

LANCASTER COUNTY**LANCASTER COUNTY PRISON**

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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

David B. Farney, Assistant Counsel
 PA Department of Corrections
 Office of Chief Counsel
 55 Utlely drive
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20 July 2006

Re: 37 PA Code Chapter 95 •
 Proposed Changes

Sir:

The purpose of this correspondence is to inform you that the Lancaster County Prison Board and Prison Administration does not support the changes being proposed to 37 PA Code Chapter 95, regarding county prisons/jails, as published in the *Pennsylvania Bulletin*. This chapter is often referred to as the "Operating Standards for County Jails" and was introduced after much debate in the early 1970's.

The changes being proposed are a result of a patchwork effort that resulted from former Governor Ridge's Executive Order Number 1 in 1996. The Governor's order, to all state departments and agencies, was to reduce unneeded bureaucracy and state mandates that would unnecessarily infringe upon the counties. In short, less state regulation, not more. At that time, the Pennsylvania Department of Corrections was one of the few areas that did not need much attention, since the DOC, in comparison to others, was "relatively new", in terms of being designated as a "department". It did not have decades to build up the vast stockpile of bureaucratic restrictions that others had. Yet, the Department of Corrections set out to change regulations, and in some respect, what appeared to be change, only for the sake of "change" itself.

The Department of Corrections states that the changes that have already occurred and those that are now proposed, are the result of regional meetings that were conducted over a decade. It is acknowledged that there were numerous meetings over that period, but there also needs to be noted that the manner in which this project was taken forward had a very distinct separation point, which can be segmented into a "phase 1", and "phase 2" of the changes to Title 37. The current proposed changes being "phase 2". In the initial effort, "phase 1", after much discussion between the DOC and the counties, as well as among the counties themselves, a number of changes were adopted to Chapter 95. These changes were more oriented toward the adoption of policies, by the counties, that would

effectuate the desired goals and objectives that Title 37 was trying to address. In essence, Title 37, set forth the “**What**” of what was to be required in the form of a standard, while the “**how**” that was to be accomplished was delegated to the counties. This was an agreeable compromise.

We now arrive at “phase 2”, which is the current proposed standards. These standards are not a result of “compromise”. These proposals are very specific in many areas and do not allow for the local governing authorities to establish the “**how**” by local policy. In some instances, it states the standard as a dictate, and then transparently allows for local policy, but only insofar as the local policy meets **precisely** what the DOC has already set forth. This was pointed out to the DOC, but quite apparently, without effect. To establish any viable document, it must be able to establish a clearly defined goal, yet general enough to allow flexibility in “**how**” to achieve that goal. The proposed standards do not do so and as change is needed in the future, will require long drawn out proceedings to change the slightest of these mandates. The specificity of the proposed changes also do not recognize that many of the “standards”, that are inherent in the field of county jail administration, are driven by the ever changing climate of court rulings. This factor could easily result in a county facility, while being in compliance with Title 37, would not be in compliance with current court mandated requirements. Standards need to be adaptable to such change in a more rapid fashion than is now allowed, or proposed.

At the crux of this matter, there is questionable authority for the DOC to act in the manner they have assumed unto themselves. The proposed changes are an usurping of the statutorily defined authority of the “County Prison Board”, which is recognized under 61 PA Code as the “sole governing authority”. The Courts across the Commonwealth have also upheld the prison boards as the “sole governing authority” in various matters, and those rulings have been very clear. The distinction has been made, most often in 16 PA Code, regarding counties in their labor negotiations, as well as under 61 PA Code, wherein reference is made to the operations of county salary boards. The DOC claims it has authority under Title 37, but the only mention of this is found, not under the chapter governing “County Jails”, but under the chapter governing “Regional Jails”, enabling them to be operated in counties in the Commonwealth. Therefore, we do not readily accept that the DOC has the authority over County Jails that they allege. We believe that the “**government and management**” of county jails is “**exclusively vested**” in the prison boards of the respective counties, by statute.

The DOC has stated in the PA Bulletin, that there is no fiscal impact. This is preposterous on its face. The state provides no funds to county corrections now, nor for any of the mandates it now wishes to establish. The proposed standards will require an increase in manpower, in services, in facility changes, in the overall infrastructure and general operations of many of our county facilities. There are 63 county facilities in our 67 counties and it is extremely doubtful that any will not need to make changes, which would be unnecessary, if the standards addressed only the “**performance goals**” and not micro-manage the “**how**” of achieving those standards. Under the current proposals, DOC micro-management is taken to the extreme, by the new authority given to the

Secretary of Corrections. Specific reference is to establishing broad authority to the Secretary to conduct a "vulnerability assessment" of a county operation, without request and also to be able to effectively "close" a county prison by imposing a restriction on the admissions of prisoners to the facility. Even though our current Secretary of Corrections is an exceptional individual, who knows what a future appointee will be like and bestowing of such authority to one individual, without safeguards, is dangerous. Further, to have no independent appeal in such cases is a circumventing of any ability to be heard. In fact, the irony of these proposed changes is that the DOC claims that it can close a prison to the acceptance of prisoners, yet it provides no mention of where those prisoners, under a court order for incarceration from a Court of Common Pleas would go. To the State? We doubt it. I would not even dare calculate the potential costs of such a decision. Yet the DOC claims "no fiscal impact".

The irony of the DOC current proposed changes, can be found in the fact that they restrict counties from any desire to meet the more ambitious standards, published by the America Corrections Association, the American Jail Association and the National Commission on Correctional Health Care. The proposed standards do not recognize the significant superiority of these national standards and the DOC will no longer accept, nor proposes to accept them, as an indicator of compliance with any Pennsylvania standards. The national standards are essentially performance based, while the proposed Pennsylvania standards are a hodgepodge of performance and instruction sheets. In fact, it appears that the goal is "do things this way", even to the extent of "what you are trying to do" becomes secondary. Although the DOC may say that input was sought, the counties question whether any such input was "heard". You should also be aware that, many of the current proposed standards were not the result of county input, but were composed by state officials with limited experience in modern jails, or none at all.

The Lancaster County Prison Board and staff are committed to the pursuit of "professional excellence" in the delivery of services by the county facility in the care, custody and control of all incarcerated individuals, as well as the protection of the community which it serves. To that end, we ask that the current proposals be retrieved from regulatory review, and that serious consideration be given to the total repeal of PA Code Title 37, chapter 95, pertaining to county jails. We believe that it is time for the adoption of national standards, by voluntary involvement, or in the alternative, that there be a "commission" set up not to "re-write" the Pennsylvania Standards, but to compose such a document completely new, which will address performance objectives, not the mechanics of how to attain any established performance, which is better left to the local jurisdiction as well as statutorily required.

Of those known to me 100% of my fellow correctional administrators do not oppose "standards", and are very desirous of meaningful and objective "standards" that are reflective of the national standards, while being local in application with a clear performance objective. Pennsylvania, in many ways, has been the birthplace of correctional innovativeness in the treatment of the individuals it incarcerates. Presently, there is an opportunity for Pennsylvania to once again be in the forefront. To this end, it is highly recommended that the current proposed changes be retracted and that there be

established a "joint commission" composed of state and county officials "equally" to review national standards and provide a mechanism for either adoption of such standards, or in the alternative a complete rewrite upon a "blank slate" of Pennsylvania standards replacing Title 37, with both of the above coupled to state funding of all new mandates created.

Thank you for any and all consideration, you may give our request,

Sincerely,



Vincent A. Guarini, Warden
On Behalf of The Lancaster County
Prison Board and Administration

cc: Lancaster County Prison Board

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

cc: Doug Hill, Executive Director
County Commissioners Association of Pennsylvania

John Wetzel, Warden
Franklin County Prison
President, Pennsylvania County Prison Wardens Association