COMMONWEALTH OF VIRGINIA
BOARD OF CORRECTIONS

Regular Meeting November 16, 2011
Location ……..6900 Atmore Drive
Richmond, Virginia
Presiding……...Peter G. Decker, III, Chairman
Present …….. Cynthia M. Alksne
Jonathan T. Blank
Felipe Q. Cabacoy
William E. Osborne
B. A. Washington, Sr.
Absent……..Kurt A. Boshart
Linda D. Curtis
Reverend Anthony C. Paige

1:00 p.m., Wednesday, November 16, 2011
6900 Atmore Drive, Richmond, Virginia 23225

The meeting was called to order. Chairman Decker welcomed attendees, thanked everyone for coming and asked that the Board Roll Call be taken. Six members were present. Three members were absent.

I. Board Chairman (Mr. Decker)

1) Welcome Newest Board Member Mrs. Linda D. Curtis

Mrs. Curtis had a prior commitment and was unable to attend. She will be at the December meeting.

2) Board Motion to Approve October Board Minutes

The Chairman called for a Motion to approve the October Board Minutes

By ***MOTION*** duly made by Mr. Cabacoy and seconded by Mrs. Alksne, the November Board Minutes were ***APPROVED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

3) Board Motion to Approve 2012 Meeting Dates

This item was provided for review, prior to the meeting. Chairman Decker indicated there would be no meetings in January and February and asked if there were any other

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comments. Hearing none, he called for the question.

By ***MOTION*** duly made by Mrs. Alksne, seconded by Mr. Osborne and verbally responded to in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington), the 2012 meeting dates were ***APPROVED*** as presented with the next meeting being held in March. **The dates are as follows: March 21, May 16, July 18, September 19, October 17 and November 21, 2012.**

The Motion was ***APPROVED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

4) **Report of Nominating Committee/Election of Board Officers (Mrs. Alksne)**

During the October meeting, Chairman Decker requested Mrs. Alksne to chair the Nominating Committee with Messrs. Blank and Boshart to act as Committee members. Mr. Boshart was absent from the meeting today, but during a brief recess, the two other Committee members met, arrived at and proposed the following slate of officers:

Mr. Peter G. Decker, III, Chairman
Mrs. Cynthia M. Alksne, Vice Chairman
Mr. B. A. Washington, Sr., Secretary

There were no nominations from the floor. Therefore, by ***MOTION*** duly made by Mr. Blank and seconded by Mr. Cabacoy, the slate of officers was ***APPROVED*** in total by verbally responding in the affirmative (Blank, Cabacoy, Osborne). In order to ensure a quorum vote, the votes of Mr. Decker, Mrs. Alksne and Mr. Washington were also included.

There were no questions and there was no discussion. There were no opposing votes. There were three absences. The Motion carried.

Mr. Decker accepted the Chairmanship and thanked the Board for its support.

II. Public/Other Comment (Mr. Decker)

Delegate Patrick Hope was again present to address the Board. He provided a handout with language (**Proposed Regulations – Restraint of Pregnant Women** - below) in support of a regulation requiring the use of the least restrictive restraints possible during transport of pregnant inmates. His language includes and addresses soft restraints, restraint during transport and the issue of reporting. His 13-member coalition of civil rights and religious groups has agreed to his proposed language on principle, has put its proposal into its current form and is now asking to proceed to the next step in the process.

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Mr. Blank enquired what action would be necessary to make this the regulation and to adopt it, as proposed, in full. He feels this is an important issue and a unique issue, and he believes there needs to be documentation to determine when this occurs and that oversight needs to happen.

Therefore, by ***MOTION*** duly made by Mr. Blank, seconded by Mrs. Alksne:

"The Board of Corrections takes the necessary steps to have this language become part of the regulations."

During the call for comment, Mr. James Bruce, the Department's Regulatory Coordinator, provided the Board a handout with two colors of print which shows the affected Standard and a suggestion as to how this proposal could be made to fit into the structure of the current Standard, *6VAC15-40-980 Restraint Equipment. Written policy, procedure and practice shall govern the use of restraint equipment.* It was suggested to add the Compliance Documentation and Discussion verbiage to the current Standard. It would then read as illustrated below:

6VAC15-40-980. Restraint Equipment – Written policy, procedure and practice shall govern the use of restraint equipment.

Compliance Documentation:
- Review written policy and procedures
- Review approval and monitoring by medical personnel when restraint chair or 4 point restraints are used
- Review incident reports (if applicable)

Discussion: Restraint equipment (handcuffs, leg irons, waist chains, restraint chair, etc.) must be stored in a manner which ensures that they are inaccessible to inmates and the public. The policy should be very specific in the authorization and use of 4-point restraints, restraint chairs, and includes provisions for medical oversight. Instruments of restraint should be used as a precaution against escape, transfer for medical reasons and as a prevention against self-injury, injury to others or property damage. They should be applied only for the amount of time absolutely necessary and consistent with the facility policy. If female inmates are housed, the policy should require that inmates in advanced pregnancy or postpartum recovery are restrained only by handcuffs applied in front of the inmate. The policy should be very specific in the authorization and use of additional restraints deemed necessary for the safety of the pregnant inmate and others.

After reading the Delegate's proposed language, Mr. Blank asked why not include all of the Delegate's proposed language in both the Compliance Documentation and the Standards and not use what was proposed in red by Mr. Bruce. In that vein, Mr. Blank proposed another ***MOTION***, seconded by Mrs. Alksne:

(Delegate Hope's proposed language:)

Proposed Regulations – Restraint of Pregnant Women
Regulations

(1) Restraint Devices: An inmate, who is known to be pregnant, will not be subject to the use of restraints, including both physical and mechanical restraints. Neither metal restraints nor restraint belts that directly constrict the area of pregnancy may be used on pregnant inmates. An inmate, who is known to be pregnant, should never be placed in a face down, four-point restraint. 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. Any restraint of a pregnant inmate that is deemed necessary for the safety of the inmate, her child, medical and correctional personnel, or the public must be conducted by the least restrictive means necessary - in those instances, only soft restraints may be used. 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. All shackles must be removed immediately if medical staff so direct.

(2) Restraint During Transport: If restraints are used during transport, soft 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 corrections official deems that the use of soft 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.

(3) Compliance Indicators

1. All aspects of these regulations are addressed by written policy and defined procedures.
2. Correctional and medical staff are advised of the procedures to be used in transporting and restraining pregnant inmates. Such communication is documented.
3. Medical and custody staff communicate about inmates who are pregnant and for whom this standard applies.
4. If restraints are used at any time during transport, labor, delivery, or in the hospital during post-partum recovery, the corrections officer must make written findings 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.
5. 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.
6. The numbers of all required documentation of shackling incidents of pregnant inmates and the written findings as to the reasons why the use of restraints were necessary shall be compiled in to a record provided annually to the Board of Corrections and made publicly available.

"That the Board of Corrections includes the language proferred by Delegate Hope to become part of the Compliance Documentation (in place of the red wording) and amend the APA to include the new provision; and that the same information be included in both places."

Mr. Blank then ***WITHDREW*** his ***first MOTION***, which action was seconded by Mrs. Alksne.

Mr. Washington stated he believed the change to be appropriate. The Chairman then called for the question.

The ***MOTION,*** duly made by Mr. Blank, seconded by Mrs. Alksne and verbally responded to in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington), was ***APPROVED*** as presented.

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

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Mr. Bruce will put the approved language into the proper format for review at the December meeting. Delegate Hope inquired as to whether he should attend the Board meeting next month and was invited to do so. Delegate Hope advised he would send an updated copy of his language. He thanked the Board for its time, and he and his supporters departed the meeting room.

At this time and at the request of the Chairman, all remaining meeting attendees identified themselves for the record.

III. Presentation to the Board

There were no presentations scheduled this month for the Board.

IV. Liaison Committee (Mr. Osborne)

Mr. Osborne reported there will be no Committee meeting in December. Director Clarke was present at the meeting and addressed the 2/4/6 percent budget reduction scenarios submitted to the Governor and noted that 2% equates to 1,000 lost beds. He noted that Pennsylvania inmates will be moved by the end of March, 2012, resulting in a revenue loss of $20.3 million. He was pleased to announce the Department has received some federal funding for Officer training and stated that every little bit helps. Mr. Osborne noted the out of compliance number is 4,465.

No Board action is required on, and the Chairman thanked Mr. Osborne for, the report.

At this time, Mr. Osborne made a suggestion to move the December Correctional Services and Board meeting times as a result of the Liaison Committee being cancelled. He suggested Correctional Services to meet at 9:30 and the Board to meet at 11:00.

Therefore, by ***MOTION*** duly made by Mr. Osborne and seconded by Mrs. Alksne and verbally responded to in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington), it was ***APPROVED*** that the December Correctional Services and Board meetings will be held at 9:30 and 11:00, respectively.

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

Mrs. Alksne then updated the Board on the status of the Jail Bed Capacity project. She indicated the Chairman's cover memo with attached spreadsheet was emailed on November 15, 2011, to all Regional Jail Administrators and to those Sheriffs who house inmates locally. The return date is December 15. Mr. Blank asked that a reminder be sent out the week before the due date to everyone who received the initial email.

Also discussed and supported in Committee was that Mr. Wilson will be sending a memo to all local facilities regarding reporting of cell size and dayroom size, which information

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will be collected either during upcoming compliance audits or unannounced inspections. This gathering of information will be helpful in crafting the next report on statewide jail bed capacity to be submitted to the General Assembly. Mr. Wilson will be reporting on the results to the Liaison Committee in March and then to the Board.

VI. Correctional Services Committee Report/Policy & Regulations (Mrs. Alksne)

1) Compliance and Accreditation Certifications Section: State/Local/Regional/Community Facilities

On behalf of the Committee, Mrs. Alksne presented the following certification recommendation for consideration by the Board:

a) **Unconditional Certification for Sussex County Jail to include male and female juveniles in accordance with §16.1-249.G of the Code of Virginia.**

By ***MOTION*** duly made by Mrs. Alksne and seconded by Mr. Blank, the Board ***APPROVED*** the above recommendation by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

b) **Board Motion to Approve Modification Request for RSW Regional Jail Authority for Standards 6VAC15-80-340 and -350 (Standards 5.4 and 5.3.C, Respectively)**

RSW Regional Jail Authority is constructing a new, 375-bed jail facility to serve Rappahannock, Shenandoah and Warren Counties. Associated with the project is a request for a modification to the *Standards for Planning, Design, Cosntruction and Reimbursement of Local Correctional Facilities (1994)* for Standard 5.4 (cells and dayrooms) and Standard 5.3.C. (dormitories) for installation of additional bunks for future population overflow in the housing units.

After discussion, the Committee agrees that the request is reasonable and recommends the following:

By ***MOTION*** duly made by Mrs. Alksne and seconded by Mr. Washington:

"To facilitate an operational decision by RSW Regional Jail Authority, the Board of Corrections grants a modification to Standard 5.4 and 5.3.C. (6VAC15-80-340 and -350) of the *Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (1994)* to allow the installation of additional beds in housing units in the RSW Regional Jail prior to final inspection of the facility. This approval does not increase the design capacity of

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the facility relative to staffing and does not authorize State reimbursement for the cost of the additional bunks or their installation. This modification approval shall not be construed as a future variance to Board Standards 5.4 or 5.3.C for this facility or as a current or future modification for any other facility."

The Motion was ***APROVED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

c) **Board Motion to Approve Amended Community-Based Corrections Plan for the Richmond City Jail**

On November 14, 2011, the Richmond City Council passed a Resolution supporting the amended Community-Based Corrections Plan and revised Planning Study for the Richmond City Jail.

The original community-based corrections plan (CBCP) was approved by the Board in September, 2009. This CBCP called for a small addition and a major renovation that would result in approximately 1,032 beds of rated capacity. The City is still planning to build to a rated capacity of 1,032 beds.

In 2009, there was concern raised by the Board regarding the disparity between the projected forecast and the number of proposed beds. Since then, the City of Richmond has tried to address this issue. It increased the number of beds it uses as a member of the Peumansend Creek Regional Jail from approximately 25 in 2009 to almost 100. This helped to decrease the average daily population by almost 75 inmates per day. Also, jail populations, statewide, have been on a downward trend.

In addition, since 2009, the City has developed a Crisis Intervention Team which trains police officers to work with the mentally ill to help them obtain services and, when appropriate, diverts them from the criminal justice system. In 2010, the City received a grant to start a Mental Health Alternative Sentencing program. This funding is for a two-year program that is to assist approximately 160 non-violent offenders with mental illness or co-occurring disorder. The Richmond Community Criminal Justice Board conducted an extensive study regarding the jail population and made a recommendation. And, in May of 2011, the City approved, as part of its 2012-2013 Biennial Fiscal Plan and Capital Improvement Plan, over $1 million to help divert offenders from jail.

In support of these efforts after review and discussion, the Committee makes the following recommendation to the Board:

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By ***MOTION*** duly made by Mrs. Alksne and seconded by Mr. Cabacoy,

"The Board of Corrections approves the amended Community-Based Corrections Plan (CBCP) as submitted by the City of Richmond."

The Motion was ***APROVED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

d) **Proposed Board Motion to Approve/Deny Request for Modification to Standards 5.3.A., 5.3.B. and 5.4.B. of the *Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (1994)* for the Richmond City Jail**

As presented above and on the published agenda, the original modification request referenced three Standards. Action on the three requests was handled in two steps:

Board Motion to Approve Modification Requests for Standards 5.3.A. and 5.3.B. of the *Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities* (1994) for the Richmond City Jail

The City of Richmond is planning to construct a 1,032-bed jail facility to replace and expand the existing Richmond City Jail. Associated with this project is a request to approve modification to the *Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (1994)* for Standard 5.3.A (housing unit capacity) and 5.3.B (security levels of housing).

Richmond City Jail is being designed. Because of the anticipated size of the facility, the City is requesting that the maximum-security housing unit size be allowed to be increased from 24 to 48, and medium-security housing unit size be allowed to be increased from 48 to 64 to enhance staff efficiency and reduce construction costs. Based on the planned large size of this facility, these increases would potentially enhance staff efficiency and reduce construction costs.

After review and discussion, the Committee agrees that these requests are reasonable and recommends the following:

By ***MOTION*** duly made by Mrs. Alksne and seconded by Mr. Cabacoy:

"To facilitate an operational decision by the Richmond City Jail, the Board of Corrections grants a modification to Standards 5.3.A. and 5.3.B. of the *Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (1994)* to allow an increase in the capacity of maximum-security

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housing units from 24 to 48 inmates per unit and medium-security housing units from 48 to 64 inmates per unit for this facility. This modification approval shall not be construed as a future modification or variance to Standards 5.3.A. or 5.3.B. for this or any other facility."

The Motion was ***APROVED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

Board Motion to Deny Modification Request for Standard 5.4.B. of the *Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities* (1994) for the Richmond City Jail

Richmond City Jail is being designed. To reduce construction costs, the City is requesting that the required square footage for two-person, multiple-occupancy cells in medium-security housing be reduced from the required 115 square feet to 80 square feet. A modification of this Standard has not been requested or granted in the past.

After much review and discussion, the Committee disagrees that this request is reasonable and recommends the following:

By ***MOTION*** duly made by Mrs. Alksne and seconded by Mr. Cabacoy:

"The Board of Corrections denies the request from the City of Richmond to reduce cell size from 115 square feet to 80 square feet or accepting the use of ACA Standards for cell size in lieu of cell-size requirements in the Board of Corrections *Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities (1994)*."

The Motion was ***DENIED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

e) **Board Motion to Approve/Deny Revised Planning Study for the Richmond City Jail**

The Committee recommends that this item be deferred this month and for Richmond City to come back in December. Richmond City agreed to work with staff to get the cell size right and make sure they have the appropriate number of segregation cells.

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Therefore, by ***MOTION*** duly made by Mrs. Alksne, seconded by Mr. Washington and verbally responded to in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington), the item will be ***TABLED UNTIL DECEMBER***.

There were no questions and there was no discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

Mr. Kessler then publicly recognized Ms. Ballard and Mr. Wilson for their hard work in getting this project to the Board. He stated staff has been nothing short of spectacular and very responsive and helpful. He told the Director he has great people on his staff. Sheriff Woody dittoed the comments and stated he has enjoyed working with them and thanked them.

2) **Policy & Regulations**

Board Motion to Approve Action on Board Policies 20-1, 20-13, 20-14, 20-15, 30-5 and 30-10

The Committee reviewed and discussed this information and agrees this action is reasonable.

Therefore, by ***MOTION*** duly made by Mrs. Alksne and seconded by Mr. Washington:

"The Board has reviewed and accepts the draft Board of Corrections Policies 20-1, 20-13, 20-14, 20-15, 30-5 and 30-10 and moves to enact the revised Policies to be effective January 1, 2012."

Mr. Blank wondered why the Code took away the power to set regulations or rules yet there are sections in the statute that specifically allow the Board to set regulations, and asked if the power is taken, does the Board still have the power?

The Motion was ***APROVED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington).

There were no questions and there was no further discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. Three members were absent. The Motion carried.

VII. Closed Session

There was no Closed Session this month.

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VIII. Other Business

Director Clarke brought the Board up to date on the exciting things going on in the Department. The Department has been reorganized and restructured to combine Operations and Community Corrections and saved $500,000 with the restructure. He indicated the Department is facing a number of challenges. It is carrying a deficit of $26 million; there is an $8.6 million deficit in medical, although two medical services contracts were combined saving $9 million; with the Pennsylvania inmates leaving Green Rock, the Department will lose $20.3 million and those funds do not go to just that facility.

The Department was asked to submit 2/4/6 percent budget reduction scenarios. Every 2 percent reduction scenario represents 1,000 beds to be vacated. The Department is waiting to hear from the Governor about a decision on Green Rock as well as the 2/4/6 percent reductions.

In spite of the above, the mood of the Department is very good. A lot of training is going on. The Department entered into a Memorandum of Understanding with the Federal government for two years for a number of activities to shift the focus of the organization to be supportive of re-entry and evidence-based practices. The Executive Team is undergoing training. A Future Search Conference is set for December. Motivational Interviewing training is ongoing. And the recidivism rate is on track to be below 27 percent.

The Chairman thanked Director Clarke for his comments. Mr. Clarke also thanked the Board for approval of the recommended name River North Correctional Center for the Grayson County facility.

Mrs. Woodhouse advised the Board of a change to the personal mileage rate that became effective July 1 of this year.

IX. Board Member/Other Comment

Mr. Cabacoy asked about inmates recently in the news. Director Clarke explained and noted that the situations are being watched closely.

X. Future Meeting Plans (provided for informational purposes)

The December 14, 2011, meetings are scheduled as follows:

No Liaison Committee
Correctional Services/Policy & Regulations Committee – 9:30 a.m., Board Room, 6900 Atmore Drive, Richmond, Virginia;
And Board Meeting – 11:00 a.m., Board Room, 6900 Atmore Drive, Richmond, Virginia.

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XI. Adjournment

There being nothing further, by ***MOTION*** duly made by Mr. Osborne, seconded by Mr. Washington and ***APPROVED*** by verbally responding in the affirmative (Alksne, Blank, Cabacoy, Osborne, Washington), the meeting was adjourned.

There were no questions and there was no further discussion. There were no opposing votes. The Chairman then voted his approval of the Motion. There were three absences. The Motion carried.

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PETER G. DECKER, III, CHAIRMAN

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B. A. WASHINGTON, SR., SECRETARY

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