Virginia
Regulatory
Town Hall

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Proposed Regulation
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	11/16/12

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.*

Brief summary

This regulatory action proposes adding section 985, *Restraint of Pregnant Offenders*, to 6 VAC15-40 with the intent to address restraints to be used on offenders known to be pregnant during transportation outside the secure perimeter, during labor and delivery, postpartum recovery, and for medical treatment unrelated to labor and delivery. Conditions for exceeding the specified restraints and the reporting thereof is addressed. All staff are required to annually review policy related to restraining pregnant inmates.

Acronyms and Definitions

There are no acronyms or undefined terms used in this section.

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.

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.

Substance

The section to be added provides that in general an inmate known to be pregnant will be restrained in the least restrictive manner appropriate to the inmate's situation and perceived flight and security risk. Handcuffs applied to the front of the inmate are the only restraints to be used for transportation outside the secure perimeter. No restraints are to be used during labor and delivery. Inmates in post partum recovery and when in a medical facility for treatment unrelated to labor and delivery will be restrained in the least restrictive method necessary. An individualized determination must be made to exceed these restraints and all use of additional restraints shall be reported. All facility staff will be required to annually review policy related to restraint of pregnant inmates.

Issues

There has been a wave of public concern related to restraint of pregnant offenders as evidenced by legislation introduced in the 2011 and 2012 General Assembly sessions and a coalition of various organizations and agencies to support statutes and/or regulation on this subject.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no known applicable federal requirements.

Localities particularly affected

The effects of this regulation will be consistent on each locality that operates a jail or lockup or participates in a regional jail.

Public participation

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is 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) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written 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 date of the public comment period.

Economic impact

There is no anticipated economic impact as this regulation defines use of current resources and practices.

Alternatives

There are no currently known alternatives to this action. Input from jail administrators, other corrections professionals, and the public have been solicited and considered as the proposed regulation was developed.

Regulatory flexibility analysis

There is no known alternative regulatory method to meet the perceived need to define restraints and restraint methods to be used on pregnant jail inmates. This regulation defines the use of currently available equipment and reporting processes.

Public comment

A total of 374 comments were received following the publication of the NOIRA. They were sorted and summarized as below.

Commenter	Comment	Agency response
27 Comments	Support HB 836 (2012)	Interpreted as support for regulation limiting restraints applied to pregnant offenders
66 Comments	Jails should follow Department of Corrections procedure on restraint of pregnant offenders	Interpreted as support for regulation limiting restraints applied to pregnant offenders
112 Comments	Restraints should not be used during pregnancy	Interpreted as support for regulation limiting restraints applied to pregnant offenders
153 Comments	Restraints should not be used during labor and delivery	Interpreted as support for regulation limiting restraints applied to pregnant offenders
5 Comments	Virginia jails currently have policies and procedures to protect pregnant offenders, no regulation is needed.	Interpreted as regulation is not needed based on current policy, procedure, and practice.
9 Comments	Incomplete, could not determine commenter's position	None
2 Comments	Irrelevant to the Regulatory action	None

Family impact

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

Detail of changes

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
985	This proposed action adds a section to specify the restraints to be used on an offender known to be pregnant. Subsections specify restraints for transportation, labor and delivery, postpartum recovery, other hospitalizations, related staff training, and the criteria and reporting requirements for use of more restrictive restraints.	None	Protect the health and well being of pregnant jail inmates and their fetuses.