



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Corrections
Virginia Administrative Code (VAC) citation	6 VAC15-40
Regulation title	Minimum Standards for Jails and Lockups
Action title	Amend current regulations to add requirements for restraint devices, application methods, and reporting of restraints used on pregnant offenders.
Date this document prepared	12/15/11

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

The current regulations do not proscribe any special considerations for restraint of offenders known to be pregnant while under the control of local jails and lockups. The proposed changes will specify the type of restraint devices to be used, how the restraint devices may be applied, the circumstances under which the restraints may be used, and reporting requirements for use of restraints on offenders known to be pregnant.

Legal basis

Sections 53.1-5 and 53.1-68 of the Code of Virginia mandate that the Board of Corrections prescribe regulations to govern the administration and operation of local correctional facilities.

Need

A coalition of organizations representing the civil rights and faith community has presented to the Board of Corrections a concern that current restraint practices for pregnant offenders are inconsistent and may result in vulnerable women being unnecessarily restrained when they are pregnant and in labor, delivery, and postpartum recovery – a practice that not only violates a woman's dignity, but can detrimentally affect her health and the health of her pregnancy.

Substance

Handcuffs applied in the front of pregnant offenders shall be the only authorized restraints approved for use when a pregnant offender is transported outside the secure perimeter.

If the Officer deems that the use of handcuffs or no restraints during transport will not adequately address an offender's escape potential, then additional security personnel shall be assigned rather than the utilization of restraints.

Neither metal restraints nor restraint belts that directly constrict the area of pregnancy may be used on pregnant inmates.

A pregnant inmate shall not be shackled by the wrists, feet, ankles, legs, or in any other way that restricts the woman's movement during labor and delivery, or while in postpartum recovery after giving birth, unless a determination is made in writing that the inmate poses a danger to herself and others.

Exceptions to this rule would be an offender who is combative, a threat to herself, or a threat to others. In those cases, only soft restraints are used.

Any restraint of a pregnant inmate that is deemed necessary for the safety of the inmate and others must be conducted by the least restrictive means necessary.

Where restraints are used, such restraints shall allow for full freedom of movement by the pregnant, laboring, or post-partum woman, including the ability to stand up, to turn over, and to walk around.

If restraints are used at any time during labor, delivery, or during postpartum recovery, a written finding as to the reasons why the use of restraints was necessary to ensure the safety of the inmate, medical and correctional personnel or the public must be made.

All required documentation of shackling incidents of pregnant inmates is maintained and reviewed by the facility administrator and the responsible health authority for compliance with written policies and procedures; corrective actions are taken as necessary and documented.

The numbers of all required documentation of shackling incidents of pregnant inmates shall be compiled in to a record made publicly available.

All restraints must be removed immediately if medical staff so direct.

Alternatives

There are no currently known alternatives to this action. Input from jail administrators, other corrections professionals and the public will be solicited and considered as the final regulation is developed.

Public participation

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Jim Bruce, Virginia Department of Corrections, Agency Regulatory Coordinator, PO Box 26963, Richmond, VA 23261-6963, james.bruce@vadoc.virginia.gov, phone, (804) 674-3303, extension 1130, FAX (804) 674-3017. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Family impact

The proposed action is intended to protect the health of pregnant offenders and the health of their pregnancy.