



Final 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	12/4/13

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.

Statement of final agency action

At its November 13, 2013 meeting, the Board of Corrections accepted the final amendments to 6VAC15-40, *Minimum Standards for Jails and Lockups*, and approved submission of the final regulation for public comment in accordance with the Virginia Administrative Process Act.

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.

This regulation offers the advantage of protecting the health and well being of pregnant jail inmates and their fetuses by standardizing the requirements for restraints for pregnant inmates while imposing minimal additional requirements on jail operations. There are no known disadvantages to the public.

Changes made since the proposed stage

There have been no changes made since the proposed stage.

Public comment

There were 253 public comments received in support of the proposed regulation. There were 14 public comments received that were incomplete and unclear in expressing a position on the issue.

All changes made in this regulatory action

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	985		A. This subsection A. is intended to apply to the transportation outside the secure perimeter such that inmates known to be pregnant shall be handcuffed only in front, unless an individualized determination is made that the inmate is a flight risk and/or danger to themselves or others or the totality of the circumstances creates a serious security risk.

			<ol style="list-style-type: none"> 1. If an individualized determination has been made, then such inmates will be restrained in the least restrictive method necessary for outside transport. Waist chains/belts shall not be used. 2. If it is deemed more restrictive restraints are needed during transport, security staff shall notify a supervisor as soon as reasonably possible and a Use of Force report indicating the reason for the use of restraints and type of restraints shall be submitted to a supervisor no later than the conclusion of the shift for review and justification. <p>B. No restraints will be used during labor and delivery unless an individualized determination has been made that the inmate is a flight risk and/or danger to themselves or others or the totality of the circumstances creates a serious security risk.</p> <p>C. This subsection C. is intended to apply to labor and delivery such that if there is an individualized determination that restraints are needed, the least restrictive alternative will be used in consultation with the medical professional but restraints shall be immediately removed, upon the request of any doctor, nurse or other health professional treating the inmate, if the restraints present a threat to the health of life of the inmate and/or child and waist chains/belts shall not be used.</p> <p>D. If it is deemed more restrictive restraints are needed during labor and delivery, security staff shall notify a supervisor as soon as reasonably practical and a Use of Force report indicating the reason for the use of restraints and type of restraints shall be submitted to a supervisor no later than the conclusion of the shift for review and justification.</p> <p>E. This subsection E. is intended to apply during postpartum recovery while the inmate is in the hospital such that after an individualized determination, inmates shall be restrained in the least restrictive method (i.e., one ankle restraint or one arm restraint) that will allow for the mother's safe handling of her infant and mother-infant bonding, except where necessary when the inmate is a flight risk, and/or danger to themselves or others or the totality of the circumstances creates a serious security risk. If it is deemed restraints more restrictive than one ankle restraint or one arm restraint are needed, security staff shall notify a supervisor as soon as reasonably practical and a Use of Force report indicating the reason for the use of restraints and type of restraints shall be submitted to a supervisor no later than the conclusion of the shift for review and justification.</p> <p>F. All staff shall annually review policy related to restraining pregnant inmates.</p> <p>G. This subsection G. is intended to apply to inmates known to be pregnant who are in a facility for medical treatment unrelated to labor and delivery then such inmates will be restrained in the least restrictive method necessary in consultation with the medical professional. Waist</p>
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