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INDEPENDENT REGULATORY
REVIEW COMMISSION

7/18/2006

David B. Farney, Assistant Counsel
PA Department of Corrections
Office of Chief Counsel
55 Utley Drive
Camp Hill, PA 17011

Dear Mr. Farney:

I write to convey the objections of the County Commissioners Association of Pennsylvania to adoption of the Department's proposed rulemaking at 37 PA Code Chapter 95, regarding county correctional institutions. Before getting into the specifics of the proposal, given that these new mandates do not come with any financial support from the Commonwealth, we take great exception to the Department's assertion in the filing documents indicating the regulations "are not expected to have a significant fiscal impact upon the Commonwealth, its political subdivisions, or the general public." While we agree that the Commonwealth will not be impacted financially, the counties and the tax paying public will be impacted by increased costs as a result of simple compliance with the regulatory standards imposed by the regulations. In some instances, the new requirements will require the purchase of equipment. In others, additional staff may be required in order to comply. These mandates will cost counties, and thus, the taxpayer, as county real estate taxes increase in order to fund compliance costs. The filing documents also indicate that the Department does not expect a significant increase in paperwork for the Commonwealth, political subdivisions or the public, yet sections of the regulations contain specific additional paperwork requirements for county prisons to achieve compliance.

Additionally, we question the authority of the Department to issue costly mandates to the counties given that statutory jurisdiction to operate county jails, pursuant to Title 61, lies with the local prison board, and the county funding authority is the board of county commissioners or their home rule counterparts. Under the proposed regulations, the governing body of local prisons will lose decision making authority, although there has been no change in the law to transfer such authority to the Commonwealth or to the Department of Corrections.

The filing documents also include a statement by the Department indicating that the rulemaking will define the circumstances for declassification of a county jail by the department. We have been unable to locate such a definition, or a process for declassification, or a procedure for appeal that would be available to counties. We also note that in a letter to the County Commissioners Association of Pennsylvania dated 27 March 2003, the Secretary of Corrections responded to county concerns on this issue by indicating that the decertification (declassification) process would be removed from the regulations.

We strongly recommend that the regulations be withdrawn from the regulatory review process, and that a new effort be undertaken, involving commissioners and their home rule counterparts and local jail administrators from the beginning, taking into account the expertise of these individuals to assure that the Department, and taxpayers, can understand the impact of the proposed new mandates that are included. We do acknowledge that the Department spent considerable time in meeting with local prison administrators, county commissioners and their home rule counterparts, however, much of the input provided during these events was not included in the proposed regulations as published on June 24, 2006 in the Pennsylvania Bulletin.

Specific Comments:

Definitions – there are definitions which appear to impose regulatory standards simply through definition itself rather than through a subsequent regulatory language. Also, there are terms used throughout the regulations that are not defined anywhere. For example, the regulations define *Health Care Screening* - process must include...” This is a requirement listed in a definition and should be discussed somewhere else in the regulations section, not in the definitions. Also, the definition of Training - (ii) includes an agenda... this is also a requirement listed in a definition and should be discussed somewhere else in the regulations section. The literal reading of this definition precludes the use of “on-line/interactive computer training” programs. Additionally with regard to definitions:

1. *Force, use of-*. This definition does not include the use of physical force to effect compliance with a lawful order. This omission makes inmate management nearly impossible. As a matter of fact, if the intent was to simplify the definition, using only “to effect compliance with a lawful order” would cover the other above enumerated justification.
2. *Governing county prison authority* – The language provided attempts to define the local prison board’s role as restricted to only administrative oversight and policy setting responsibility for the jail. In fact, the Prison Board is empowered by law with the “government and management” of the local jail and this responsibility is “exclusively vested” in the board.

In Subsection 95.220b (Scope), the Department proposes to remove a waiver of standards of compliance with Title 37 regulations even if the facility has achieved accreditation through the American Correctional Association or the National Commission on Correctional Health Care. The standards for accreditation under those two organizations exceed the current standards for county prisons. The section on inspections should have language added to explain how soon after inspection the audit report will be issued. We believe that there should be a requirement that the inspector present a verbal report on-site at the end of the inspection. It is critically important that language be included indicating that the county has the chance to respond to the report and that the county’s response becomes part of the report.

There is no mention of an appeal process in the event a facility disagrees with something cited in the inspection report that the facility feels is erroneous or inaccurate. The regulations are written in such a way as to prevent the county from responding to cited violations. There is broad discretionary power given to the Secretary of Corrections to order Vulnerability Assessments, and to declassify a prison, based on the inspection process. Under the current statutes, the local prison boards retain the sole power to operate local detention facilities. We believe that the Secretary of Corrections ordering a vulnerability assessment is beyond the

department's authority. We also question where the sentenced inmates will go if a prison is declassified. Will the Department Of Corrections accept these inmates?

Under section (9) "declassified" - this term needs to be defined.

Under section (11) there is no appeal or response process to the Citation of Noncompliance.

Section 95.224 Inmate Rules and Staff Procedures - under this section the term "jail" is used instead of "prison" which has been used up to this point, and the word "jail" is not defined anywhere.

Section 95.235 Work Programs - in section 4(b) recommended guidelines the word "furlough" is used and this is not defined.

Section 95.229. Bedding. – Unlike the admissions process in state prisons, county jails cannot "schedule" admissions, and therefore, must quickly accommodate inmates brought to the facility. There may be times when a large number of inmates arrive in a short period of time. In situations such as those, it may be necessary to provide temporary bedding, such as a mattress on a floor, which would place the facility in non-compliance.

Section 95.241. Security. – Under this section, a staffing analysis is required to determine staffing levels. The regulations also require an annual staffing analysis that will serve as the staffing allotment for the facility. While we agree that a staffing analysis should be done, and in the best of circumstances, all positions should be filled, the standard fails to take into account that commissioners have the sole budgetary authority, and for any number of reasons, staffing levels may not meet this unfunded mandate.

Section 95.243. Treatment services. – The regulations require treatment services which include education, social services, alcohol and drug treatment and counseling. While it may be desirable to have each of these services within the county jail, without funding, counties would be hard pressed to assure additional services when state and federal funding for county delivered human services in the community have been reduced over the past several years. Provision of these services should be a local decision based upon available resources. The regulations also require a needs assessment of every inmate. This standard would be more appropriate for a state prison setting where inmates have long stays, not in county jails where stays are shorter. Compliance with this mandate will require every county jail in the Commonwealth to hire additional staff, and budget financial resources for salary, treatment costs, and increased paperwork.

Section 95.248. Sanitation, maintenance and safety. – the regulations require an emergency power back-up system. This system must be load tested at least on a quarterly basis, with this load test and the operating status of the system documented. This will require unnecessary disruption at the facility during testing periods and require counties to incur considerable costs to engage a testing agency that can run into the thousands. One test per year should be sufficient to meet this standard.

Conclusion:

The County Commissioners Association of Pennsylvania again urges the Department to withdraw the regulations from the Independent Regulatory Review Process and to begin anew with specific input from commissioners and jail administrators. There is a need to balance the interests of the State Department of Corrections with the fiscal impact on the local property

owner. We do not believe that the regulations, as proposed, achieve that balance, and instead, impose arbitrary standards that should be decided locally based upon available resources, or be accompanied by adequate Commonwealth funding to meet the demands of the mandates. Should the Department decide to adopt our suggested approach, CCAP will commit the resources needed to assure input from the perspective of elected county officials.

Sincerely,

Scott Conklin
Centre County Commissioner
Chairman, CCAP Courts and Corrections Committee

Cc: The Honorable Stewart Greenleaf, Chairman
Senate Judiciary Committee

The Honorable Jay Costa, Minority Chairman
Senate Judiciary Committee

The Honorable Dennis O'Brien, Chairman
House Judiciary Committee

The Honorable Thomas Caltagirone, Minority Chairman
House Judiciary Committee

Alvin C. Bush, Chairman
Independent Regulatory Review Commission

Scott Schalles, Regulatory Analyst
Independent Regulatory Review Commission