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August 22, 2006

Jeffrey Beard
Secretary
Pennsylvania Dept. of Corrections
2520 Lisburn Rd.
Camp Hill, PA 17001

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2006 AUG 29 AM 9:56
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Secretary Beard,

I am writing to formally express my protest to proposed legislative changes to Title 37, Chapter 95, which governs County Correctional Institutions. Before addressing these proposed changes in a specific manner, the Philadelphia Prison System ("PPS") first and foremost requests to be exempt from the application of the proposed changes to Title 37 discussed below.

The Philadelphia Prison System is the only county Jail which is also located in a City of the First Class. That distinction encompasses all of the accompanying challenges that flow from it. With well over 8700 inmates, we are over four times the size of the next largest county (Allegheny). Accordingly, no other county must face the operational and financial burdens that the PPS must on a daily basis. We therefore request that the PPS be exempt from the application of any the proposed changes to Title 37 discussed herein. On that note, I will specifically address the proposed changes below.

First, § 95.222 (a) (4) **Admissions** states that strip searches of an arrestee at Intake shall be conducted only where there is reasonable belief or suspicion that the arrestee may be in possession of an item of contraband. It has been indicated that this change is being proposed as a result of decisions in caselaw that have stated there must be reasonable suspicion for strip searches at admission. However, the City of Philadelphia is currently engaged in federal litigation in Eastern District court regarding this same issue.

The position the City is arguing is that, contrary to the cases which have stated that reasonable suspicion is necessary--cases which addressed counties where booking/arraignment take place at the county jail--the process in Philadelphia is that

arrestees are only admitted to the PPS after a full arraignment process at the Police Administration Building or police districts, where the arrestee is not strip searched. Therefore, unlike the cases that have been decided against small county jails, an arrestee is only admitted to the PPS after being arraigned and not released on bail.

Along with the City's argument in the federal litigation case, there are serious operational concerns. The PPS admits between five-hundred (500) and six-hundred (600) new inmates per week, creating an operational burden for us in separating new admits based on reasonable suspicion that no other county in the state will have to contend with. The combination of new admits and our current population numbers have given us no space in our Intake facilities to be able to classify and separate inmates based on reasonable suspicion for a strip search.

Moreover, records we have produced pursuant to the federal litigation have shown that there have been many cases of contraband found on new admits who would not qualify for a strip search based on reasonable suspicion for weapons or drugs (for example, drugs found on a new admit with a retail theft charge). These findings have shown that it would be a security nightmare for a system as large as the PPS to not strip search every new admit. Finally, the delays caused by classifying and separating new admits to determine reasonable suspicion for strip searches will also affect admissions at the Police Department level. The delay caused in creating the space necessary at Intake to be able to receive new, arraigned admits from the Police Department will create more of a backlog at the Police Administration Building and Police Districts.

Indeed, there is no 3rd Circuit precedent regarding the strip search issue in regard to post-arraignment facilities like the PPS. Therefore, we protest legislative changes to Title 37 which will damage the City's argument (as it will be discoverable in litigation) in a case which could positively affect the security of correctional institutions throughout the state.

On May 19, Deputy Commissioner Tomaszewski, Major Charles Shovlin and Deputy Director of Legal Affairs Greg Vrato met with the DOC County/State Liaison Committee to express these same concerns. Several counties voiced their agreement with our position. However, the DOC recently informed us that the changes for this section of Title 37 will still be pursued. Again, I cannot understand why a change would be made that will damage our attempt to preserve security for our own facility as well as all facilities in the Commonwealth; a change made on the mistaken presumption that this issue has been decided by caselaw.

Pursuant to the operational difficulties mentioned above as a result of our current population challenges, our next objection is to **§95.220b (9) Scope**. This section states that if a county prison does not meet compliance standards, "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..."

We object to this section applying to Philadelphia County. The PPS does not expect to fall short of compliance standards at anytime; however, we are doing our best to deal with population challenges which make it very difficult to house inmates in a manner that we would consider ideal. The Philadelphia County criminal justice system is currently addressing the potential causes of increased prison population to address this issue in an ongoing matter. But, as we presently deal with the population challenges we have with over 8700 inmates, we are hard-pressed to understand what the State would accomplish by “declassifying” one of our facilities.

The PPS has already been told by all 60 counties that no other facility has room for any of our inmates. We cannot imagine what facility the State would provide upon shutting down one of our facilities which would not cause an incredible negative affect on the security of the citizens of this Commonwealth. Accordingly, if this section is to exist at all within Title 37, it should only be with an accompanying provision stating what the State will do to house the approximately 1,000 plus inmates that are housed in any given PPS facility in the event that the State, pursuant to this proposed provision, declassifies one of our facilities.

The next area that is problematic is **§ 95.241 Security, Section (b)(3) Counting Procedures and (g) Count Control**. The proposed change is that an inmate count should be taken on each shift. We do not do a headcount on the 7-3 shift. Due to the number of inmates that are in movement at this time of the day, it is simply not operationally feasible for a headcount to be conducted on the 7-3 shift. Again, this is a situation where the PPS is dealing with a number of inmates far beyond the rest of the county prisons in the state.

Next, **§ 95.241 Security, (c)(ix) Emergency Plans**, states that there shall be written agreements with other jurisdictions for handling emergency incidents and the possible evacuation of inmates. Although we are working on Emergency Plans with the City of Philadelphia for the PPS, we do not have agreements with other counties to house our inmates in case of evacuations. Due to our current population challenges, we have already contacted every county in the state regarding the possibility of an arrangement to house some of our inmates. Every county has informed us that there is no bed space for such an arrangement. With over 8700 inmates at PPS vs. the size of the other 60 counties in the state, it is simply not possible for us to enter into an agreement with any of the other counties regarding the housing of inmates on an emergency basis. We accordingly believe that this should not be a requirement; and, in any event, a requirement from which the PPS is exempted.

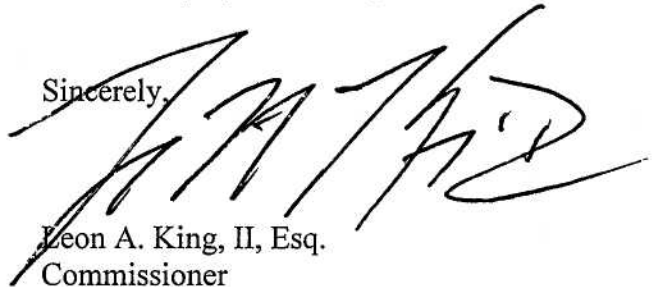
Lastly, **Section 95.230 (5) Food Services**, states that all food worker staff “shall be given a physical examination and certified to be free of communicable diseases before starting to work in the Food Service Department.” This is beyond the scope of Pennsylvania Code Sections 46.111 and 46.112, which governs food employees in the state. Pennsylvania Code 46 does not require a food service employee to undergo a physical examination prior to commencing work in a food service department. **Rather, it requires that the employee report any disease or medical condition to the food**

service operator. Further, the City of Philadelphia requires that all food staff employees are trained for how to handle food under the assumption that one of the food staff workers has acquired a communicable disease. Indeed, a food staff worker can be certified for not having a communicable disease upon commencing work; but could, hypothetically, become infected with a communicable disease on any given day. Therefore, the training on how to handle food under the assumption of a staff worker being infected with a communicable disease is clearly most important. The PPS complies with these requirements of both Pennsylvania law and the City of Philadelphia.

Based on the above, to impose a certification process for every food service worker prior to their commencing work for us would be a tremendous operational burden, due to the number of our food service staff. As the number of food service staff would be shortened at any given time due to this testing, there would be an accompanying delay in providing food to our over 8700 inmates in a timely manner. This is yet another example of the number of inmates/staff at the PPS creating burdens that are not experienced by any other county prison in this State.

Based on all of the above, we again request that the Philadelphia Prison System be exempted from the proposed changes to Title 37 discussed herein. We would greatly appreciate any help you can provide in this matter before these proposed changes to Title 37 are officially made.

Sincerely,



Leon A. King, II, Esq.
Commissioner

cc: The Honorable Edward G. Rendell, Governor of Pennsylvania
John H. Estey, Governor's Chief of Staff
Thomas Corbett, Pennsylvania Attorney General
State Senator Stewart J. Greenleaf, Chair, PA Senate Judiciary Committee
State Rep. Dennis M. O'Brien, Chair, PA House Judiciary Committee
Alvin C. Bush, Chairman, PA Independent Regulatory Review Commission
William Sprenkle, Deputy Secretary, Pennsylvania Dept. of Corrections
Harry E. Wilson, President, PA Wardens' Association
Pedro A. Ramos, Managing Director, City of Philadelphia
Loree Jones, Deputy Managing Director, City of Philadelphia
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Robert Tomaszewski, PPS Deputy Commissioner for Administration
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Gregory J. Vrato, Esq., PPS Deputy Director of Legal Affairs