

COMMISSIONERS OF CUMBERLAND COUNTY



Bruce Barclay
Chairman

Gary Eichelberger
Vice Chairman

Richard L. Rovegno
Secretary

RECEIVED
2006 JUL 27 PM 2:34
INDEPENDENT REGULATORY
REVIEW COMMISSION

July 20, 2006

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

Dear Mr. Farney:

Cumberland County objects to adoption of the Department's proposed rulemaking at 37 PA Code Chapter 95, regarding county correctional institutions.

We question the authority of the Department to issue costly mandates to the counties given that statutory jurisdiction for county jails remains as the local prison board, and the county funding authority is the board of county commissioners. Title 61 vests the authority to operate county jails with the local prison boards.

Under these proposed regulations, the governing body of the local jails will lose decision making authority, although there has been no change in statute to transfer 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, a process for declassification, a procedure for appeal that would be available to counties.

Before addressing 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 that the regulations "are not expected to have a significant fiscal impact upon the Commonwealth, its political subdivisions, or the general public." The Commonwealth will not be impacted financially; the taxpayers through the counties will be required to support these additional costs. Proposed 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. The

standards 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 most certainly require every county jail in the Commonwealth to hire additional staff, and budget financial resources for salary, treatment costs, and increased paperwork.

Cumberland County strongly recommends that the regulations be withdrawn from the regulatory review process, **and a new effort undertaken, involving commissioners 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 any mandates that are included.** Even though the Department spent time in meeting with local jail administrators and county commissioners; much of that input was not included in the proposed regulation as published on June 24, 2006 in the Pennsylvania Bulletin.

Definitions – there are definitions which appear to impose regulatory standards simply through inclusion of a definition of the term rather than regulatory language. Also, there are terms used throughout the regulation 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 separated 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 separated somewhere else in the regulations section, not in the definitions. The literal reading of this definition precludes the use of “on-line/interactive computer training” programs.

Additionally with regard to definitions:

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.

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 jails. Accreditation by the American Correctional Association, National Commission on Correctional Healthcare, or other recognized professional organizations should be recognized and waive Title 37, Chapter 95 and the inspection process.

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 a process of appeal 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 both order Vulnerability Assessments and to declassify a jail, based on the inspection process. There is inconsistency with the inspection process. What is compliant with an inspector this year may not be compliant with a different inspector next year.

Title-37, Chapter 95 does not address that when these standards do not address a specific area that the inspectors fall back to American Correctional Association standards or other professional standards. These standards must be identified and not left up to the inspectors for their arbitrary interpretation.

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.

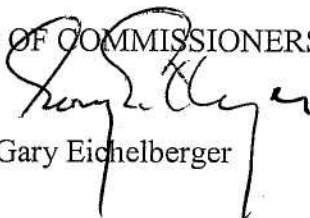
Cumberland County urges the Department to withdraw the regulations from the Independent Regulatory Review Process and to begin anew with specific input from commissioners and jail administrators. There is a need to balance the interests of the State Department of Corrections with the impact on the local property owner. We do not believe that the regulations, as proposed, achieve that balance, and instead, impose arbitrary standards that should remain as local decisions based upon available resources, or be accompanied by adequate Commonwealth funding to meet the demands of the mandates.

Sincerely,

CUMBERLAND COUNTY BOARD OF COMMISSIONERS



Bruce Barclay



Gary Eichelberger



Richard Rovegno

ON BEHALF OF CUMBERLAND COUNTY PRISON BOARD:



Alfred L. Whitcomb, Chairman

- cc: Cumberland County Legislators
- John Byrne, Chief Operations Officer
- Richard Moore, County Administrator
- Doug Hill, County Commissioners' Association of Pennsylvania
- Earl Reitz, Warden, Cumberland County Prison