i) Current listing of all keys/access cards.

(ii) Storage/back-up/protection arrangements for keys/access cards and accessible security devices. Keys/access cards shall be stored in a secure location when not in use. A set of emergency prison keys/access cards shall be stored in a controlled location outside the secure perimeter.

(iii) Criteria for use of keys/access cards and security devices.

(iv) Security measures required for the installation / maintenance / repair / replacement of keys/access cards and security devices. An inspection of all keys/access cards and security devices shall be conducted quarterly to determine status, condition and need for action. The results of this inspection shall be documented and submitted to the prison administrator or designee.

(v) Staff responsible for authorizing use of applicable keys/access cards and security devices. Inmates may not be permitted access to keys/access cards and security devices.

(vi) Inventory and receipt system to account for keys. Keys/access cards shall be checked out and checked in. A record shall be maintained to identify keys/access cards issued, identifying the person possessing and returning said key/access card. The record must allow a current accounting as to the location and possessor of keys/access cards.

(vii) Staff training required to use keys/security devices, particularly the ability to release inmates in the event of a fire or other emergency.

(5) Contraband Control. Written local policy must describe time, methods and techniques and identify:

(i) What is considered contraband.

(ii) Procedures for conducting personal searches of inmates, vendors, volunteers, visitors and staff. All individuals shall be subject to search upon entering or leaving the prison. Inmates permitted to leave the prison for any reason shall be searched prior to re-entering the prison.

(iii) Procedures for conducting cell/dormitory/area searches. Searches of all cell/dormitory/area locations are to be conducted at least twice annually to determine the presence of contraband and the security status of bars, doors and windows. The results shall be documented and submitted to the prison administrator or designee.

(iv) Procedures for conducting security checks of the interior and the security perimeter of the prison. At least one daily security check shall be conducted of all interior areas and the security perimeter to determine such matters as staff and inmate concerns and faulty or unsafe conditions. The results of this security check shall be documented and submitted to the prison administrator or designee.

(v) Staff training required to conduct searches/security checks.

(6) Tool/Equipment Control. WRITTEN LOCAL POLICY MUST IDENTIFY:

(1) Written local policy must identify:

(i) The current listing of authorized tools/equipment.

(ii) Security measures required for the maintenance/repair/replacement of tools/equipment. An inspection of all tools/equipment shall be conducted semi-annually to determine status, condition and need for action. The results of this inspection shall be documented and submitted to the prison administrator or designee.

(iii) The staff responsible for authorizing use of tools/equipment. Inmates may not be permitted access to these items, except as issued by authorized prison staff.

(iv) The storage arrangements for tools/equipment. Tools/equipment shall be stored in a secure locker or area when not in use. These items shall be stored so that their presence or absence can be immediately determined.

(v) An inventory and receipt system to account for all tools/equipment. These items shall be checked out and checked in via the designated maintenance area. This maintenance area shall be secure from entry by inmates. A record shall be maintained to document any tools/equipment issued, identifying the person possessing and returning said item. Tools/equipment shall be returned to the designated maintenance area daily, with a documented inventory done as to accountability and condition. There shall be a current accounting as to the location and

possessor of these items. INMATES MAY NOT HAVE ACCESS TO THE TOOL STORAGE AREA WITHOUT STAFF SUPERVISION.

(vi) The direction given to staff and inmates in the use of tools/equipment.

(vii) The safety procedures to protect persons who use tools/equipment.

(2) (viii) Inmates given assignments in the work assignment program, industrial program or the public works/community service program shall be supervised by person(s) designated by the prison administrator or designee. These inmates shall be subject to searches as prescribed by procedure.

(g) (7) Count Control.

Written local policy must require that at least one formal, physical inmate headcount be conducted for each shift, with at least three such headcounts being completed within each 24-hour period. Each such headcount shall be documented in the prison's records. In the performance of the formal inmate headcounts, each inmate in attendance shall be observed as to flesh and movement. There shall be strict accountability for all temporary absences from the prison by an inmate. Only prison staff trained to conduct a formal inmate headcount shall perform such a count. Written local policy must describe time, methods and techniques to be followed in making any and all counts and remedying count discrepancies.

(h) (8) Inmate Transportation.

Written local policy must identify the circumstances and means for transporting inmates, including specifying the vehicles and persons authorized for that purpose. Written local policy must identify what restraint and search techniques are to be used and any special precautions. Written local policy must include contingency plans to be followed in the event of an accident, escape/security breach or medical emergency during transportation.

§ 95.242. [Extraordinary occurrences reports] Statistical/Informational Reporting .

[Minimum requirements. The following are the minimum requirements applicable to extraordinary occurrences reports:

(1) Extraordinary occurrences which involve or endanger the lives or physical welfare of jail officers or prisoners in the jail shall be reported to the Division of County Correctional Services, Department of Corrections, in writing on a form supplied by the Division within 48 hours.

(2) Extraordinary occurrences shall include the following:

(i) Death, including suicide or homicide, even if the person was transferred to a hospital before death occurred and thus did not actually expire in the jail.

- (ii) Attempted suicide.
- (iii) Escape.
- (iv) Attempted escape.
- (v) Fire.
- (vi) Riot or serious disturbances.
- (vii) Serious injuries.
- (viii) Assault on officers.
- (ix) Use of mace or gas.
- (x) Use of instruments of restraint, other than in the transportation of prisoners and for medical reasons in a hospital setting.
- (xi) Physical force used on a prisoner.
- (xii) Outbreak of infectious diseases.]

The following are the minimum requirements applicable to the collection of statistics and other information by the Department:

(1) Monthly County Prison and Jail Data. County prisons shall submit to the Department WRITTEN LOCAL POLICY MUST PROVIDE THAT a completed County Data Monthly Report (Population Information) BE SUBMITTED TO THE DEPARTMENT on designated report forms or by other available approved methods. The County Data Monthly Report (Population Information) shall be submitted within 30 days of the end of the reporting month.

(2) Report of Extraordinary Occurrence. WRITTEN LOCAL POLICY MUST PROVIDE FOR THE FOLLOWING:

(i) County prisons shall submit to the Department a completed County Extraordinary Occurrence Monthly Report (Incident Information) on designated report forms or by other available approved methods. The County Extraordinary Occurrence Monthly Report (Incident Information) shall be submitted within 30 days of the end of the reporting month.

(ii) An incident qualifies as an extraordinary occurrence when an incident involves one or more of the following and meets the associated condition(s):

<u>TYPE OF INCIDENT</u>		<u>ONLY COMPLETE IF</u>
<u>Death</u>	==	<u>All cases</u>
<u>Natural</u>		
<u>Accidental</u>		

Homicide
Suicide

Escape -- Law enforcement referral
Actual
Walk-a-Way
Attempt

Infectious Diseases / -- Department of Health reporting required
Communicable Diseases

Mental Health Commitment -- All cases
Mental Health 302
Mental Health 304

Attempted Suicide -- Medical treatment beyond immediate first aid or mental health referral or both

Use Of Force -- Whenever utilized for other than routine use of restraints during inmate movement/escort/transportation
Physical
Restraints
Chemical Agent
Stun Device
Baton
Firearms

Assault -- Medical treatment beyond immediate first aid or law enforcement referral or both
On Staff By Inmate
On Inmate By Staff
On Inmate By Inmate

SEXUAL ASSAULT/ -- ALL CASES
ALLEGATION OF SEXUAL ASSAULT
ON INMATE BY INMATE
ON INMATE BY STAFF

Emergency -- Outside agency assistance or law enforcement referral
Fire or both
Disturbance
Hostage
Bomb Threat
Terrorism
Biological/chemical
Utility outages
Evacuation/relocation

(iii) An incident qualifies as an Extraordinary Occurrence when an incident involves an inmate, prison employe, contractor, volunteer or visitor in a situation occurring within the prison, on prison property or while an inmate is under custody of the prison, or during the performance of a prison employe's official duties.

(3) WRITTEN LOCAL POLICY MUST PROVIDE THAT ~~county prisons shall submit to the Department~~ a completed Annual County Prison General Information Report BE SUBMITTED TO THE DEPARTMENT on designated report forms or by means of other available approved methods. The Annual County Prison General Information Report for the preceding calendar year shall be submitted by the first Monday in March of each year.

(4) The data and information submitted to the Department in the County Data Monthly Report, the County Extraordinary Occurrence Monthly Report, and the Annual County Prison General Information Report shall be collected for statistical, analytical and trending purposes only.

(5) INFORMATION REQUIRED UPON COMMITMENT OF OFFENDER TO THE DEPARTMENT.

(i) WRITTEN LOCAL POLICY MUST ESTABLISH THE PROCEDURE NECESSARY TO ENSURE THAT THE INFORMATION WHICH MUST ACCOMPANY AN INMATE UPON COMMITMENT TO THE CUSTODY OF THE DEPARTMENT IS PROVIDED TO THE DEPARTMENT AS REQUIRED BY 42 Pa.C.S.A. §9764 (a). THE POLICY MUST ALSO SPECIFY THE PERSON RESPONSIBLE FOR COLLECTING THE INFORMATION AND ENSURING THAT IT IS SUBMITTED TO THE DEPARTMENT AS REQUIRED BY LAW.

(ii) WRITTEN LOCAL POLICY MUST ESTABLISH THE PROCEDURE NECESSARY TO ENSURE THAT THE ADDITIONAL INFORMATION REGARDING AN INMATE, WHICH IS PROVIDED BY THE COURT TO THE COUNTY PRISON IN ACCORDANCE 42

Pa.C.S.A. §9764(b), IS TRANSMITTED TO THE STATE CORRECTIONAL FACILITY, AS REQUIRED BY 42 Pa.C.S.A. §9764(c), FOLLOWING TRANSFER OF THAT INMATE FROM THE COUNTY PRISON. THE POLICY SHALL ALSO SPECIFY THE PERSON RESPONSIBLE FOR COLLECTING THE INFORMATION AND ENSURING THAT IT IS SUBMITTED TO THE DEPARTMENT AS REQUIRED BY LAW.

§ 95.243. Treatment services.

[(a) *Minimum requirements.* The following are the minimum requirements governing treatment services:

(1) Jails shall provide counseling services to the inmate population. Subject to the size of the inmate population, counseling services shall be available a minimum number of hours per week and may be offered by paid, qualified counselors; by negotiating contracts with existing public or private qualified agencies; by the use of professional volunteers; by self-help groups; or by a combination of any or all of these. The services shall be given by or be under the supervision of a qualified counselor, who may be hired on a part-time basis, according to the size of the inmate population, or who may be employed by a qualified agency with whom the jail contracts for services. Counseling shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholics Anonymous and similar groups; testing and clinical psychological services; and psychiatric services. A qualified counselor is one who has preferably a Master's Degree, but no less than a Bachelor's degree in one of the behavioral sciences and who meets the minimum standards of the profession for the job he or she is performing. A contracting agency may be either public or private, provided the employees who perform the services in the jail meet the standards for qualified counselor. A professionally qualified volunteer counselor is one who meets the standards for qualified counselor, is professionally employed or retired, and who volunteers his or her services.

(2) Counseling services shall be provided on the following basis:

(i) In jails with an average daily inmate population of ten or less, the administrator shall submit a letter to the Department of Corrections, Division of County Correctional Services, explaining how all inmates have access to counseling services.

(ii) Jails with an average daily inmate population of under 25 but over ten shall provide no less than eight hours of counseling services per week.

(iii) Jails with an average daily inmate population of under 50 but over 25 shall provide no less than 16 hours of counseling services per week.

(iv) Jails with an average daily inmate population of under 75 but over 50 shall provide no less than 40 hours of counseling services per week.

(v) Jails with an average daily inmate population of under 175, but over 75 shall have two full-time treatment personnel, one of whom shall be the treatment supervisor. Counseling services shall be available no less than five days per week. The treatment supervisor shall coordinate all counseling programs, the use of self-help groups, involve local qualified agencies both by promoting professional volunteers and by contracting for needed services, as well as provided services himself or herself. The treatment supervisor shall meet the minimum standards for qualified counselor. In jails where a classification committee exists, the treatment supervisor shall be a member of the classification committee.

(vi) Jails with an average daily inmate population of 175 or more shall have, in addition to the treatment supervisor, one qualified counselor for every 75 inmates over the first 75. His duties shall be to provide direct services and help the overall treatment program under the direction of the treatment supervisor.

(3) The jail administrator shall develop a written plan as to how he plans to meet the minimal treatment standards and send it to the Department of Corrections, Division of County Correctional Services. Qualifications set forth in this section do not apply to personnel currently employed in treatment services if they pursue courses leading to the above stated qualifications.

(4) If the jail administrator is faced with unusual problems which make it unfeasible or impossible to meet the minimum requirements for treatment services, he or she should write to the Department of Corrections, Division of County Correctional Services and request an appropriate alternative.

(5) Jails not required to hire full-time treatment personnel may meet the minimum requirements by complying with the following:

- (i) Hiring a part-time counselor.
- (ii) Contracting with an existing qualified agency.
- (iii) Utilizing the services of a professionally qualified volunteer.

(6) Jails not required to hire full-time treatment personnel shall appoint a liaison person to help the counselor or counselors operate in the jail with a maximum of efficiency and effectiveness and the minimum of red-tape. This liaison person may be the warden or some employe designated by the warden. Volunteers shall undergo a training and orientation program supervised by the warden.

(7) Jails shall have each prisoner interviewed as soon as possible after admission.

(8) On the basis of the initial interview, and with the aid of psychological testing if deemed necessary and feasible, a treatment plan shall be developed and discussed with the inmate. Within reasonable limits, the inmate should have the right to accept or refuse the treatment.

(9) An unsentenced inmate shall have the right to refuse treatment without qualification.

(10) If an inmate is found to be psychotic or otherwise mentally disturbed, he or she shall not be treated in the jail, but shall be transferred to a mental health facility in accordance with the provisions of the Mental Health Act (50 P. S. § 4412).

(b) *Recommended guidelines.* The following are the recommended guidelines for treatment services:

(1) Wherever possible, a sufficient number of other specialists such as psychologists, social workers, teachers, and trade instructors should be provided.

(2) Good jail administrators shall encourage diversionary measures wherever possible. The progressive administrator shall strive to make maximum use of community treatment centers, release on recognizance, bail bonding, and any other programs which shall protect the public and at the same time serve the best interests of justice.]

The following are the minimum requirements applicable to treatment services:

(1) Written local policy must:

(i) Designate that the delivery of treatment services shall be supervised by a treatment professional who is employed by the prison, someone under contract with the prison or who serves as a volunteer.

(ii) Identify treatment programs SERVICES.

(iii) Designate who is responsible to provide each treatment program SERVICE.

(iv) Identify the number of hours provided per week for each treatment program SERVICE, and the total number of hours provided per week for all treatment programs SERVICES.

(2) WRITTEN LOCAL POLICY MUST REQUIRE treatment services must include, but are not limited to, TO INCLUDE the following programs:

(i) Education.

(ii) Social services.

(iii) Alcohol and other drugs.

(iv) Counseling services.

(3) WRITTEN LOCAL POLICY MUST REQUIRE treatment programs SERVICES shall TO be provided by a treatment professional or a person certified, licensed or trained to provide that programming who is employed by the prison, under contract with the prison or who serves as a volunteer, or by any combination thereof.

(4) Written local policy must specify that all inmates admitted to the prison receive a treatment intake screening, performed and recorded by a person with treatment training. This screening must include, but not be limited to, the determination of current mental and emotional stability, medical status, immediate personal/family issues, the identification of legal representation, and the obtaining of the name of a relative or other person for notification in the event of an emergency. A record of the screening shall be kept as part of the permanent prison document.

(5) WRITTEN LOCAL POLICY MUST REQUIRE THAT an inmate determined upon admission to be in need of immediate treatment services be assessed by a treatment professional within 7 days.

(6) WRITTEN LOCAL POLICY MUST REQUIRE THAT Following review of the initial treatment intake screening by a treatment professional, a treatment needs assessment shall be conducted by a treatment professional within 14 90 days following admission. This assessment must identify individual treatment needs and, within available prison and community resources, provide for access to supportive and rehabilitative services. The assessment shall be recorded as part of the inmate's file. FOLLOW-UP AVAILABLE TREATMENT SERVICES SHALL BEGIN WITHIN 45 DAYS OF THE TREATMENT NEEDS ASSESSMENT. This assessment shall include, but not be limited to:

(i) Review of history of psychotherapy, psycho-educational groups and classes or support groups;

(ii) Review of history of drug and alcohol treatment;

(iii) Review of educational history;

(iv) Review of history of sexual abuse victimization and predatory behavior;

(v) Review of history of violence.

(7) Written local policy must identify the procedures for evaluating whether an inmate is mentally ill and proceedings under the Mental Health Procedures Act (50 P.S. §§ 7101-7503), should be initiated.

(8) WRITTEN LOCAL POLICY MUST PROVIDE THAT INMATES SHALL HAVE THE OPTION TO REFUSE TREATMENT SERVICES except when subject to an involuntary commitment under the Mental Health Procedures Act or unless otherwise directed by court order. , inmates shall have the option to refuse treatment services.

(9) Written local policy must specify that there is no discrimination regarding treatment services access based on an inmate's race, religion, national origin, gender, or disability. If both genders are housed in the prison, all available services and programs shall be comparable.

§ 95.244. Community involvement. [Reserve]

[Recommended guidelines. The following are the recommended guidelines for community involvement:

(1) Community involvement with the jail and involvement of personnel and selected inmates in community activities should be encouraged. This may include the following:

(i) Tours of facilities by church groups, college classes, fraternal, civic and other responsible organizations. Such tours shall be conducted not only for viewing the physical plant, but as a means of interpreting treatment programs and correctional needs. Every effort should be made during such tours to respect the privacy of prisoners desiring such.

(ii) Participation of community organizations in meaningful institutional programs.

(iii) The use of volunteers who are trained and supervised in structured activities.

(iv) Speaking engagements by jail administrator and staff.

(v) Participation in community activities by inmate speakers, panels, choirs, and sports teams.

(2) Members of the news media with proper credentials should be encouraged to visit the jail. Such occasions should be utilized by the jail administrator, custodial, and professional staff to orient newsmen to jail management, inmate behavior, rehabilitation efforts, and to problems and limitations of the jail.]

~~The following are the minimum requirements applicable to community involvement:~~

~~—(1) Written local policy shall identify and explain any authorized community involvement activities. Adherence to inmate privacy rights shall be maintained and a waiver process shall be established.~~

~~—(2) Written local policy shall identify the criteria for permitting the interaction of members of the community with staff and inmates. Before participating in any activity, all such individuals or groups shall receive documented direction as to their general and specific responsibilities, as well as the rules of the prison. Individuals may only participate in activities consistent with their credentials, training or experience.~~

~~—(3) Written local policy shall identify the person responsible for coordinating and supervising community involvement activities.~~

§ 95.245. Incoming publications.

[*Recommended guidelines.* The following are the recommended guidelines for incoming publications:

- (1) The jail administrator should give a wide latitude in allowing outside magazines, newspapers, reference materials, training manuals, religious tracts and pamphlets, fiction and nonfiction books, and legal publications to enter the jail whether a part of the library or as personal inmate purchase.
- (2) A decision to declare a publication unacceptable should be based on a clear showing that admission of the publication shall jeopardize the discipline and good order of the jail.
- (3) All prisoners should be permitted a reasonable quantity of reading materials and all legal materials necessary for research or preparation of his or her case, to be retained in his or her cell, locker, or dormitory. Neatness and good order should be of primary concern rather than a specified number of publications. Excessive quantities should be disposed of by amicable agreement with the inmate if at all possible.]

The following are the minimum requirements applicable to incoming publications:

- (1) Written local policy must specify the procedure for receiving, reviewing and allowing publications into the prison, including the searching of incoming publications for contraband.
- (2) Written local policy must establish the criteria for prohibiting a publication from coming into the prison, including the defining of obscene material. Incoming publications may be read and examined by the prison administrator or a designee. The criteria for prohibiting a publication from coming into the prison must be related to maintaining the order, security or safety of the prison or the exclusion of obscene material.
- (3) Written local policy must identify the procedure for allowing access to both recreational and instructional reading materials for use by inmates.

§ 95.246. Investigations [of deaths.] == Deaths and sexual assaults/threats ALLEGATIONS.

[*Minimum requirements.* The following are the minimum requirements for investigations of deaths of prisoners or jail staff:

(1) Whenever a prisoner or staff member dies within the jail or on jail property, whether the death be from suicide, violence, accident, or natural causes, an investigation by the local police or an appropriate law enforcement agency shall be requested. An extraordinary occurrence report shall be filed with the Department of Corrections, Division of County Correctional Services.

(2) The jail administrator or staff person in charge shall contact the county coroner and the local police via telephone and request an immediate investigation when notified of the death of a prisoner or a jail employe. A follow-up written request shall be made to the police or other law enforcement agency with an additional request that a copy of the investigation report be forwarded to the Department of Corrections, Division of County Correctional Services.]

The following are the minimum requirements for investigation of:

(1) Deaths – WRITTEN LOCAL POLICY MUST PROVIDE FOR THE PROCEDURE TO BE FOLLOWED IN THE EVENT OF THE DEATH OF AN INMATE, PRISON EMPLOYE, VOLUNTEER, CONTRACTOR OR VISITOR. THE POLICY MUST PROVIDE FOR THE FOLLOWING:

(i) ~~The prison administrator shall immediately notify~~ IMMEDIATE NOTIFICATION OF the coroner and the appropriate law enforcement agency BY THE PRISON ADMINISTRATOR OR DESIGNEE when an inmate dies within the prison, on prison property or while in the custody of prison staff.

(ii) ~~Immediate notification shall also be made to~~ OF the coroner and the appropriate law enforcement agency BY THE PRISON ADMINISTRATOR OR DESIGNEE when a prison employe, volunteer, contractor or visitor dies within the prison, on prison property or while in the performance of his official duties.

(2) ~~Written local policy shall describe the procedure to be followed in the event of the death of an inmate, prison employe, volunteer, contractor or visitor. The policy shall include~~

(iii) Identification of the coroner and the law enforcement agency to be notified. The policy shall also specify who is responsible for contacting the coroner and the law enforcement agency.

(iv) IDENTIFY THE STAFF PERSON RESPONSIBLE FOR coordinating investigative efforts with the coroner and the law enforcement agency and completing and submitting a report to the governing county prison authority.

~~(v) Whenever such a death occurs, it shall be documented and shall be reported~~
DOCUMENTATION AND REPORTING OF ANY SUCH DEATH to the Department and the United States Department of Justice.

(2) Sexual Assaults/Threats ALLEGATIONS – WRITTEN LOCAL POLICY MUST DESCRIBE THE PROCEDURE TO BE FOLLOWED IN THE EVENT OF AN ALLEGATION OF A SEXUAL ASSAULT INVOLVING AN INMATE, PRISON EMPLOYEE, VOLUNTEER, CONTRACTOR OR VISITOR. THE POLICY MUST PROVIDE FOR THE FOLLOWING:

~~(i) The prison administrator or designee shall immediately immediately report occurrences of sexual assault or threat in accordance with the laws of the jurisdiction~~ DIRECT AN INVESTIGATION OF ALL ALLEGATIONS OF SEXUAL ASSAULT OCCURRING WITHIN THE PRISON, ON PRISON PROPERTY OR WHILE AN INMATE WAS IN THE CUSTODY OF PRISON STAFF.

~~(ii) The designated law enforcement agency shall be notified and an investigation requested when a sexual assault or threat occurs within the prison, on prison property or while in the custody of prison staff. An immediate request for investigation shall also be made when a prison employee, volunteer, contractor or visitor indicates that a sexual assault or threat has occurred within the prison, on prison property or while in the performance of his official duties.~~

~~(2) Written local policy shall describe the procedure to be followed in the event of a sexual assault or threat involving an inmate, prison employee, volunteer, contractor or visitor. The policy shall include~~

~~(iii) Identification of the law enforcement agency to be notified.~~

~~(iv) IDENTIFY THE STAFF PERSON The policy shall also specify who is responsible for contacting the law enforcement agency, coordinating investigative efforts with that said agency and completing and submitting a report to the governing county prison authority.~~

~~(v) Whenever such a sexual assault or threat occurs, it shall be documented and shall be reported~~ DOCUMENTATION AND REPORTING OF ANY SUCH SEXUAL ASSAULT OR ALLEGATION OF SEXUAL ASSAULT to the Department and the United States Department of Justice.

§ 95.247. Notification.

[*Minimum requirements.* The following are the minimum requirements governing notification of death of a prisoner, next of kin of a prisoner, or the transfer of the prisoner:

(1) A prisoner shall be informed at once of the death or serious illness of a family member. In such cases, if the family member resides in Pennsylvania, the prisoner may be authorized to go to the funeral or bedside either under escort or alone, with court approval.

(2) Upon the death or serious illness or serious injury to a prisoner, or his removal to an institution for the treatment of mental illness, the jail administrator shall at once inform the spouse, or nearest relative or other person previously designated by the prisoner.

(3) Every prisoner shall have the right to notify at once his family of his transfer to another institution. If the prisoner lacks funds, he shall be given a free letter to notify the family.]

The following are the minimum requirements applicable to notification:

(1) Written local policy shall provide for prompt notification by prison authorities of an inmate's listed emergency contact in the event of the inmate's death, serious illness or serious injury. The policy shall also provide for prompt notification to an inmate in the event of the death, serious illness or serious injury to the inmate's immediate family member.

(2) Written local policy, in accordance with the sections 201 and 214 of the Crime Victims Act (18 P.S. §§ 11.201 and 11.214), must establish a victim notification procedure. The procedure must identify how victims register for notification, the circumstances for which victims are notified, how this information will be maintained in a confidential manner and who is responsible for notifying the victim. If the inmate is a State prisoner on writ for local court proceedings, the county prison shall immediately contact the State correctional institution from which the inmate was transferred when circumstances exist requiring notification of the victim. In this instance, disclosure to the victim will be then BE handled by the Department.

~~(3) Written local policy shall specify a procedure for the transfer of inmate information. The procedure shall identify the information to be transferred between county and state correctional facilities, when this information is to be transferred, how this information is to be transferred and who is responsible for the transfer of information.~~

§ 95.248. Sanitation, maintenance, and safety.

[*Minimum requirements.* The following minimum requirements shall apply to sanitation and safety:

- (1) Local codes relating to fire, health and safety shall be followed.
- (2) If available, fire safety standards shall follow guidelines of the local fire department. Otherwise a fire extinguisher, or hose assembly connectable to available water outlet, shall be required on every floor of the jail.
- (3) If available, a fire safety plan shall be developed with the local fire department and evidence of this arrangement shall be on file.
- (4) Jails shall follow the regulations set forth by the Department of Labor and Industry for safety standards and fire regulations.]

The following are the minimum requirements applicable to sanitation, maintenance and safety:

(1) WRITTEN LOCAL POLICY MUST REQUIRE the prison shall TO adhere to applicable governmental PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY regulations regarding sanitation, maintenance and safety as promulgated by those agencies and departments so authorized by law OR ANY APPLICABLE LOCAL CODE INSPECTIONS.

(2) Written local policy must identify a sanitation and housekeeping plan. This plan must address all prison areas and provide for daily housekeeping and regular maintenance by assigning specific duties and responsibilities to staff and inmates. Inmates shall be required to maintain their immediate living area and adjacent general space in a sanitary condition. The control of vermin and pests shall be addressed on a monthly basis by a qualified person, with documentation of the application of any pest or vermin control treatment. A sanitation inspection shall be conducted of all prison areas on a monthly basis to determine the health and safety status of the prison and the need for action. The results of this inspection shall be documented and submitted to the prison administrator or designee.

(3) Written local policy must identify a preventive maintenance program for the physical plant of the prison. This program must ensure the regular care and inspection of equipment that is essential for safe and efficient operation. A qualified person shall conduct an inspection of all equipment, at least semi-annually, as specified by the manufacturer, to determine condition and need for action. The results of this inspection shall be documented and submitted to the prison administrator or designee.

(4) Written local policy must provide for the inventory, control, storage and clean-up of toxic, caustic and flammable substances. Written local policy must also specify an exposure control plan for governing the handling of blood-borne pathogens.

(5) WRITTEN LOCAL POLICY MUST REQUIRE THAT prison operational support areas, to include laundry room, janitorial closets, mechanical room, electrical room, boiler room, maintenance room and storage room shall be maintained in a safe and clean condition at all times.

(6) WRITTEN LOCAL POLICY MUST REQUIRE THAT the prison administrator shall maintain any required licenses or documentation of the prison's compliance with applicable building code/life safety code. Current licenses or certificates of occupancy or both shall be available for inspection in the prison.

(7) WRITTEN LOCAL POLICY MUST REQUIRE THAT the approved bed capacity shall be specified annually. The actual in-house population may not exceed the prison's approved bed capacity. The in-house population shall be calculated as the average daily inmate population for the 6 calendar months prior to the date of the ~~pre-inspection audit~~ PRISON INSPECTION.

(8) WRITTEN LOCAL POLICY MUST REQUIRE THAT an emergency power back-up system shall be available and in operational condition. This system shall be load tested at least on a ~~quarterly basis~~ AN ANNUAL BASIS, with this load test and the operating status of the system documented.

(9) Written local policy must identify a fire emergency/evacuation plan. This plan shall be reviewed annually by the prison administrator or designee and shall identify an existing agreement with a responding fire department(s). Staff training for the implementation of this plan shall be provided on an annual basis. All areas of the prison shall be involved and participate in fire drill exercises at least once each year, with all fire drills being documented. Written local policy MUST shall also provide for a system of inspection, testing and certification by a qualified person of all fire/smoke detectors, fire/smoke alarms and panels and fire fighting equipment on an annual basis.

ATTACHMENT

COMMENT AND RESPONSE DOCUMENT Regulation 19-7 County Correctional Institutions

Notice of the Proposed Rulemaking was published at 37 Pa. B. 3094 (June 24, 2006). The Department received 32 sets of public comments as well as formal-comments from the Commission. Public comments were received from the following county prison officials, local government officials, state government officials, court of common pleas judge, individuals, prisoner advocacy organizations and statewide organizations:

Warden Craig A. Lowe – Pike County Correctional Facility
Warden Harry D. Gillespie and Deputy Warden Susan M. Haxton - Greene Co. Prison
Warden Ramon Rustin - Allegheny County Prison
Karen N. Zullinger – Social Worker
Patrick Tutella – Chaplain Supervisor – Berks County Prison
Director of Corrections Harris Gubernick – County of Bucks
Warden George A. Wagner – Berks County Prison
Peggy V. Leader – Treatment Specialist – Bedford County Jail
Pennsylvania Institutional Law Project
Hon. Linda K.M. Ludgate – Judge, Berks County Court of Common Pleas
County Commissioners Association of Pennsylvania (CCAP)
Chaplain Dennis L. Ugoletti – Beaver County Jail
The Pennsylvania Prison Society
Office of County Commissioners – Dauphin County
Commissioners of Cumberland County
Pennsylvania County Prison Warden's Association (PCPWA)
Warden John E. Wetzel – Franklin County Jail
Greene County Prison Board
Office of the Commissioners – Clarion County
Pennsylvania Sheriff's Association
Westmoreland County Board of Commissioners
Office of the Commissioners – Cambria County
Warden Guarini – Lancaster County Prison
Board of Commissioners - County of Potter
Hon. H. William DeWeese – State Representative - 50th Legislative District
Hon. Rob Kauffman – State Representative – 89th Legislative District
Sheriff Steven A. Evans – County of Bradford
Indiana County Prison Board
Office of Commissioners of Berks County
Hon. Dick L. Hess - State Representative - 78th Legislative District
Justice & Mercy, Inc.
Commissioner Leon A. King, II, Esq. – Philadelphia Prison System
Hon. Peter J. Daley – State Representative – 49th Legislative District

Through a cooperative effort between the County Commissioners Association of Pennsylvania (CCAP), the Pennsylvania County Prison Warden's Association (PCPWA) and the Department, a County-State Liaison Committee has been established to discuss issues of shared concern among these entities. The Committee has also served as a venue for discussions of the proposed rulemaking, the public comments and suggestions for improvements to the regulations.

The Department's response to public comments and the Commission's comments general comments is submitted under the subject headings of the comments received from the Commission.

1. Fiscal Impact of the Regulation –

A number of commentators (Warden Gillespie and Deputy Warden Haxton - Greene County, Warden Wagner - Berks County, Judge Linda K. M. Ludgate – Berks County Court of Common Pleas, CCAP Court and Corrections Committee, Dauphin County Commissioners, Cumberland County Commissioners, Pennsylvania County Prison Wardens Association, Warden Wetzel - Franklin County, John Stets – Greene County Prison Board, Clarion County Commissioners, Westmoreland County Commissioners, Cambria County Commissioners, Potter County Commissioners, Honorable H. William DeWeese, then Minority Leader of the House of Representatives, Honorable Rob Kauffman, State Representative, Sheriff Evans - Bradford County, Warden Wilson – Indiana County, Thomas J. Gajewski, Sr. - Berks County Commissioner and Honorable Peter J. Daley, State Representative) disagreed with the Department's statement in the Preamble that the proposed rulemaking is not expected to have a significant fiscal impact upon the Commonwealth, its political subdivisions or the general public.

The most numerous comments regarding the fiscal impact of the proposed rulemaking concerned *Section 95.241(1) (ii)* and *Section 95.243(2) and (6)*.

Comment - Section 95.241(1) (ii) – This sub-paragraph required that the county prison conduct an initial staffing analysis to determine the staffing allotment and post assignments to safely operate the prison. The proposed language further required that the “results of this annual staffing analysis must serve as the required staffing allotment designated for the prison.” These commentators (Warden Harry D. Gillespie and Deputy Warden Susan M. Haxton - Greene Co. Prison, CCAP Court and Corrections Committee, Dauphin County Commissioners, Warden Wetzel - Franklin County, John Stets – Greene County Prison Board, Westmoreland County Commissioners, Honorable Peter Daley) objected to this language because they believe it would have a significant fiscal impact by requiring the hiring of additional staff.

Response: The Department agreed that the final determination as to the number of staff hired by the prison should ultimately be a local decision based on resources and all other relevant factors. The next to the last sentence of this sub-paragraph in the proposed rulemaking was therefore deleted. The prison administrator, or designee, is free to

conduct that analysis in the manner they deem most appropriate to the local prison provided relief factors for each classification of staff are considered.

Comment - Section 95.243 (2) – Numerous comments (Warden Gillespie and Deputy Warden Haxton - Greene County, Warden Wagner - Berks County, CCAP Court and Corrections Committee, Dauphin County Commissioners, Cumberland County Commissioners, Warden Wetzel - Franklin County, Westmoreland County Commissioners, Potter County Commissioners, Honorable H. William DeWeese, Thomas J. Gajewski, Sr. - Berks County Commissioner and Honorable Peter J. Daley) were received regarding the requirement in sub-paragraph (2) that treatment services must include programming in the four areas of education, social services, alcohol and other drug and counseling. The comments all asserted that these requirements represented an unfunded mandate for counties to provide various treatment services and that the commentators stated that the decisions as to what services to provide should be left to the local prison authorities.

Response: The Department believes that the requirements of sub-paragraph (2) in the final-form regulation do not represent a significant departure from the existing minimum requirements of Chapter 95 regarding treatment programming or from the current practice in virtually all of the 64 counties operating county prisons in Pennsylvania. More importantly, the Department believes these requirements allow greater flexibility to the county prison in providing treatment services than the existing standards by permitting local prison authorities to allocate financial resources for the services most appropriate to the county prison's inmate population.

When comparing the existing standards to the final-form regulation, it must be noted that the term "counseling services" is defined very broadly in paragraph (1) of the existing standard. The third sentence of that paragraph states "[C]ounseling shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholic Anonymous and similar groups; testing and clinical psychological services; and psychiatric services." That broad description of "counseling" essentially includes some aspect of the four areas of treatment services required by sub-paragraph (2) of the final-form regulation as those four areas are defined in Section 95.220a. For example, "[E]ducation" is defined as "[A]a treatment service using formal academic education or a vocational training activity designed to improve knowledge or employment capability, or both." (emphasis added) "[S]ocial services" is defined as "[A]a treatment service designed to promote the welfare of the community and inmate, as through aid for physically and mentally handicapped, health maintenance, family development and employment opportunities." "[A]alcohol and other drugs treatment" is defined as "[A]a treatment service designed to address the impact and ramifications of use or abuse of alcohol and other drugs so as to prevent illegal and/or destructive conduct and avoid addiction." "[C]ounseling" is defined as "[A]a treatment service using planned interpersonal relationships to promote social adjustment and provide opportunities to express feelings verbally with the goal of resolving the individuals problems." An element of all of these four treatment service

areas is part of the definition as to what must be included in “counseling” under the existing standard.

The existing standard mandates the specific number of hours of “counseling” (again, as broadly defined) that must be provided based solely on the inmate population of the facility. The existing standard also mandates to some degree the treatment staff that must be available to provide the counseling services. Conversely, the final-form regulation does not mandate the number of hours these different treatment services must be provided, but only that some form of programming must be provided in these areas. Additionally, the final-form regulation does not mandate the manner in which the treatment services in these four areas must be provided. As allowed by the existing standard, these services may be provided by a treatment professional employed by the prison, someone under contract or a volunteer.

The Department believes that this new standard is not only consistent with the current recognized professional standards for adult local detention facilities, but also with the current practices in most all of the Commonwealth’s county prisons. For example, all county prisons currently have some form of alcohol and other drug programming, at a minimum, in the form of 12 step programs for alcohol and/or drug addiction. All county prisons currently have some form of counseling services. Perhaps not all inmates, particularly short-term inmates, would have access to those services, but the final-form regulation does not mandate that. The final-form regulation leaves the decisions as to which inmates receive what services largely up to the county prison.

Regarding education services, all county jails would currently be meeting the standard in the final-form regulation because all county jails make programming available to inmates less than twenty-one years of age to prepare for the general education development examination as mandated by state law.

Comment - Section 95.243 (6) - Warden Gillespie and Deputy Warden Haxton - Greene County, Warden Wagner - Berks County, Cumberland County Commissioners, Pennsylvania County Prison Wardens Association and Warden Wetzel - Franklin County all submitted comments regarding Paragraph (6). These commentators all objected to the requirement that a comprehensive treatment needs assessment be conducted on each inmate within 14 days following admission to the jail. The commentators asserted that such a requirement was inappropriate to the nature of short-term offenders housed in county jails and that such a requirement would necessitate the hiring of additional staff thereby significantly increasing the costs to the county without funding to pay for such additional expenses.

Warden Wetzel, Warden Gillespie and Deputy Warden Haxton specifically commented that this requirement would actually decrease the treatment services provided because of the time that would be expended to complete the exhaustive treatment assessment for all inmates in the jail for more than 2 weeks.

Response: Upon review of the comments regarding Paragraph (6) and additional discussions with the County-State Liaison Committee, the Department has substantially revised the minimum requirements for conducting a treatment needs assessment. The Department concurs that requiring an exhaustive treatment needs assessment for short-term inmates may strain county resources and result in the opposite of the intended purpose, which is to make treatment services available to as many inmates as appropriate and possible. The final-form standard has therefore been changed so that Paragraph (6) only requires that a treatment needs assessment be conducted within 90 days of an inmate's admission. Additionally, the follow-up treatment services recommended by the needs assessment must begin within 45 days of the needs assessment. The Department and members of the County-State Liaison Committee reached a consensus that this revision will appropriately exclude short-term inmates (those with sentences under 3 months) from the requirement. The revision will substantially reduce or avoid any additional financial burden to the counties in conducting treatment needs assessments.

The Department also simplified the conducting of a treatment needs assessment by eliminating the more prescriptive requirements of what must be included in an assessment as listed in sub-paragraphs (6)(i-v). The elimination of the prescriptive requirements gives the counties flexibility in determining how those assessments should be conducted.

Comment – Section 95.221 (6) – Warden Gillespie and Deputy Warden Haxton objected to the requirement that the county prison provide a prison personnel policy manual. They objected to the requirement as cost prohibitive and unnecessary because the Greene County Human Resources Department supplied the personnel policy manual for all county employees.

Response: The Department concurs with the comment. The word “prison” was therefore deleted from paragraph (6) so that the final-form regulation only requires that written local policy provide for the availability of a personnel policy manual for employee reference. This change will delete the need for a separate prison personnel policy manual for those county prisons that do not have one, yet provide for the availability of the county personnel policy manual that covers all employees.

Comment – Section 95.248 (8) – CCAP, Warden Wetzel and Honorable Peter Daley objected to the fiscal impact of the requirement that the emergency power back-up system be load tested on a quarterly basis. Both comments asserted that the requirement would cost thousands of dollars per load test and that an annual test would be sufficient.

Several commentators (Dauphin County Commissioners, Pennsylvania Sheriff's Association, Westmoreland County Commissioners and Cambria County Commissioners) made the general comment, not specific to *Section 95.248* that the proposed regulation would require the purchase of additional equipment.

Response: After discussion of this issue with the County-State Liaison Committee, consensus was reached that an annual load test of the county prison's emergency back-up

system was sufficient. The final-form regulation therefore substitutes “annual” for “quarterly” in the second sentence of paragraph (8).

The general comments did not explain why they believe the proposed rulemaking would require the purchase of additional equipment. The Department believes that the only requirement in the proposed rulemaking that could possibly require the purchase of new equipment would be the paragraph (8) requirement that an emergency back-up power system be available and operational. The Department cannot estimate the possible fiscal impact of such a requirement because the cost of any emergency generator would vary greatly depending on the size and power needs of the facility. The Department believes however, that almost all county prisons in the Commonwealth already have an emergency back-up power system so that the overall fiscal impact of this requirement to county governments is negligible. For those county facilities that do not have an emergency back-up power system, the Department believes that the benefits of ensuring that the prison can operate on a close to a normal routine during a power outage, far outweighs any costs to the county for purchasing back-up generators.

Comment – *Drafting and revising written local policies* – Warden Gillespie and Deputy Warden Haxton commented that the proposed regulation would have a significant fiscal impact on the counties because of the scope of requiring a county prison to rewrite existing policy or create new policies to meet the new standards. They expressed concern that this task duty reassignments for prison management for an undetermined length of time.

Response: The Department recognizes that the drafting or revising of new written local policies will require an investment of time on the part of the county prisons. The Department has therefore changed the effective date for the revised standards to be twelve months after final-form publication rather than upon publication as stated in the proposed rulemaking. The Department believes this additional time period will allow county prison administrators sufficient time to establish new written local policies where necessary or to make revisions to existing policy. The additional time period will also allow the county prisons the ability to plan implementation of any changes to the prison’s existing procedures brought about by the new standards.

Phase 1 of the Department’s revisions to Chapter 95 regulations (effective February 2000) required county prisons to draft written local policies to meet the minimum requirements of those revisions. Phase 1 revised 12 sections of Chapter 95. Many of the Commonwealth’s county prisons have extensive, up-to-date written local policies as a result of the Phase 1 revisions. In the time since February 2000, those county prisons that had not previously operated using substantive written local policies have since done so. The Department therefore believes that the work required for the county prisons to draft or revise the written local policies to comply with the revised standards will not be as time consuming or as difficult as was required under Phase 1. The Department has and will continue to offer county prisons assistance in drafting written local policies.

Comment – Additional paperwork requirements – Warden Gillespie and Deputy Warden Haxton offered their belief that they would need an additional shift supervisor to document all of the proposed changes. Honorable H. William DeWeese offered a general comment that the new documentation requirements would require the hiring of additional staffing. They further stated that most of the documentation required by the proposed rulemaking occurs regularly in their facility, yet they are concerned that the Department will find the facility to not be in compliance because there is no separate report as they believe are required by the changes. Other commentators (LIST) commented generally that they believed the proposed rulemaking would cause a significant burden because of required additional paperwork.

Response: There are some new provisions in the final-form regulation that require documentation of a review, action, inspection or event. The intent of these provisions, in part, is to require that the county prison record or confirm in writing that the required action took place. In most instances, that recording or written confirmation can be done in the location, manner or form that the county prison deems appropriate. The below listed provisions do not require a separate report or that the documentation take any particular form. The Department believes the county prisons can comply with the following documentation requirements with a minimal investment of time or effort and without any significant, additional paperwork requirements:

Section 95.221 (1) – requires documentation of the training of all corrections personnel in each employee’s personnel file.

Section 95.224 (6) - requires documentation of the annual review of inmate rules and staff procedures.

Section 95.223 (2) – requires documentation in an inmate’s file that the inmate received orientation in the prison’s rules, procedures and programs listed in the paragraph (1).

Section 95.230 (2) – requires documentation that the person in charge of food services on any given shift, if not certified, has been trained as to food safety and sanitation procedures established in written local policy.

Section 95.241 (1)(vi) – Warden Wetzel commented that this documentation requirement would increase paperwork.

Section 95.241 (3)(iii) – requires documentation of an annual review of the county prison’s emergency plans.

These requirements can be met by something as simple as a notation, signature and date at the bottom of a policy or on a separate sheet following the policy stating that the required review has taken place. Regarding *Section 95.241 (1)(vi)*, the documentation could be as simple as a notation and signature in a block logbook that a visit or inspection has taken place. The requirement to document the training or qualification of personnel (*Sections 95.221 (1), 95.230 (2) and 95.241 (2)(ii)(H)*) and the orientation of inmates

can be met by having the appropriate personnel sign a receipt, acknowledgement or certification and placing that in the employee's personnel file. A similar practice would meet the requirement to document orientation of all inmates under *Section 95.223 (2)*.

The documentation provisions listed below may require a greater investment of time to complete than the above provisions.

Section 95.241 (2)(ii)(E) – requires a documented monthly inventory of the stored restraints, chemical agents, stun devices, batons and firearms.

Section 95.241 (4)(iv) – requires documentation of a quarterly inspection of the keys, access card or other security devices.

Section 95.248 (2),(3),(8) and (9) – these provisions require documentation of the required, periodic sanitation inspections, inspections of the physical plant and equipment, testing of the emergency back-up power system, fire/smoke alarms or detectors and the conducting of fire drills.

The Department believes that any additional investment of time to complete these documentation requirements is not substantial, nor unreasonable in light of the nature of the information. It is vitally important to the safe and secure operations of the prison that prison management know whether the prison's restraints and weapons are accounted for and in usable condition. The same consideration is true for the keys, access cards or other security devices. Again, the regulation does not mandate the manner or form of the documentation. Whether the county prison creates checklists for these inventories or requires written reports to the prison administrator or some other method is a decision left to the county prison. The Department has found that most county prisons have service contracts for the maintenance and testing of major physical plant equipment such as boilers, any emergency back-up power system or the fire/smoke alarm system. The requirement to document the testing of these systems does not represent a change from the way almost all county prisons currently operate. The outside vendor's service or testing report would be sufficient documentation to meet the requirements of *Section 95.248 (3), (8) and (9)*.

Section 95.246 (1)(v) and (2)(v) – requires the documentation and reporting of any death and any sexual assault or alleged sexual assault to the United States Department of Justice. Federal law mandates these additional reporting requirements.

Section 95.242 in the final-form regulation formalizes some additional informational reporting requirements beyond the existing regulation. Paragraphs (1) and (3) will require county prisons to submit a Monthly County Prison and Jail Data report and an Annual County Prison General Information Report. These paragraphs will put into regulation the Department's long-standing practice of collecting statistical information from the county prisons. With only a few exceptions, all county prisons in the Commonwealth provide this information to the Department. The Department will provide the reporting forms. The county prisons are not responsible for creating the

forms. Also, the regulation has been written so that electronic filing of the information can be implemented. In that the county prisons have this information readily available and most all of the counties have been reporting this information, this requirement will not require any additional paperwork beyond existing practices.

In order to relieve some reporting requirements, Paragraph (2) of the final-form regulation eliminated the requirement that extraordinary occurrence reports (EOR) be submitted to the Department within 48 hours of the event. The final-form regulation now requires that a County Extraordinary Occurrence Monthly Report be submitted within 30 days of the end of the reporting month. Again, the Department will supply the report form to the county prisons. The monthly report will be more of a statistical compilation of events qualifying as extraordinary occurrences as defined in Paragraph (2) requiring less detail than a single EOR. The Department believes this change in reporting practice will be substantially easier for county prisons than the current 48-hour reporting provision.

Comment - Additional paperwork requirements - Warden Gillespie and Deputy Warden commented that they would have to discard current in-stock forms and create new forms to comply with the new reporting requirements.

Warden Wetzel objected to the requirement that county prisons report utility outages as extraordinary occurrences as an unnecessary burden.

Response – See response under *Section 95.242* above.

Comment – Fiscal assistance to the counties. The Pennsylvania Prison Society generally stated its support for the proposed rule changes and the Department’s effort to adopt more consistent, uniform standards for the operation of county prisons, but stated that financial assistance to the counties was critical to this effort. The comment specifically recommended that assistance grants, a loan program or other fiscal packages be made available to the counties for necessary modifications.

Response –The Department cannot establish financial assistance as recommended through regulations without specific authorization from the General Assembly.

2. Reasonableness of the regulation

Comment: IRRC noted that the “Department has stated in the RAF that these amendments are intended to ‘afford county prison administrators with sufficient flexibility to address prison management problems that are local in nature.’ Similar to our comment above, commentators disagree with this statement. While these commentators generally agree that standards are needed, they believe this rulemaking is overly prescriptive. In the Preamble to the final-form regulation, the Department should explain how amendments to each section provide County Correctional Institutions (local prison) with greater flexibility in carrying out their duties.” Comments of this nature

were submitted by Warden Gillespie and Deputy Warden Haxton - Greene County, Pennsylvania Sheriff's Association, Warden Guarini – Lancaster County Board, Potter County Commissioners and Honorable Rob Kauffman.

Response: The Department's intent in revising the Chapter 95 regulations is first and foremost to modernize outdated standards so that the minimum requirements for county prisons in Pennsylvania are consistent with recognized professional standards for adult local detention facilities. In many important ways, as described below, the revised standards in the final-form regulation do provide greater flexibility to county prison administrators than existing standards. As with the Phase I revisions promulgated in February 2000, the new standards require county prisons to develop written local policy that incorporates the minimum requirements of Chapter 95. The Department's intent is to permit county prisons maximum flexibility in establishing the details of policy and procedures most appropriate for that facility.

The Department does not assert that all of the revisions in the final-form regulation afford greater flexibility to county prison administrators than existing standards. Prison operations and administration have evolved significantly in the almost 30 years since the existing standards were promulgated. A number of the existing standards are outdated to the point of no longer providing meaningful standards for current-day prison operations. In the process of modernizing those standards, some of the revised standards are necessarily more prescriptive than existing standards. The Department's intent is to limit the instances of somewhat more stringent minimum standards to those standards that directly impact on safety and security. The Department does not believe that any of the more stringent requirements are unduly burdensome either operationally or financially given the importance of the goal of enhancing the safe and secure operation of county facilities.

Described below are instances where the revised standards in the final-form regulation provide greater flexibility to county prison administrators than the existing standard:

Section 95.241 – Security. The existing language of paragraph (1) requires staffing levels for a county prison based solely on the inmate population, specifically requiring a minimum staffing ratio of one officer per shift for every 15 inmates. The revised standard in paragraph (1) of the final-form regulation contains no required, specific ratio of officers to inmates. The revised provision instead requires only that the county prison conduct an initial staffing analysis, thereafter reviewed on an annual basis, which takes into consideration the logical relief and leave factors. The revised provision does not limit this determination to only a mathematical calculation, but instead will allow the county prison to consider any other factors administrators deem relevant to the analysis.

Subparagraph (1)(iii) in the final-form regulation gives greater flexibility to the county prison in making male and female staff assignments generally requiring that reasonable accommodation to inmate privacy be maintained. The existing standard is more restrictive by specifically limiting the movement of male officers to enter female housing only in the presence of a "matron."

Warden Gillespie and Deputy Warden Haxton objected to the requirements of subparagraph (1) (v) listing the specific job duties for staff assigned to the 24 hour control center. The Department concurs with these comments. The second sentence of the provision listing specific job duties has been deleted from the provision.

Paragraph (4) *Access Control* is a prime example of how the revised standards in the final-form regulation replaced seriously outdated standards (see Paragraph (3) of the existing standard). The existing standards concern only keys. The revised standard recognizes that many facilities now use other means of accessing secure areas.

Paragraph (6) *Tool/Equipment Control* is another example of how the revised standards replace outdated and inadequate existing standards (see Paragraph (8) of the existing standard). The existing standard does not include any minimum requirement for a county prison to inventory and safely secure tools instead addressing those issues only under “recommended guidelines.”

Warden Wagner and Commissioner Gajewski submitted comments objecting to the tool control provisions Section 95.242 (6)(v) in the proposed rulemaking as being cumbersome and likely to require the hiring of additional staff. Upon further discussion of the issue with the County-State Liaison Committee, the Department concurred with this concern. Subparagraph (6) (v) in the final-form regulation is therefore revised to eliminate the text that established “how” a tool inventory and receipt system had to operate. The final-form provision now contains only the requirement that an inventory and receipt system must be established by written local policy leaving the specifics as to how to implement that system to the discretion of the county prison.

Section 95.243 – Treatment services. A number of comments were received concerning this provision. Most of those are discussed in the context of comment number 14 below. With regard to the issue of whether the revised standards are overly prescriptive, the Department asserts that, taken as a whole, the provisions of Section 95.243 in the final-form regulation, are consistent with the current recognized professional standards for adult local detention facilities while still allowing county officials and jail administrators sufficient flexibility to make decisions appropriate to their facility.

The Department’s statutory mandate found at 61 P.S. §460.3(3) includes establishing standards for county jails that include “standards for correctional programs of treatment, education and rehabilitation of inmates.” The Department believes these treatment services requirements in the final-form regulation provide significantly more flexibility to county jails in meeting inmate treatment needs than the existing requirements of Section 95.243. As with the staffing requirements in the existing Section 95.240, the existing treatment section sets very specific requirements for the number of hours of counseling services that must be provided per week as well as specific staffing requirements based solely on the jails average daily inmate population. The Department believes this numbers-only approach is in fact inflexible and fails to afford county prisons with sufficient discretion to meet the treatment needs of the inmate population based on other relevant factors.

It is important to note that the term “counseling services” as used in Paragraph (1) of the existing section is defined broadly so that it “shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholics Anonymous and similar groups; testing and clinical psychological services; and psychiatric services.” “Counseling services” in the existing regulation encompasses, in more specific terms, much of the four areas for treatment services required in Section 95.243 of the final-form regulation.

Perhaps most importantly, and contrary to the concerns of the commentators, the final-form regulation does not require *how* these treatment services must be provided. Section 95.243 does not specify the amount of hours that must be provided in these treatment areas, which inmates must be provided which services, nor the manner in which the treatment services are to be provided. Those decisions are left to discretion of the county jail administrators and treatment staff. As with the existing standard, the final-form regulation permits a county jail to provide these services through a person employed by the prison, someone under contract with the prison, through a volunteer or any combination thereof.

The final-form regulation also provides county jails greater flexibility in terms of who must deliver those services. Paragraph (3) allows these services to be delivered by a treatment professional (defined in Section 95.220a) or a person certified, licensed or trained to provide such programming. The existing standard requires that a qualified counselor who preferably possesses a Master’s Degree, but no less than a Bachelor’s degree in behavioral sciences deliver the services. Furthermore, if the treatment services are delivered by a contracting agency or a professional volunteer, those persons must still meet the standards for qualified counselor. The existing standard also requires all county jails with populations over 75 inmates, but below 175, to have two full-time treatment personnel, one of whom must be a treatment supervisor. For jails with average daily populations of 175 inmates or more, the existing standard requires providing an additional qualified counselor for every 75 inmates over the first 75. Those specific staffing mandates have all been eliminated in the final-form regulation. The Department believes the existing standards provided more of a mandate to county jails as to *how* to provide the required counseling services than the revised standards in the final-form regulation. The intent of the final-form treatment services provision is to establish the required areas in which treatment services must be provided, but to leave the decisions as to the level of services and how those services are provided up to the county jail administrators.

Section 95.244 – Community involvement. Upon further review of this section, the Department determined that the neither the existing standards nor the requirements in the proposed rulemaking advance important interests in safety and security, programming or other operational standards and, therefore, this section is being deleted in its entirety. Any issues related to security in this section are addressed in other sections. Additionally, the Department believes issues of prison interaction with the community

are ones appropriately left to the professional judgment of the prison administrators and not easily subject to minimum requirements.

Additional Comments: *Section 95.222(1)(iv) – Admission.* Commissioner King of the Philadelphia Prison System (PPS) objected to the requirement that an unclothed search of an arrestee take place only when there is reasonable belief or suspicion that the arrestee is in possession of an item of contraband. Commissioner King stated that the requirement was impractical and unnecessary due to the unique operational considerations of the PPS. He specifically cited the fact that all arrestees admitted into a PPS facility are done post-arraignment unlike other counties.

Response: The Department concurred. For this reason, the specific requirements regarding the use of strip searches were eliminated and the regulation requires that written local policy the type of search to be performed and any restrictions on the use of strip searches.

Section 95.222 – Admission and release. The Pennsylvania Prison Society made two recommendations regarding the provisions on release. It was recommended that written local policy should include a detailed list of the terms of releasing inmates. It was also recommended that the regulation include a requirement for establishing a re-entry fund by withholding a percentage of an inmate's wages to assist the inmate upon release.

Response: The Department believes these recommendations, while commendable objectives, go beyond the intent of the regulation to establish *minimum* standards for the operation of county prisons.

3. *Implementation procedures*

Comment: *Effective date* – The Preamble to the proposed rulemaking stated that the regulation shall be effective upon final-form publication in the *Pennsylvania Bulletin*. IRRC recommended that the Department consider an effective date that occurs six to twelve months after final-form publication to allow county prisons time to implement the new standards.

Response: The Department concurs with this recommendation. The final-form publication will establish the effective date for the new standards as twelve months after final-form publication. The Department believes this time period will go a long way toward allowing county prisons sufficient time to establish written local policies implementing the new standards. This time period will also give county prisons additional time to plan compliance with the new standards in a way to minimize any fiscal impact the new standards may have on operations.

Comment: *Written local policy* – IRRC stated its understanding of the Department's intent as requiring the county prisons to develop their own written policy that reflects the minimum requirements of Chapter 95. IRRC noted that not all paragraphs under sections

establishing standards begin with the phrase “Written local policy must provide ...” IRRC recommends that each paragraph begin with this phrase or in the alternative, that each section establishing standards be revised to begin with a similar phrasing.

Response: The Department concurs with the recommendation. The Department believes that adding the suggested phrasing to either the beginning of a paragraph or to the beginning of a section, when appropriate, clarifies the intent of the regulation. These changes have been made in the final-form regulations in the following instances:

Section 95.222 – the phrase is deleted from subparagraphs (1)(iv) and (vii) and added to the beginning of paragraph (1). The phrase is also added to the beginning of paragraph (2).

Section 95.224 – the phrase is added to the beginning of paragraphs (2), (5) and (6).

Section 95.229 – the phrase is added to the beginning of paragraph (3).

Section 95.230 - the phrase is added to the beginning of paragraph (6).

Section 95.232 - the phrase is added to the beginning of paragraphs (2), (3) and (11).

Section 95.233 - the phrase is added to the beginning of paragraphs (3) and (6).

Section 95.233a - the phrase is added to the beginning of paragraphs (3) and (4).

Section 95.235 - the phrase is added to the beginning of paragraphs (2), (3) and (4).

Section 95.237 - the phrase is added to the beginning of paragraph (2).

Section 95.239 - the phrase is added to the beginning of paragraphs (2), (4) and (5).

Section 95.240 – the phrase is added to the beginning of paragraphs (1), (2), (3), (4), (5), (6), (8) and (9).

Section 95.241 – the phrase is deleted from subparagraphs (1) (i), (iii) and (vi) and added to the beginning of paragraph (1). The phrase is deleted from subparagraph (2) (iv) and added to the beginning of paragraph (2). The phrase is deleted from subparagraph (3) (i) and added to the beginning of paragraph (3).

Section 95.242 - the phrase is added to the beginning of paragraphs (1), (2) and (3).

Section 95.243 - the phrase is added to the beginning of paragraphs (2), (3), (5) and (8).

Section 95.248 - the phrase is added to the beginning of paragraphs (1), (5), (6), (7) and (8).

4. ***Section 95.220a. Definitions – Reasonableness; Implementation procedures; Clarity***

Comment: The Commission listed 18 definitions that contained substantive provisions suggesting that those substantive provisions either be deleted or placed in the body of the regulation. CCAP - Court and Corrections Committee submitted a comment objecting to the nature of many of the definitions as being substantive in nature.

Response: The Department concurs with this recommendation. The following changes to definitions in the final-form regulation have been made:

Bed Capacity – the substantive language “and that are only utilized in areas approved for residential occupancy by the Pennsylvania Department of Labor and Industry or local code authority” has been deleted from the definition.

Community resources - the second sentence of the definition has been deleted.

Counseling – the second sentence and the three types of counseling have been deleted.

Financial audit – the second sentence of the definition has been placed in the body of the regulation at the end of Section 239 (3).

Health care screening – the substantive provisions in the second and third sentences of the definition have been placed in the body of the regulation in Section 232 (1).

Health care training - the second sentence of the definition has been deleted.

Major infraction – the definition has been deleted and some of the substantive language has been placed in the body of the regulation in Section 240 (2)(i).

Minor infraction – the definition has been deleted and some of the substantive language has been placed in the body of the regulation in Section 240 (2)(ii).

Noncontact visitation – the second sentence of the definition has been deleted.

Preinspection audit – the definition has been deleted. As described below under Comment No. 5, the inspection process set forth in Section 220b has been revised so that preinspection audits have been eliminated.

Prison inspection – the second sentence of the definition has been deleted and the first sentence revised to conform to the revisions to Section 220b.

Procedures – the second and third sentences of the definition have been deleted.

Security perimeter – the second sentence of the definition has been deleted.

Segregation – the second sentence of the definition has been deleted.

Training – the second sentence of subparagraph (i) has been placed in the body of the regulation as the second sentence in Section 221 (5). All of subparagraph (ii) of the definition has been deleted.

Treatment professional – the first sentence of the definition has largely been deleted.

Treatment training – the second sentence of the definition has been deleted.

Vulnerability analysis – the second and third sentences of subparagraph (i) have been deleted and the remaining text of the definition has been combined into one sentence.

Comment: *Alcohol and other drugs treatment* - IRRC recommends that the phrase “or both” be deleted from the definition.

Response: The Department concurs and the phrase has been deleted.

Comment: *Bed capacity* - IRRC recommends that since the phrase “recognized professional standards” is referenced in the definition, the specific standards should be referenced in the definition.

Response: The Department concurs and reference has been made to the American Correctional Association’s standards for Adult Local Detention Facilities.

Comment: *Building code* – IRRC recommends that since the definition references “Federal, state and local regulations that dictate construction of a prison”, the definition should specifically reference the regulations that should be followed.

Response: This definition has been deleted as the term is used in only one instance and its usage is self-explanatory. Furthermore, each local prison would need to identify and comply with any applicable building codes separate from the applicability of this regulation.

Comment: *Contraband* – IRRC recommends that the phrase “or on prison grounds” be deleted from the definition since the “prison grounds” are by definition part of the prison.

Response: The Department concurs and the phrase has been deleted.

Comment: *Force, use of* – IRRC and a number of commentators (Warden Gillespie and Deputy Warden Haxton - Greene County, Warden Wagner - Berks County, CCAP Court and Corrections Committee, Cumberland County Commissioners, Warden Wetzel - Franklin County, Pennsylvania Sheriff’s Association and Thomas J. Gajewski, Sr. - Berks County Commissioner) stated that the use of force to effect compliance with an order is an accepted standard in correctional practice. The commentators further noted

that the omission of the use of force to effect compliance with an order from the definition would make it difficult to maintain order in county prisons.

Response: This omission was an oversight. The phrase “to effect compliance with the rules and regulations of the facility when other methods of control are ineffective or insufficient” has been added to the definition. The definition is now consistent with accepted correctional practice and the Department’s own use of force definition and policy.

Comment: *Life safety code* - IRRC recommends that the last sentence of the definition, which states, “Two chapters are devoted to correctional facilities.” be deleted.

Response: The Department concurs and the sentence has been deleted.

Comment: *Major infraction and minor infraction* – IRRC noted that a number of commentators believed that these definitions do not provide county prisons with sufficient flexibility regarding inmate misconducts. More specifically, the commentators (Warden Gillespie and Deputy Warden Haxton, Warden Wagner, Warden Wetzel and Commissioner Gajewski) stated that the definitions were not consistent with common jail practices that allow for some rule violations being sanctioned in an informal manner and without hearings. IRRC also requested that the Department explain the need for including major and minor rule infractions in the regulation.

Response: As a result of discussions with the County-State Liaison Committee and review of the public comments, the Department has revised Section 240 (2) to allow county jails greater flexibility to respond to inmate rule violations. The revision allows a county jail to define a third category of rule infractions in its written local policy by defining a category of rule infractions that do not rise to the level of major or minor infractions. A new paragraph (7) has been added allowing for informal resolution of this third category of rule infractions. Paragraph (7) also requires that an inmate’s participation in the informal resolution of these rule infractions be on a voluntary basis only.

The concept of breaking down inmate rule violations into major and minor infractions is consistent with the current recognized professional standards for adult local detention facilities and in fact gives county jails greater flexibility in responding to inmate rule violations. The current standard in Section 95.240 required that discipline for violation of any prison rule could not be imposed unless the basics of due process were provided to the inmate. Those basic due process requirements found in Paragraph (2) are that the inmate be informed of the offense charged in writing, has had an opportunity to present a defense and has been found guilty of the charge by an impartial party or board designated by the prison administrator. The existing standard requires these procedures regardless of the gravity of the rule violation or the level of the sanction imposed. The final-form regulation eliminates the across-the-board procedural requirements by tying the level of procedure due for a rule violation to the seriousness of the violation and the level of the sanction that can be imposed.

Comment: *Prison administrator* - IRRC recommended that the phrase “regardless of local title” be deleted from the definition as unnecessary.

Response: The Department concurs and the phrase has been deleted.

Comment: *Restraints* – Since the definition references devices as “authorized”, IRRC recommends that the term should either be deleted or the regulation specify how a device is authorized.

Response: The Department concurs. The phrase “authorized by written local policy that is” has been added to the definition to clarify that the written local policy needs to specify which restraints are authorized for use in the county jail.

Comment: *Treatment service(s)* – IRRC recommends that this term be defined since it is used throughout the proposed rulemaking.

Response: The Department concurs with this recommendation. A definition of the term has been added to the final-form regulation.

5. ***Section 95.220b. Scope – Statutory authority; Reasonableness; Implementation procedures; Clarity***

The Department received extensive comments on *Section 95.220b* from IRRC and a number of commentators. All of the comments were submitted under the three general topics discussed below:

Comment – *Inspection and declassification process* – IRRC and/or these commentators stated six common objections to the inspection and declassification process described in the proposed rulemaking:

(a) IRRC and a number of commentators (Dauphin County Commissioners, Cumberland County Commissioners, Pennsylvania County Prison Warden’s Association, The Pennsylvania Prison Society, Westmoreland County Commissioners and Cambria County Commissioners) suggested that the term ‘declassification’ was unclear and should be defined.

(b) Commentators (CCAP Court and Corrections Committee, Cumberland County Commissioners, Westmoreland County Commissioners, Warden Guarini – Lancaster County Board and Warden Wilson – Indiana County Prison Board) objected to the lack of consultation with, and an appeal process for, county prisons found to be in non-compliance. IRRC noted its agreement with the commentators and recommended that both a consultation and appeals process be included in the final-form regulation.

(c) Warden Gillespie and Deputy Warden Haxton - Greene County objected to the proposed rulemaking because it allowed for the possibility that a county prison

could be declassified for noncompliance with standards not related to security. Warden Wagner also commented that the proposed rulemaking allowed for a declassification hearing for any continued non-compliance, not just those violations presenting a significant threat to security. Warden Gillespie and Deputy Warden Haxton recommended that declassification be limited to noncompliance with the same safety and security-related standards that could trigger a vulnerability analysis under paragraph (6) of the proposed rulemaking. IRRC also recommended that the final-form regulation specify that declassification occur only in instances where there is noncompliance with security standards. Commissioner King objected to the application of the declassification provisions to the Philadelphia system because of the population challenges they face. Justice & Mercy, Inc. stated support for provisions that would enforce the minimum standards, however, the comment objected to the regulation allowing non-compliance of standards for up to three years without any enforcement action.

(d) Warden Gillespie and Deputy Warden Haxton objected that the proposed rulemaking failed to state who is responsible for the costs of a vulnerability analysis ordered by the Department. IRRC recommended that the language of the final-form regulation describe who will pay for mandatory and voluntary vulnerability analyses.

(e) A number of commentators (Warden Gillespie and Deputy Warden Haxton – Greene County, Warden Wagner - Berks County, CCAP Court and Corrections Committee, Dauphin County Commissioners, Warden Wetzel - Franklin County, Westmoreland County Commissioners, Warden Guarini – Lancaster County Board and Thomas J. Gajewski, Sr. - Berks County Commissioner) questioned what would happen with pretrial detainees and inmates if a local prison is declassified and objected to the proposed rulemaking failing to clarify that issue.

(f) IRRC commented that this section lacked specificity on time frames for certain actions in the inspection and declassification process. More specifically, IRRC found that paragraphs (2) and (3) failed to provide specificity regarding pre-inspection audits.

Response - Inspection and declassification process - The Department found the public comments and the subsequent discussions with the County-State Liaison Committee on these issues to be extremely valuable. That process resulted in important revisions to this section that the Department believes clarify the intent of the process and the procedures themselves. The Department's overriding goal in establishing the inspection and classification procedures is to ensure that county prisons are meeting the minimum standards that it believes are essential to the safe and secure operation of those facilities. The Department is fully cognizant that these are the same goals of the county prison administrators, county prison boards and the staff working at those facilities. A second objective of the inspection and classification procedures, as revised, is to assist county prisons in complying with the minimum standards so that the common goal of safe and secure correctional facilities is achieved. To that end, *Section 95.220b* in the final-form regulation has been revised as explained below:

(a) The Department concurs with the comments that use of the term “declassification” in the proposed rulemaking has caused confusion, particularly since that specific term is not used in the authorizing statute itself. The term “declassification” is therefore not used in the final-form regulation. The Department believes the section is clarified by instead using the language of the authorizing statute. Paragraphs (11), (12) and (13) now describe the purpose of a hearing as determining whether a county prison should be ‘classified as ineligible to receive prisoners with a sentence of six months or more but less than five years.’

(b) The Department agrees with the recommendations of IRRC and the commentators to include an appeal and/or consultation process in the final-form regulation. Paragraph (3) of the final-form regulation establishes a procedure that allows for input from the county prison before a final inspection report is issued. Specifically, the regulation requires the Department’s inspector to issue the preliminary findings of the inspection to the county prison administrator and the governing county prison authority. The governing county prison authority or designee will then have up to 30 days to submit a written reply to the preliminary findings to the Deputy Secretary for Administration. The Deputy Secretary then has preliminary findings and a response from the county prison, which may include any relevant documentation, before issuing a final inspection report. Allowing input from the county prison will result in a fairer and more complete process. The written response offers the county prison an opportunity to dispute the preliminary findings or to explain other policies or practices that could mitigate the preliminary findings of the inspector. The regulation does not include an appeal from the final inspection report issued by the Deputy Secretary. A county prison cannot be classified as ineligible to receive certain inmates based solely on the findings in an inspection report. That classification cannot happen without a hearing and resulting order with specific findings by the Secretary. Should such an order be issued, the county prison would have the right to appeal that order to the Commonwealth Court under state law (42 Pa. C.S.A. §5105). The Department also believes that the changes permitting a response by the county prison to preliminary findings, including the submission of documentation, allows the Department to consider the unique circumstances faced by a particular county such as Philadelphia before determining whether the county is in compliance with the standards.

(c) The Department agrees with the recommendation of IRRC and the commentators to limit an ‘ineligibility’ classification of a county prison only to noncompliance with safety and security related standards. Paragraph (2) of the final-form regulation lists the specific sections and paragraphs of Chapter 95 that are deemed to be essential to the safety and security of the county prison, prison staff, inmates and the public. The paragraphs of the section that follow set forth that only a violation of an essential standard could lead to a classification hearing by the Department. The final-form regulation limits the possibility of a classification hearing even further by requiring not only a violation of an essential standard, but a finding by that this violation constitutes an “immediate threat to the safety and security of the county prison, prison staff, inmates or the public.”

(d) The Department agrees with IRRC's recommendation that the final-form regulation describe who is responsible for paying the costs of a mandatory or voluntary vulnerability analysis (VA). Under Paragraph (8) of the final-form regulation, the Department bears the costs of the VA when the Department orders a VA. Under Paragraph (10) of the final-form regulation, when a county requests a VA, the county bears the costs of the VA. The Department has offered several training sessions for county prison officials in how to conduct a vulnerability analysis. A number of county prison officials and staff have been participating with the Department in planning and offering additional VA training sessions.

(e) The statute (61 P.S. §460.3 (3) and (4)) authorizes the Department to establish standards, inspect and classify the county jails according to those standards as eligible to "receive prisoners as eligible to receive prisoners sentenced to maximum terms of six months or more but less than five years." The statute does not specifically address what happens to those inmates should a jail be classified as ineligible to receive these prisoners. The Department believes that the appropriate reading of the statute restricts a classification action to limiting a county prison from receiving *additional* prisoners with the defined sentences. The statute does not authorize that all prisoners with the defined sentences already in the prison be removed. In discussions with the County-State Liaison Committee, the Department stated that should a county prison be classified as ineligible to receive these prisoners, that county remains responsible for arranging for incarceration of individuals sentenced by the county's court of common pleas in another facility. Pennsylvania law (61 P.S. §72) permits the transfer of inmates in a county prison to another county "upon such terms and conditions as the counties may determine." It is not an uncommon practice for a one county to pay another county to house a prisoner sentenced by the initial county's court of common pleas when there is no space in the county prison.

(f) The Department agrees with IRRC's recommendation to provide for specific steps and timeframes for the inspection and declassification process. As described in part in paragraph (b) of the above response, the final-form regulation contains specific time frames that define each step of the inspection process (see paragraphs (1), (3), (4) and (9)). The inspection procedures have also been greatly simplified by eliminating the differing prison inspection cycles consisting of pre-inspection audits and prison inspections, which were described in paragraphs (1) through (4) of the proposed rulemaking. Each county prison is now subject to an annual prison inspection. County prisons are only subject to a bi-annual inspection if the county prison is in full compliance with all of the minimum requirements of Chapter 95.

Comment – (2) - Statutory authority – A number of commentators (Warden Gillespie and Deputy Warden Haxton - Greene County, Warden Wagner - Berks County, CCAP Court and Corrections Committee, Dauphin County Commissioners, Cumberland County Commissioners, Pennsylvania County Prison Wardens Association, Warden Wetzel - Franklin County, Clarion County Commissioners, Westmoreland County Commissioners, Cambria County Commissioners, Warden Guarini – Lancaster County Prison Board, Warden Wilson – Indiana County and Thomas J. Gajewski, Sr. - Berks County

Commissioner) questioned the Department's statutory authority to promulgate standards for county jails generally and to establish declassification procedures specifically. The commentators stated that the Department's promulgating standards and a scheme to declassify county jails for violation of those standards directly conflicts with statutory provisions granting local prison boards the authority to operate county jails. Similar objections were made regarding the Department's authority to order a vulnerability analysis.

Response - Statutory authority – The Department is empowered by Section 506 of The Administrative Code of 1929 (71 P.S. §186) to prescribe rules and regulations for the performance of the Department's business. The Department's business includes establishing standards for county jails and prisons, including physical facilities and standards for correctional programs for treatment, education and rehabilitation of inmates. See section 3(3) of the Act of December 27, 1965 (P.L. 1237, No. 502) (Act 502) (61 P.S. § 460.3(3)). Section (3), paragraph (4) of Act 502 empowers the Department to inspect county jails and to classify them, in accordance with the standards the Department adopted, as eligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years. The language of these statutory provisions is straightforward and unambiguous. The statute states that the Department has the duties of establishing standards, inspecting according to those standards and classifying them in accordance with those standards. Likewise, the Department's authority to classify county jails is limited to determining if the jail is eligible "to receive prisoners" with sentences within the parameters designated in the statute. These differing statutory powers are not incompatible.

The Department disagrees with the commentators' assertion that the Department necessarily lacks these powers because they conflict with the statutory authority granted to local prison boards to operate county jails. These various statutory provisions are not in conflict either logically or according to the rules of statutory construction. The object of statutory construction is to give effect to the intent of the General Assembly. Section 1921 of the Statutory Construction Act of 1972, 1 Pa. C.S.A. §1921, states that "every statute shall be construed, if possible, to give effect to all its provisions." It is not problematic to give full meaning to the above-cited duties of the Department and the statutory provisions granting a local prison board the authority to operate and manage the county jail. Act 502 grants the Department oversight on county prisons that is limited to the establishment of standards, inspection according to those standards and classifying the jails as eligible to receive the defined class of inmates. The local prison boards are empowered with operating and managing county jails within those standards established by the Department.

The Department also disagrees with commentators' assertion that the Department does not have the authority to conduct a VA. The final-form regulation has been structured so that the VA process is an extension of the inspection process. A VA is authorized based on findings of noncompliance with the essential standards and a finding that the noncompliance may present an immediate threat to the safety and security of the facility. The Department believes the VA process provides a very important supplement to the

routine inspection-classification process by allowing the Department to respond quickly to those situations when a final inspection report finds serious and immediate safety and security problems at a facility. A VA report will, in the short term, identify actions the county prison can take to mitigate or eliminate any immediate threat to safety and security. Should the county prison be unable or unwilling to take those actions, the VA process allows the Department to move to a classification hearing, if necessary, much more quickly under paragraph (11) instead of going through the three-year, progressive inspection process described in paragraphs (6) and (7). More importantly, the Department believes that the issuance of a VA report is more likely to result in identifying practices and actions that can be taken by the county prison to mitigate or eliminate any immediate threats to safety and security, thus avoiding the need for a classification hearing.

Comment – (3) - Elimination of ADA/NCCHC accreditation waiver – The proposed rulemaking eliminated a waiver of the subchapter in its entirety for those counties achieving American Correctional Association accreditation using Adult Local Detention Facilities standards. Also eliminated was a waiver of the requirements of Section 95.232 (relating to medical and health services) for those counties achieving National Commission on Correctional Health Care accreditation. A number of commentators (Director Gubernick – County of Bucks, Warden Wagner - Berks County, Judge Linda K. M. Ludgate – Berks County Court of Common Pleas, CCAP Court and Corrections Committee, Cumberland County Commissioners, Warden Wetzel - Franklin County, Warden Guarini – Lancaster County Prison Board and Thomas J. Gajewski, Sr. - Berks County Commissioner) objected to the elimination of these waivers claiming that the standards for both ACA and NCCHC accreditation were far more exacting than the standards of this chapter. They claimed that the standards were therefore unnecessary for those counties achieving either of these accreditations.

Response – There are several reasons for eliminating the waiver provisions. Foremost, the Department believes that its statutory duty is to establish standards and inspect according to those standards and that those duties should not be relinquished to a non-government entity. While the ACA and NCCHC standards are equivalent to or exceed the standards established by the Department, the accreditation process takes place every three years. The accreditation process may therefore not discover newer, problematic developments. Additionally, only one county prison in the Commonwealth has ever sought and received ACA accreditation. Although a number of counties are accredited by the NCCHC, the Department believes there is value to conducting a full inspection of all aspects of a county prison's operations including its health care facilities.

6. Section 95.224. Inmate rules and staff procedures – Reasonableness

Comment: Paragraph (2) stated that new or revised rules shall be disseminated to staff, and when appropriate, to inmates prior to implementation. IRRC recommends that the final-form regulation specify when it would not be appropriate to disseminate new or revised rules to inmates.

Response: The phrase “when appropriate” has been deleted so that new inmate rules shall be disseminated to inmates in all instances.

7. Section 95.229. Bedding – Reasonableness

Comment: As noted by IRRC, some commentators (Warden Gillespie and Deputy Warden Haxton - Greene County, CCAP Court and Corrections Committee and Warden Wetzel - Franklin County) expressed concern that these provisions fail to recognize the need for temporary bedding when a county prison must process a large number of inmates in a short period of time. In such circumstances, the county prison may need to use temporary bedding that does not meet the requirement that the bedding be at least 12 inches off the floor. IRRC recommended that the regulation include an exception to the 12-inch requirement for a limited time to manage a dramatic increase in population. The Pennsylvania Sheriff’s Association commented generally, without further explanation, that the provisions of this section left prison administrators with little or no discretion in managing their prison.

Response: The Department concurs with this recommendation. The final-form contains a new paragraph (2) that allows for an exception to the requirements of paragraph (1) in emergency circumstances. Consistent with the intent of the Chapter 95 regulation, the revised provision requires the county jail to establish written local policy that defines the emergency circumstances that would require the use of temporary bedding. As a result of discussions with the County-State Liaison Committee, the revised regulation places two reasonable time limits on the use of the emergency exceptions to bedding requirements. No individual inmate shall be subject to temporary bedding for a period exceeding 30 days. The regulation limits the use of any temporary bedding arrangements to no more than 90 consecutive days in recognition that long-term use of temporary bedding arrangements by a county jail may create additional operational problems.

8. Section 95.230. Food services – Clarity

Comment: Paragraph (2) requires one supervisory food service employee to become “certified in food safety and sanitation.” IRRC suggests that the regulation specify what type of certification will be acceptable.

Response: The Department concurs and the regulation has been revised. The fourth sentence of Paragraph (2) has been revised to specify that the certification be “in accordance with the Food Employee Certification Act (3 Pa. C.S.A. §§6501-6510).”

9. Section 95.232. Medical and health services – Clarity

Comment: IRRC recommended that the reference to “certifying health organization” under Paragraph (8) be more specific.

Response: The Department concurs and the regulation has been revised. County jails utilize various health organizations to directly conduct basic first aid and cardiopulmonary resuscitation training to its employees or to certify county jail employees as trainers. To allow county jails the choice of obtaining these training services from different organizations, the last sentence of Paragraph (2) was revised to state that all corrections personnel be certified “by the organization that conducts the training.”

Comment: IRRC also recommended that the references to state and federal law in Paragraph (9)(ii) include specific citations to the applicable laws.

Response: The Department concurs with this recommendation. The appropriate statutory reference has been added to Paragraph (9) (ii).

10. Section 95.235. Work Programs – Clarity

Comment: Paragraph (3) requires local prisons to provide “some form of compensation” to inmates participating in work programs. IRRC noted that since the term compensation is defined, the phrase “some form of” should be deleted.

Response: The Department concurs with the recommendation. The phrase “some form of” has been deleted from Paragraph (3).

Comment: Warden Wagner objected to the requirement of Paragraph (3) believing that it requires compensation for nearly all work details. He asserts that the decision as to whether there should be payment is a local decision.

Response: The Department believes the revised standard is less burdensome than the existing requirement. The existing standard already requires that all prisoners who work “shall be paid” either in cash or credit toward pending court costs. The revised standard does not change the requirement that inmates be compensated, but it does expand the definition of compensation beyond case or credit toward court costs. The expanded definition gives greater flexibility to the county prison to meet this requirement and may in fact permit counties to lessen the fiscal impact of the already existing requirement.

Comment: Paragraph (4) states that inmate working conditions comply with “all applicable federal, state or local work safety laws and regulations.” Also, Paragraph (5) references “applicable law.” IRRC recommends that the regulation should include references specific citations to those laws and regulations.

Response: Upon further review of the Department’s inspection practice, reference to inmate working conditions complying with all applicable federal, state, or local work safety laws and regulations has been deleted from the final-form regulation. The Department believes that the applicability of various federal, state and local laws is open to interpretation and may vary from county to county. Department inspectors would not

be qualified to resolve those questions of law. The Department's interests in conducting inspections in this area is to insure that the county prisons written local policy address that inmates be issued appropriate clothing and tools for particular work and that they are given appropriate direction on the proper use of the equipment and tools.

Comment: Warden Wagner and Commissioner Gajewski objected to the last sentence of Paragraph (5) believing that it required county jails to have the same work programs for both male and female inmates and that it would not be possible to comply with such a requirement.

Response: The Department recognizes that county prisons housing both male and female inmates cannot practically offer identical work programs for male and female inmates. In order to clarify that Paragraph (5) does not establish such a requirement, the Department has deleted the second sentence of Paragraph (5). The remaining language requires that county prisons establish a written local policy prohibiting discrimination regarding access to a work program.

11. Section 95.237. Religion – Need; Implementation procedures

Comment: Patrick Tutella, Chaplain Supervisor for Berks County and Dennis Ugoletti, Chaplain for Beaver County Jail, objected to the language Paragraph (1) of the proposed rulemaking. Mr. Tutella expressed his belief that the proposed language would make participation in religious activities a matter of choice on the part of each inmate and that such a requirement would be extremely difficult for chaplains to meet. Mr. Ugoletti stated that he believed the proposed language was too broad. He questioned the extent of the requirement.

Response: The Department concurred with the commentators concerns that the above requirement of Paragraph (1) was too broadly stated. The first sentence of Paragraph (1) was therefore revised to revert to the existing standard with added language requiring that the requirement be put into written local policy. The requirement now states that "Written local policy shall provide that each prisoner be allowed to satisfy the needs of his religious life consistent with the orderly administration of the prison." This change will result keeping the decision making process as to accommodating religious activities requests with the local prison management.

Comment: Numerous commentators (County Warden Gillespie and Deputy Warden Haxton - Greene County, Patrick Tutella, Chaplain Supervisor – Berks County, Peggy Leader, Treatment Specialist – Bedford County Jail, Dennis Ugoletti, Chaplain - Beaver County Jail, Warden Wetzel - Franklin County and Honorable Dick L. Hess – State Representative 78th District) questioned the need for the Paragraph (2) requirement that individuals seeking to provide religious guidance to inmates must have clinical pastoral education or equivalent specialized training and endorsement by a the appropriate religious certifying body. The commentators expressed concern that these requirements would limit religious programming in some jails because religious activities are provided

by volunteers without such training. Many stated that such a decision should be made solely by the local prison administrators.

Response: The Department understands and concurs with these stated concerns. The educational, training and certification requirement have been deleted from the final-form regulation. This county prison need only establish in written local policy that the prison administrator or designee must screen such individuals. The factors used for screening these individuals are left to the discretion of the prison administrator or designee.

12. Section 95.240. Inmate disciplinary procedures – Need; Implementation procedures

Comment: As noted in IRRC’s comments on the definitions of major and minor infractions, IRRC suggested that the Department explain the need for including two levels of infractions.

Response: See the Response to Comment No. 4 – *Major infraction and Minor infraction*

13. Section 95.241. Security – Need; Implementation procedures; Clarity

Comment: *Paragraph (1) Supervision of inmates*

IRRC noted that Subparagraph (1) (ii) requires an initial staffing analysis to be conducted and that the results of the annual staffing analysis be available at all times. IRRC suggested that the final-form regulation specify who conducts the staff analysis and who has access to it.

Response: The Department concurs with the recommendation. Subparagraph (1) (ii) of the final-form regulation requires that the staffing analysis be conducted by the prison administrator or designee and that the information on the number and type of positions filled and vacant be available for review by the Department’s inspectors.

Comment: *Paragraph (1) Supervision of inmates*

IRRC questioned the need for the Subparagraph (1) (v) requirement that local prisons maintain a permanent log to record routine information, as well as other information.

Response: The Department recognizes the concern. In order to allow for the varying practices in county jails, the specific requirement to maintain a permanent log and shift reports to record the listed information is deleted from the final-form regulation. Most emergency situations and unusual incidents will be reported to the Department under Section 95.242 (2) *Report of Extraordinary Occurrence*.

Comment: *Paragraph (2) Use of Force*

IRRC noted that Subparagraph (2) (i) restricted the use of force to certain instances and

that use of force to effect compliance with an order was not included. As with IRRC's comment regarding the definition of "force, use of", IRRC recommended that Paragraph (2) be amended to allow force to effect compliance with an order.

Response: The Department concurs. See the Response to Comment No. 4 for – *Force, use of.*

Comment: IRRC noted that the terms "authorized equipment" and "recognized certification period" used in Subparagraph (2) (ii) (H) are vague and recommended that those terms be defined.

Response: Subparagraph (2) in the final-form regulation clarifies the use of those terms. Subparagraph (2)(ii) adds the term "Authorized equipment such as" to clarify that the county prison's written local policy must specify the equipment that prison staff may use in applying force (e.g. the physical restraint(s), chemical agent(s), stun device(s), batons and firearms).

Use of the term "recognized certification period" is deleted and Subparagraph (2)(ii)(H) is revised to clarify that all prison staff authorized to use the equipment listed in policy must demonstrate competency in use of the equipment as per the training or certification standards recommended by the manufacturer of that equipment.

Comment: *Paragraph (3) Emergency Plans.* Commissioner King objects to the requirement of subparagraph (i)(I) which states that written local policy must provide for written agreements with other jurisdictions for handling emergencies and possible evacuation of inmates. He states that Philadelphia has been unable to enter into agreements with any other county to house inmates and therefore this should not be a requirement.

Response: The Department recognizes that entering into such an agreement requires the consent of another jurisdiction. The Department further recognizes that if a county has made good faith efforts to establish such agreements as part of emergency planning, but has been unable to do so because of the inability or unwillingness of other jurisdictions, the county cannot be held to have violated the standard. However, the requirement should remain the objective for a county prison's emergency planning.

Comment: *Paragraph (5) Contraband control.* Subparagraph (ii) stated that individuals "entering *or* leaving" the prison will be subject to search. IRRC asked if the local prison had discretion in this area, or did the Department intend to have individuals searched before "entering *and* leaving."

Response: The Department's intent in stating the individuals are "subject" to search when entering or leaving the facility is that the local prison has discretion as to when an individual entering or leaving the prison is searched.

Comment: *Paragraph (7) Count Control.* Commissioner King stated that the proposed requirement that a headcount be conducted on each shift for at least 3 headcounts for

each 24-hour period is problematic because the Philadelphia Prison System does not conduct a count on the 7-3 shift due to the number of inmates that are in movement at that time.

Response: The Department believes this requirement is consistent with the current recognized professional standards for adult local detention facilities. Furthermore, the Department believes this requirement is directly related to a county's responsibility to maintain the detention of inmates lawfully committed to its custody.

14. Section 95.243. Treatment services – Fiscal impact; Need; Clarity

Comment: A number of commentators objected to the treatment mandates of this section. The commentators' objections were directed exclusively at the requirements of Paragraphs (2) and (6).

Paragraph (2) of the proposed regulation required treatment services to include programs in education, social services, alcohol and other drugs and counseling services. The commentators (Greene County Warden Gillespie and Deputy Warden Haxton, Warden Wagner of Berks County, CCAP Court and Corrections Committee, Dauphin County Commissioners, Cumberland County Commissioners, Pennsylvania County Prison Wardens Association, Warden Wetzel of Franklin County, Westmoreland County Commissioners, Potter County Commissioners, Honorable H. William DeWeese - then Minority Leader of the House of Representatives, and Thomas J. Gajewski, Sr. - Berks County Commissioner) all objected to these requirements as unfunded mandates. Warden John Wetzel of the Franklin County Jail specifically described the requirements as the Department dictating how treatment services should be delivered and that such a decision should be left to the county jail. The other commentators stated the same objection. Warden Wetzel also explained that these requirements would preclude a community-based approach to drug and alcohol services implemented by Franklin County that resulted in a corresponding reduction of drug and alcohol services within the jail itself. The Cumberland County Commissioners commented that while the required services were desirable the county would have a difficult time assuring the additional services within the jail and that the decision on which services to provide should be a local one based on available resources.

Response: The Department is cognizant of the concerns of the commentators. The Department believes that the requirements of Paragraph (2), when read with all of the provisions of Section 95.243 in the final-form regulation, are consistent with the current recognized professional standards for adult local detention facilities while allowing county officials and jail administrators flexibility to make decisions appropriate to their facility.

The Department's statutory mandate found at 61 P.S. §460.3(3) includes establishing standards for county jails that include "standards for correctional programs of treatment, education and rehabilitation of inmates." The Department believes these treatment services requirements provide significantly more flexibility to county jails in meeting

inmate treatment needs than the existing requirements of Section 95.243. The existing section sets very specific requirements for the number of hours of counseling services that must be provided by a county jail per week as well as certain staffing requirements based solely on the jails average daily inmate population.

It is important to note that the term “counseling services” as used in Paragraph (1) of the existing section is defined broadly so that it “shall include group and individual counseling of a general nature; vocational rehabilitation counseling; social casework and group work, including self-help groups such as Alcoholics Anonymous and similar groups; testing and clinical psychological services; and psychiatric services.” “Counseling services” in the existing regulation encompasses, in more specific terms, much of the four areas for treatment services required in Section 95.243 of the final-form regulation.

Perhaps most importantly, and contrary to the concerns of the commentators, the final-form regulation does not require *how* these treatment services must be provided. Section 95.243 does not specify the amount of hours that must be provided in these treatment areas, which inmates must be provided which services, nor the manner in which the treatment services are to be provided. Those decisions are fully left to discretion of the county jail administrators. As with the existing regulation, the final-form regulation permits a county jail to provide these services through a person employed by the prison, someone under contract with the prison, through a volunteer or any combination thereof.

Section 95.243 in the final-form regulation also provides county jails greater flexibility in terms of who must deliver those services. Paragraph (3) allows these services to be delivered by a treatment professional (defined in Section 95.220a) or a person certified, licensed or trained to provide such programming. The existing standard requires that the services be delivered by a qualified counselor who preferably possesses a Master’s Degree, but no less than a Bachelor’s degree in behavioral sciences. If the treatment services are delivered by a contracting agency or a professional volunteer, those persons must still meet the standards for qualified counselor. The existing standard also requires all county jails with populations over 75 inmates, but below 175, to have two full-time treatment personnel, one of whom must be a treatment supervisor. For jails with average daily populations of 175 inmates or more, the existing standard requires providing an additional qualified counselor for every 75 inmates over the first 75. Those specific staffing mandates have all been eliminated in the final-form regulation. While well-intentioned, the existing standards provided far more of a mandate to county jails as to *how* to provide the required counseling services than the new Section 95.243 in the final-form regulation. The intent of the final-form treatment services provision is to establish the required areas in which treatment services must be provided, but to leave the decisions as to the level of services and how those services are provided up to the county jail administrators.

As discussed under Comment No. 2 above, significant changes have been made to Paragraph (6). The requirement that all inmates be given a treatment needs assessment within 14 days of admission has been significantly changed so that such an assessment

must be conducted within 90 days of an inmate's admission to the jail. Additionally, the treatment services recommended by the assessment must begin within 45 days of the assessment. The Department and member of the County-State Liaison Committee believe that these changes will allow county prisons to focus treatment service resources on those inmates who are there for longer terms of incarceration.

Finally, it should be noted that the significant interest assuring that treatment services are provided to any inmate, short term or long term, in need of immediate services is met by Paragraphs (4) and (5) of this section.

Comment: IRRC noted that the terms "treatment services" and "treatment programs" are used in this section and recommended that one term be used and defined.

Response: The Department concurs with this recommendation. The provision has been revised so that all references are now to "treatment services." As explained above, that term has also been defined.

15. Section 95.244. Community involvement – Clarity

Comment: IRRC suggested that the Department define the term "community involvement" to assist the regulated community with developing a written policy that would meet the requirements in this section.

Response: For the reasons discussed in the Response to Comment No. 2 above, this section is deleted in its entirety.

16. Section 95.246. Investigations – death sexual assaults/threats – Clarity

Comment: IRRC questioned the need for the language in Subparagraph (1)(ii) requiring written local policy to specify who is responsible for contacting the coroner and law enforcement when Subparagraph (1)(i) specifically required the prison administrator to notify the coroner and appropriate law enforcement agency in the case of a death. IRRC noted similar language in Paragraph (2), pertaining to sexual assaults/threats.

Response: The Department concurs. Both Paragraphs (1) and (2) were revised to state that written local policy shall specify the procedure in the event of a death or an allegation of sexual assault, respectively, involving an inmate, prison employee, volunteer, contractor or visitor. Both paragraphs then list the elements that the written local policy must address.

Comment: IRRC noted an inconsistency between the language of Subparagraph (2)(ii) which requires the reporting of sexual assaults and threats and the statistical/informational reporting requirements of Section 95.242. That section requires the reporting of assaults, but not the threat of sexual assaults on a monthly report filed with

the Department. IRRC questioned how local prisons are to report the threat of sexual assaults.

Response: The Department concurs. Paragraph (2) of this section was revised to clarify that the intent of the paragraph is to require county prisons to establish procedures, through written local policy, to address all *allegations* of sexual assault and not assaults and *threats* of assault. Additionally, Section 95.242 (3)(iii) was revised to include the requirement to report sexual assaults and allegations of sexual assaults on the County Extraordinary Occurrence Monthly Report to the Department.

17. Section 95.248. Sanitation, maintenance and safety – Clarity

Comment: IRRC recommended that Paragraph (1) be revised to include a specific citation to the “applicable governmental regulations” that must be adhered.

Response: The Department does not believe it is possible or practical to list all of the applicable regulations to sanitation or safety. To add clarity, the revised paragraph references Pennsylvania Department of Labor and Industry regulations and any applicable local code authorities. The existence of any municipal sanitation and safety codes varies from county to county.

Comment: IRRC noted that Paragraphs (2), (3) and (9) required written local policy to “identify” plans or programs related to sanitation, maintenance and fire emergency/evacuation. IRRC asked if the intent was for county prisons to simply identify the plans or programs or must they be incorporated into the written local policy.

Response: The word “identify” was deleted from Paragraphs (2), (3) and (9) to clarify that the county prisons must incorporate the required elements of the identified program or plan into the written local policy.

18. Miscellaneous clarity

Comment: IRRC recommended that the phrase “including, but not limited to”, as non-regulatory language be deleted from Sections 95.220b(1), 95.221(8), 95.232(12), 95.235(1), 95.241(1)(ii), 95.243(2), 95.243(4) and 95.243(6).

Response: The Department concurs. The phrase has been deleted in each instance.

Comment: IRRC recommended that the reference to “generally accepted accounting *procedures*” in Section 95.239(3) be changed to “generally accepted accounting *principles*.”

Response: The Department concurs. The phrase has been changed as recommended.

Comment: IRRC noted that Section 95.241(2)(ii)(F) appeared to be an incomplete sentence.

Response: The Department concurs. Subparagraph (2)(ii)(F) of Section 95.241 has been revised to read “Circumstances and types of force requiring specific authorization and who shall authorize the use of such force.”

Comment: IRRC recommended that the phrase “prison administration” in Section 95.241(3)(ii) be revised to “prison administrator.”

Response: The Department concurs. The phrase has been changed as recommended in what is now Subparagraph (3)(iii) because of the addition of new language as Subparagraph (3)(ii).

Comment: IRRC recommended that the phrase “or designee” should be added to Section 95.246(1)(i) after the word “administrator.”

Response: The Department concurs. The phrase “or designee” has been added after the word “administrator” in the revised Subparagraph (1)(i).

Comment: IRRC noted that the second sentence of Section 95.248(9) contained a typographical error in using the word “departments” instead of the singular “department.”

Response: The Department has corrected the error.

19. *Miscellaneous comments - Reasonableness*

Finally, discussed below are the miscellaneous comments and the responses thereto which did not specifically fit under the headings of the comments received from the Commission.

Comment: *Section 95.233a – Telephone communication* – The Pennsylvania Institutional Law Project objected to the proposed language on telephone communication because it failed to address the cost of telephone access for inmates and their families and failed to require public disclosure of the terms of contracts between prisons and telephone providers. The comment also noted that telephone access is important for inmates to strengthen family and community ties and a critical component to successful transition to life after prison.

Response: The Department believes these recommendations go beyond the intent of the regulation to establish *minimum* standards for the operation of county prisons. The choice whether to provide telephone access, and more importantly, the contract for such services are decisions properly left to the discretion of county officials.

The following commentators requested a copy of the final-form regulation. A copy of the Preamble, Final-form Regulation and the Comment Response Document was sent to these commentators on this date, July 3, 2008:

Honorable Linda K.M. Ludgate – Berks Co. Court of Common Please

Rev. Dennis L. Ugoletti , Chaplain - Beaver County Jail

Craig A. Lowe - Warden, Pike County Correctional Facility

Karen A. Zullinger

Harry D. Gillespie, Warden and Susan M. Haxton, Deputy Warden – Greene Co. Prison

William M. DiMascio, Executive Director – The Pennsylvania Prison Society

George A. Wagner, Warden – Berks County Prison

Thomas W. King, III, Solicitor – Pennsylvania Sheriff's Association

Donna Oberlander, Chairperson, Board of Inspectors – Office of Commissioners, Clarion County

Steven A. Evans, Sheriff – Bradford County

Honorable Dick L. Hess – State Representative, 78th Judicial District



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS
P. O. BOX 598
CAMP HILL, PENNSYLVANIA 17001-0598

OFFICE OF THE
SECRETARY OF CORRECTIONS

July 3, 2008

VIA HAND DELIVERY

Kim Kauffman, Executive Director
Independent Regulatory Review Commission
14th Floor, Harrisstown 2
333 Market Street
Harrisburg, PA 17101

RE: *Amendments to County Correctional Institutions Regulations*
37 Pa. Code Ch. 95

Dear Mr. Kauffman:

I am pleased to present for your review and approval the Pennsylvania Department of Corrections' final form amendments to its county correctional institutions regulations. The amendments are promulgated under the authority of Section 506 of the Administrative Code of 1929, Act of April of April 29, 1929, P.L. 177, art. V, §506 (71 P.S. §186) and Section 3 of the Act of December 27, 1965 (P.L. 1237) (61 P.S. §460.3).

The regulations will amend Chapter 95 of Title 37 of the Pennsylvania Code by completing the revision of outdated regulations and making the minimum standards consistent with recognized professional standards for adult county corrections facilities. These regulations will amend a total of 22 sections of Chapter 95. In addition to completing the revision of outdated standards, the amendments establish a formalized inspection and inspection report procedure and a hearing process so that the Department can fairly and clearly meet its statutory duty to determine if a county prison should be classified as ineligible to receive prisoners sentenced to maximum terms of 6 months or more but less than 5 years. The regulation limits use of the hearing classification process to only the most serious of specifically identified safety and security violations.

The Department received a number of public comments on the proposed rulemaking. Through a cooperative effort between CCAP and the Department, a County-State Liaison Committee was previously established to discuss issues of shared concern between the Department and county prisons and to foster a productive working relationship between the state and local prison officials. Following the close of the public comment period, the committee provided a venue for review of the proposed rulemaking, the public comments and suggestions for improvements to the regulations. The public comments and the committee discussions were tremendously helpful in developing the final-form regulation.

The Department does not expect the regulations to have any significant negative fiscal impact on the Commonwealth or the counties. A number of revisions made to the regulation as a result of the public comments and the committee discussions were specifically intended to minimize or eliminate any negative fiscal impact of the revised minimum standards.

I am available at your convenience to answer any questions or concerns that you or any of the members of the Judiciary Committee may have regarding the regulations.

Very truly yours,


Jeffrey A. Beard, Ph.D.
Secretary of Corrections

dbf

C: William D. Sprenkle, Deputy Secretary of Administration
John Coyne, Director, Office of Legislative Affairs
Andrew C. Clark, Deputy General Counsel
Suzanne Hueston, Chief Counsel
Glenda Davidson, Office of General Counsel
David B. Farney, Assistant Counsel
File (CC-00096)

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 19-7
 SUBJECT: COUNTY CORRECTIONAL INSTITUTIONS
 AGENCY: DEPARTMENT OF CORRECTIONS

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

INDEPENDENT REGULATORY
REVIEW COMMISSION

2008 JUL -3 PM 12:06

RECEIVED

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/3/08	<i>Anna Squigiali</i>	HOUSE COMMITTEE ON JUDICIARY
	<i>Patricia Zamayo 7/3/08</i>	MAJORITY CHAIRMAN <u>Thomas R. Caltagirone</u>
7/3	<i>Alister</i>	SENATE COMMITTEE ON JUDICIARY
	<i>N. Ritter 7/3/08</i>	MAJORITY CHAIRMAN <u>Stewart J. Greenleaf</u>
7/3/08	<i>Kathy Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)