



Office of Commissioners of Berks County, PA

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Mr. Alvin C. Bush, Chairman
IRRC
14th floor
333 Market Street
Harrisburg, PA 17101

INDEPENDENT REGULATORY
REVIEW COMMISSION

David B. Farney, Esquire
Assistant Counsel, IRRC
14th floor
333 Market Street
Harrisburg, PA 17101

Dear Messrs Bush and Farney

I am writing to you in my capacity as President of the Berks County Prison Board regarding the proposed regulations for Pennsylvania's county prisons (jails). I hope these comments will be considered even though they are a few days late. I was on vacation and did not get the letter written before leaving. I also respectfully request the opportunity to personally testify before the IRRC before the decision is made regarding approval of the regulations. I am totally opposed to the proposed regulations as written for the following reasons:

1. In summary, these regulations will cost the County money, which amounts to an unfunded mandate, be of limited benefit in terms of running our prison, be unnecessary, be the writings of someone unfamiliar with the daily operations of a jail, and institute unnecessary bureaucratic changes.
2. Removing the ability to receive a waiver of compliance with the Chapter for jails that achieve ACA accreditation is counterproductive, since both are far more difficult to achieve than is compliance with the standards of this chapter. The stated purpose is that removal is to ensure "periodic" audits or inspections. That reasoning is flawed because, in order to achieve and maintain these accreditations, a jail must be audited and inspected periodically. If the real reason for this regulation is to ensure periodic audits and inspections of the prison, simply grant a waiver and VISIT the jail annually. The proposed regulation is unnecessary.
3. Ordering a hearing to is troublesome for the following reasons:
 - A) It is unclear if the state has the authority to pursue this methodology. State law seems to clearly indicate that local jails are under local (county) control.
 - B) Prisoners sentenced to more than 6 months but less than five years are essentially everyone who is sentenced to a county jail.
 - C) This regulation is clearly an **unfunded mandate**. The regulation does **NOT** address

who pays for the alternative housing. It is my understanding that DOC officials could **NOT** answer the question when posed by prison (jail) officials. This new cost should **NOT** fall on the counties.

D) It is my understanding that in a letter from the Secretary of Corrections, dated March 27, 2006, the counties decertification concerns would be removed.

4. **FISCAL IMPACT** – The proposed regulations state that the regulations are revenue neutral to counties. Following are some specific examples:

A) 95.220a Definitions – This definition omits the force option to “gain compliance with a with a lawful order.” The regulation requires **beginning** with the least amount of force. This can be impractical depending on the specific circumstances. If a low level of force is used where a higher level is legitimately required, injury to the correctional Officer could result. This is improper for the CO and could result in medical costs from an injury to the CO.

B) This regulation attempts to remove authority from the local governing authority and limit it to administrative matters only. There is no rationale for this. It removes the ability to control spending by the people who know it on a daily basis, the local prison board. Further, state law exclusively vests the government and management in the Prison Board.

C) Intake interview- This is not a definitional issue. It is a question of the type and extent of services required by counties to provide. Obviously this can magnify costs.

D) Major infraction- this section eliminates discretion from the local jail. Why not allow the local jail to determine the appropriate level of punishment based on an onsite review of the facts related to that unique incident (within limitations).

E) Minor infraction – see above

F) Segregation- Most jurisdictions include disciplinary segregation. It is my understanding that it is overlooked

G) Training- The literal interpretation of this section suggests on-line computer training, which is inappropriate.

H) Unclothed search - Should be changed from unclothed to naked body. Some prisons perform searches in underwear. That is less than sufficient.

5. 95.22b Scope –Declassification hearings are only ordered for violations that present a significant threat.

6. This section now allows for a declassification hearing to be ordered as a result of any continued non-compliance that results in a citation.

7. Housing – If an inmate is required to be transferred to another facility, there is **no** indication of how it will be paid for. This leads me to suspect that the county will ultimately be “**on the hook.**”

95.235 Admission and Release – This section **requires that compensation be paid to virtually every inmate, except for personal housekeeping and house area cleaning.** This section is flawed for two reasons. Obviously, the cost to the county for community service work. Secondly, this will take away learning and training opportunities from inmates.

95.235 Providing comparable work opportunities for both male and female inmates to all available work programs will be extremely difficult to do. It will be extremely staff intensive and add additional operational and supervisory costs. Further, is there any statutory authority to mandate this requirement? The measure might be counterproductive. It will likely reduce the total number of work/learning opportunities that can be accessed.

95.240 Inmate disciplinary procedures-Not all jails have two levels of misconduct. This restricts creative, innovative and incident specific. Further, there are incidents where a major infraction may not necessarily require a formal hearing.

95.240 Minor discipline may not be imposed without a review by an independent party. This is far too cumbersome, time consuming and is unnecessary.

95.241 Discipline for a major infraction may not be imposed without a formal hearing. This imposes yet another administrative responsibility and cost to a jail system that is already extremely costly to the taxpayers. Further, it might be a poor use of resources, wouldn't this money be better spent on inmate rehabilitation for those who qualify to help these inmates improve their life style and reduce recidivism.

95.242 Security –

(2)(i) Use of force is limited to self-defense. This eliminates use of force to gain compliance. It should be obvious that force to gain compliance is a must in certain incidents.

(2)(ii) This regulation requires that written local policies must specify the authority for the use of force. This contradicts the preceding section.

(2)(iii) This section mirrors a prior section where the uses of **minimum force** is required. Depending on the type and level of misbehavior, this requirement may be totally inappropriate and may expose corrections officers to possible injury.

(f) (v) This will add additional requirements that will require more staff. Again, this is an **unfunded mandate.** Further, if it is the state's desire to run local jails, why doesn't the state take them over and pay all of the costs. Otherwise, allow the local prison board to have a reasonable degree of control. I think this was the desire of the legislature when it distinguished between local jails and state penitentiaries. What other justification could exist for the current separation.

95.243 By requiring specific treatment, this again removes local control. Berks county is currently in the process of implementing a Community Correction facility, which will provide additional remedial services for those inmates where LSI scores indicate a likelihood of success.

95.246. Investigations - this section should be amended to say, the prison administrator, **or designee.**

Thank you very much for your consideration of these points. I appreciate the opportunity to comment in writing and would also appreciate the opportunity to make abbreviated comments to the IRRC in person. I respectfully request that opportunity.

Sincerely,



Thomas W. Gajewski, Sr.
Berks County Commissioner