

Board of Corrections
Liaison Committee
March 14, 2012

**COMMONWEALTH OF VIRGINIA
BOARD OF CORRECTIONS
LIAISON COMMITTEE MINUTES**

Regular MeetingMarch 14, 2012

Location6900 Atmore Drive, Richmond, Virginia

Presiding.....Elton Blackstock, Chairman

PresentPeter Decker, III, Chairman, Board of Corrections
B. A. Washington, Member, Board of Corrections
William Osborne, Member, Board of Corrections
Rev. Anthony C. Paige, Member, Board of Corrections
Felipe Cabacoy, Member, Board of Corrections
Linda Curtis, Member, Board of Corrections
John Jones, Virginia Sheriffs' Association
John Roberts, Newport News Department of Adult Corrections
Gabe Morgan, Sheriff, Newport News City Jail
David Simons, Hampton Roads Regional Jail
Tom Jones, Sheriff, Charlotte County
Sandra Thacker, Superintendent, Peumansend Creek Regional Jail
Eugene Taylor, Hampton Roads Regional Jail
Sheriff Beth Arthur, Arlington County
Sergeant Tameka Hull, Arlington County
Major David Kidwell, Jail Director, Arlington County
Dick Hall-Sizemore, Department of Planning and Budget
Debra Gardner, Chief Deputy, DOC
Jim Parks, Classification and Records, DOC
Brooks Ballard, Architecture and Engineering, DOC
Jim Bruce, Policy and Initiatives Manager, DOC
Tom Young, Lead Engineer, DOC
Melissa Welch-Atkinson, Procedure Development Manager, DOC
Bill Wilson, Compliance and Accreditation, DOC
Donna Foster, Compliance and Accreditation, DOC

The meeting was called to order and attendees were welcomed.

Committee Chairman (Elton Blackstock)

- Mr. John Roberts welcomed committee members and guests. He announced the recent death of Peter Decker, II, and told attendees of Mr. Decker's legacy as a revered member of the community while offering the Chairman of the Board, Peter Decker, III, the condolences of the committee.

Mr. Roberts announced that Superintendent Blackstock would be serving as Chairman of the Liaison Committee from this meeting forward. Superintendent Blackstock officiated at this point and called for a motion to approve the November minutes. By **MOTION** duly made and seconded, the minutes were unanimously **APPROVED**. The Motion carried.

I. Meeting Summary

- (The 2012 meeting schedule was not included in the Liaison meeting package and is attached to the March minutes package and will be included in the May Liaison package.)

Jim Bruce reported the following:

- HB1488 and HB836 pertaining to restraint of pregnant inmates have both been tabled for this Session. The public comment period for the addition of this language to the Board Standards has closed.

Mr. Bruce offered a visual display of stacks of public comments made on the issue. The stack showing opposition of all restraints was small, the display supporting some restraint but not during labor was the largest of the stacks and the stack of comments supporting no restraints was small as well. Sheriff Morgan was leery of the visual display adding that anyone could have multitudes of people comment on a specific viewpoint thereby swaying the tally as numerical alone. He was more interested in a summation of the arguments of opposing views. He noted that the majority of escapes occurs during transport of offenders for feigned hospital visits or any time the offender is outside of secure areas. Superintendent Simons agreed with Sheriff Morgan adding that this bill does not differentiate between a one-week-term and a full-term pregnancy. He has had pregnant inmates who were on methadone who security needed to transport to methadone clinics because the offender was trying to kill the fetus. The judges sentenced them to incarceration until the birth for the purpose of prenatal care and detoxification. He said medical is consulted and unless absolutely necessary, they are not restrained.

Reverend Paige stated that pregnancy, whether in church or in jail, does not change behavior. He then asked if the language of the tabled bills was inadequate. Mr. Wilson advised that it was the language of the proposed Standard in question. Mr. Bruce clarified that the proposed bill restricts all restraining of pregnant inmates. Mr. Decker noted the proposed bill was heard by the Board of Corrections (the Board), who initially voted to support the bill but have since been advised of how problematic and restrictive this bill is in scope by the Sheriffs' and the Regional Jails Associations. He added that he was glad that the Associations were represented in the current meeting to provide

their view of the bill. He is hoping to take the best of both views and suggest something in the middle. Superintendent Thacker commented that the language used in the bill is inappropriate; that the term “shackle” is outdated and not reflective of how inmates are restrained and which projects an image that is incorrect and inflammatory.

Mr. John Jones, Executive Director of the Virginia Sheriffs’ Association, addressed the committee. He spoke to the creation of the Liaison Committee, of which he was a part and which was created to serve as a means of communication between the sheriffs and the Department of Corrections (the Department) and has worked well over the years. For that he expressed appreciation. The Sheriffs’ Association is concerned about a few items in the proposed bill. His organization appeared before the House committee to oppose the bill and it was ultimately not passed. Delegate Hope appeared before the Board to discuss passage of the bill, but Mr. Jones added that this should have been handled by the Board as a standard and not legislated. He noted the language in HB836 went further than HB1488 did, and the Sheriffs’ Association went before the committee to oppose HB836 for public safety reasons.

Mr. Jones noted that this is an emotionally charged issue. During the meeting at the General Assembly, the room was packed with people speaking of shackling female inmates during delivery and added that this has never been done by any facility in Virginia that he was able to document and he shared that fact with the committee. He stated that oftentimes pregnancy cannot be determined immediately and that it is not unusual for the offender to be received into the facility, impaired by alcohol and/or drugs, necessitating restraint with pregnancy not being known. He emphasized the term shackling is no longer used and is considered barbaric. The current acceptable term is restraint and minimum restraint is used to protect public safety as well as safety of the officers.

Sheriff Beth Arthur was in attendance representing the Virginia Sheriffs’ Association as first vice president and is Sheriff of Arlington County overseeing the Arlington County Jail. Sheriff Arthur identified Delegate Hope as a representative of Arlington County and expressed how difficult it has been to have an opposing view from the delegate. Sheriff Arthur noted that she is the mother of two. She discussed the impression of restraining a pregnant offender as being undignified, to which she suggested that it is undignified for all people to be restrained but is necessary for the safety of anyone in her custody. Sheriff Arthur has had pregnant offenders attempt to run from custody and to try to escape from a patrol car. She noted that jails are much more likely than the Department to have custody of pregnant inmates because the baby has typically been delivered by the time they are received into the Department.

Mr. Decker commented that he wished Board member Jonathan Blank could have been in attendance during this meeting as he was the most passionate supporter of the proposed legislation. Beyond that, he remarked that the proposed legislation gave the custodial administration discretion if necessary, specifying soft cuffs in the front. Sheriff Arthur agreed but added that it requires documentation and places responsibility on the deputy as the liable individual, and she considers the liability to be hers. Mr. Decker asked if she would want the entire bill scrapped or if she likes parts of the proposal, and she indicated that she could handle the front restraining limitations once the offender is known to be pregnant but that the documentation could prove to be excessive. She noted there is less required documentation and reporting to the Department in the event of a death in custody than is required by the legislation being discussed. She also indicated she could accept the leg restraint requirement that allows enough space to prevent shuffling, which also allows for leg irons without chains, but they do not do this anyway. She offered a hypothetical scenario of a female inmate whose boyfriend is a gang member. She notifies him that she is going to a hospital and he uses firearms to help her escape causing a horrific scene in a hospital emergency room. Sheriff Arthur read her written suggestion of the minimum standard and it is enclosed in this package.

Superintendent Thacker asked why there is a requirement for a report. Mr. Wilson explained that this was Delegate Hope's language but that he agreed with her; restraints may be necessary even to transport to the shower and back or to the recreation room and back and that if a report is written for each transport, it will become excessive. If use of force is necessary, the jails typically document it for all inmates. Delegate Hope wanted to be able to visit any jail, request this report and be able to note the number of times pregnant inmates were restrained or handcuffed, which would prove daunting to document each incident. Mr. Wilson suggested that the standard require that the physician and administration review all policies regarding protocol annually to include restraint of pregnant offenders in lieu of reporting individual incidents of pregnant inmate restraint.

Sheriff Morgan expressed his discomfort with the reporting of restraint use. He considers it basically as being surveillance due to a perceived past error, and he asked how this report enhances public safety. Sheriff Morgan added that this language is being proposed to pacify an advocacy group. He asked to be shown where this issue is or ever has been a problem. Sheriff Arthur described an encounter with an advocacy group who chose her jails to single out when their complaint was actually with another jail. For reasons unknown, the group basically refuses to confront the jails with whom they have issue.

Rev. Paige complimented Sheriff Arthur on her presentation/discussion of the pregnant female restraint topic. Mr. Washington added that the additional knowledge shared by the sheriffs' offices and regional jails has clarified the picture for the Board, most of which they were unaware of previously. They indicated while the Board wants to support the offenders, they also want to support the staff taking care of them all the while ensuring public safety.

Mr. Blackstock spoke out as the president of the Virginia Association of Regional Jails stating that the regional jails house half the local inmate population in Virginia. Their views are similar to those expressed by the Sheriff's Association. He shared that his wife is a nurse and has seen several articles regarding this issue in nursing manuals. After doing research of some other regional jails across the country, he found that similar Code changes had been recommended in other states, in particular, Illinois, but he indicated this has not been an issue in Virginia, which, historically, has been at the forefront of operations in corrections and jails. Virginia has a Board of Corrections as well as the minimum standards for varying institutional levels. Many states have no minimum standards whatsoever. Virginia has jail inspectors and auditors from the Department, who visit annually and who audit every three years. What Virginia has done in the past has worked. A standard regarding the use of restraints is already in place. A committee meets to identify standards that need updating and those revisions are then sent to the Board for approval. This issue of restraining pregnant females from the viewpoint of regional jails is that we should follow the present path with some specifics for pregnant females. He asked: If an inmate walks in stating that she is pregnant, should restraints be forbidden from that point forward, pregnancy unproven? He noted that most escape attempts are planned for doctors' offices or outside appointments. He considers this to be very dangerous, and the superintendents agree that this issue needs to go back to committee for further review by the Board with recommendations from the sheriffs and regional jails.

Mr. Osborne asked if there were any statistics concerning the number of babies born to Virginia offenders in custody. There were no statistics immediately available during the meeting. Mr. Jones responded that the Sheriff's Association had done a survey asking about restraint during delivery and there were no affirmative responses.

Superintendent Simons suggested using a model policy as used by the Department in the past. Also he noted that the training academy could be an avenue for teaching protocol on this issue. Hampton Roads Regional Jail has an average of two births per month, and he would welcome Delegate Hope and/or the ACLU to visit his jail to see the treatment of pregnant inmates. They have ultrasound capabilities on site, and the inmates walk the halls unrestrained. He

stated that it would paint a different picture than what has been projected. Sheriff Morgan added that he envisioned a good combination of using Sheriff Arthur and Superintendent Simons' experiences and involving the ACLU in assisting with not only creating the training at the academy but creating in-service training addressing this issue. He suggests the goal could be met through compliance rather than legislation.

Mr. Blackstock thanked the speakers on the topic of restraining pregnant females in custody.

Bill Wilson reported the following:

- According to the Compensation Board as of January 31, 2012, there were 28,732 inmates housed in the jails of which 1,800 were federal inmates. The rated capacity is 21,289 leaving 5,277 out of compliance inmates.

There were a couple of legislative topics to discuss. There was language introduced for temporary housing units. The construction committee and the Board did not support the use of temporary housing structures and recommended language changes. The language was changed in the senate bill to allow temporary structures for five years max with two extension requests permitted. Each extension would cost them 25% of the reimbursement of the permanent structure. Also, the Board would need to be advised of an expansion or a permanent facility plan and would require a community-based correction plan and a planning study. In the case of an emergency, such as fire or some damage causing the structure to be condemned, the facility would be given a one-year time allotment for submission of the community-based correction plan and planning study with an annual review required by the Board. The use of the temporary structure would be limited and very restricted. This is under consideration by the Senate and was struck down by the House.

The other legislative issue regards the bed space survey. Mr. Wilson noted that Mr. Hickman made these changes due to his attendance at the Liaison Committee meeting last year. At the time of this meeting, Mr. Wilson only had a strikethrough of previous language. To his knowledge, the survey will still be required of the Board but the language referencing double bunking capacity will be changed to design capacity, also referred to as rated capacity. The information they request will basically entail the number of single cells, the number of multiple-occupancy cells and the number of dorms. Any extra bed space will be considered overflow beds, classified as emergency use only.

Rev. Paige asked the origin of the proposal of the new language concerning temporary structures, specifically asking if it came from the Department. Mr.

Wilson advised that the Board had submitted a Legislative Action Summary to the Governor's Office, but the language was changed by the legislature. Ms. Ballard added this was a proposed budget amendment that was attached to the state budget, patroned by Sen. Blevins to which the Department offered suggested changes. Rev. Paige stated that he did not recall the Board discussing changes to any language regarding temporary structures. His concern is that the full Board had not been involved in these decisions. Mr. Decker reminded Rev. Paige of the e-mails they received during the legislative session. Rev. Paige asked if they were asked for responses. Several Board members agreed that they had been asked for feedback. Mr. Hall-Sizemore interjected that the language does not state that the temporary structure shall be allowed. It states the Board may grant a waiver to the present standards but that the ultimate decision will still be by the Board. Rev. Paige expressed his concern that once the floodgates are opened, other localities may expect similar leniency. Mr. Wilson noted that the Board opposed the language change altogether. Chief Deputy Director Gardner clarified that the Department did not introduce this language; it was introduced by a legislator; that the Board could respond or leave the language, which was rather detrimental. There was no choice whether to leave the language or remove it. The correspondence was disseminated to the Board asking if the member was in agreement or wanted to make any modifications. This information noted that suggested modifications would either be more palatable and easier for the Board to enforce or that the Board member could make their own suggested modifications. The response was optional but the legislation would move forward regardless.

Rev. Paige asked if there was data regarding the number of requests for removal of inmates from jails. Mr. Wilson advised that he does not track this information and asked for clarification of the term 'removal of inmates' noting that there are numerous reasons that jail administrators may ask for removal of inmates. Rev. Paige implied cumulative requests. Mr. Wilson and Mr. Parks agreed that there was no data collected in regard to these requests although it could be retrieved. Rev. Paige asked why we have overpopulated jails while there are empty prisons, adding that out-of-compliance inmates should be in the custody of the state, leaving the localities to build new facilities. Sheriff Morgan spoke of the out-of-compliance numbers, which he stated was 7,500 for which the jail gets \$12 per state-responsible inmate. If you look at any jail cost audit report, the median cost is about \$55 with the difference is borne by the locality. There are eight facilities vacant in the state, one of which is brand new and has never housed a prisoner. He currently has 53 inmates in the regional jail that are out-of-compliance and to whom he pays the regional jail to house. He needs those 50 to be removed from the regional jail. Essentially, he is paying to house inmates that are the responsibility of the Department. In addition, he will be shorted on the fourth quarter per diem by the Compensation Board. Relative to changing the legislative language, he wanted to thank all the members of the Liaison

Board of Corrections
Liaison Committee
March 14, 2012

Committee for the pressure placed on legislators to change the parameters of the bed space survey. If not for the efforts of the Liaison Committee, the language would not have been changed.

Jim Parks reported the following:

- The out-of-compliance rate is creeping up and the Department is now in the final phase of closing Mecklenburg Correctional Center. At the same time, the Pennsylvania inmates have been almost completely returned to their home state. The Mecklenburg inmates are being sent to Green Rock, and 400-500 beds will be available for transfer from the jails. He noted that problem inmates should be identified for transfer by the jails. He asked that jails notify Ms. Jennifer Hastings in the Intake Unit for assistance. All Department inmate intake flows through Powhatan Reception Center. Superintendent Blackstock complimented Mr. Parks and his staff for assisting with a recent issue involving gang members. Mr. Parks stressed that he wants to help with issues that stress the resources of the jails and asked that he or his staff be made aware of these issues. Superintendent Blackstock acknowledged that it was not the fault of the Department that there is an empty prison being mothballed while out-of-compliance rates increase. It is the fault of the legislature, who has not provided funding to open the facility. His suggestion was to talk to representatives in your locality about your concerns. Superintendent Simons suggested that out-of-compliance numbers for localities be considered collectively to include the jail and the corresponding regional jail.

Superintendent Blackstock announced that the next meeting will be held on May 16, 2012, at 9:30.

By MOTION duly made by the Chairman Elton Blackstock, seconded by several members in attendance and unanimously APPROVED, the meeting was adjourned.