

COMMONWEALTH OF VIRGINIA
BOARD OF CORRECTIONS

Regular Meeting	November 14, 2012
Location	6900 Atmore Drive Richmond, Virginia
Presiding.....	Peter G. Decker, III, Chairman
Present.....	Jonathan T. Blank Kurt A. Boshart Felipe Q. Cabacoy Linda D. Curtis William E. Osborne Carl R. Peed Reverend Anthony C. Paige
Absent.....	Cynthia M. Alksne

1:00 p.m., Wednesday, November 14, 2012
6900 Atmore Drive, Richmond, Virginia 23225

The meeting was called to order. Chairman Decker welcomed attendees and thanked everyone for coming. Roll call was taken by Mrs. Woodhouse.

I. Board Chairman (Mr. Decker)

1) **Board Motion to Approve October Board Minutes**

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

By *MOTION* duly made and seconded, the October Board Minutes were *APPROVED* by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed). Mrs. Alksne was absent. There were no opposing votes, and the Chairman then voted his approval of the Motion. The Motion carried.

II. Public Comment

There were no members of the general public present requesting to address the Board. Ms. Scott Richeson was present to provide an update to the Red Onion and Wallens Ridge segregation reduction step-down plan, which is to relocate level “S” offenders from Red Onion in exchange for level 5 offenders from Wallens Ridge. She reviewed the main goals of the program and its progress, to date. The Board was impressed and expressed support of the changes and thanked Ms. Richeson for the update.

III. Liaison Committee (Mr. Osborne)

Mr. Osborne restated information provided by the Comp Board. He noted that \$6.3 million is being requested for this fiscal year of which \$4.7 is for local responsible inmates as well as an anticipated increase in state responsible inmates. \$7.3 million in additional funding will be requested for FY14. Several new jails will be coming on line in FY14; namely,

RSW, Richmond City Jail and the expansion of the Southwest Virginia Regional Jail, which projects equate to \$28 million and 221 positions. The overcrowding and staffing issue is being looked at. State agencies are to submit their 4% reduction plans next week, and the operations and jail per diems will be affected. More information will be forthcoming once the Governor's budget comes out.

Mr. Wilson reported the jail capacity at 30,062 and the out of compliance figure at 5,168. Mr. Parks reported there have been no changes in the DOC bed numbers. Mr. Wilson indicated that 80 beds at Mecklenburg County Jail will be opening around January 1, 2013. Mr. Osborne reported the new Jail Standards will be effective July 1, 2013, to include the pregnant inmate restraints language. And the Committee welcomed Captain John Jenkins from the Fauquier County Sheriff's Office as its newest member.

There were no questions or comments. The Chairman thanked Mr. Osborne for his report. No Board action was required.

IV. Administration Committee

There was nothing for the Administration Committee this month. No meeting was held.

V. Correctional Services Committee Report/Policy & Regulations (Mr. Boshart)

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

Mr. Boshart presented the following jail certifications for consideration:

a) Board Motion to Approve Revised Memorandum of Agreement between Board and State Fire Marshal for Annual Inspection of Local Jails

The Board approved a Memorandum of Agreement with the State Fire Marshal's Office in July, 2012. Prior to signing that agreement, the State Fire Marshal advised that a charge of \$51.00 per hour would be initiated for inspections of local jails, and language would have to be added to any MOA before approval and sign off. The State Fire Marshal came to the September Board meeting to explain the need for the hourly charge.

In October, the Board briefly discussed this and agreed to table any action until the new agreement is received and reviewed. It also rescinded its July action. In November, the revised MOA, which includes language about hourly charges to local jails as well as a clarification of when inspections are to be completed, was provided for the Board's review and action. The MOA was discussed, and the Board is comfortable with the proposed changes.

Therefore, by *MOTION* duly made by Mr. Blank, seconded by Mr. Osborne and *APPROVED* by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed),

“The Board of Corrections approves the Memorandum of Agreement between the Virginia Department of Fire Programs State Fire Marshal’s Office and the Board of Corrections for inspections of local jails.”

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

b) **Board Motion to Deny Appeal of Finding of Non-Compliance with Standard 6VAC15-40-1100 (Fire Safety Inspection) for the Accomack County Jail**

During the October unannounced inspection, it was determined the jail was not in compliance with the above-noted Standard. The jail had fire safety inspections in July of 2010, June of 2011 and then not until September of 2012, which was outside the 12-month period required by the Standard. The jail contends it made a good-faith effort to get the inspection performed. Documentation was presented that the jail requested the inspection from the local fire marshal on June 5, prior to expiration of the 12-month period, and again on September 18, well after the 12-month period had expired. No representatives from the facility were in attendance at the meeting and after discussion, it was recommended that the Board deny the appeal; therefore,

By *MOTION* duly made by Mr. Blank, seconded by Mr. Osborne and approved by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed), the Board *DENIES THE APPEAL* on Standard 6VAC15-40-1100 (Fire Safety Inspection), and the jail will submit a Plan of Action to the Board within 14 days.

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

c) **Board Motion to Deny Appeal of Findings of Non-Compliance with Standards 6VAC15-40-450, 6VAC15-40-1080 and 6VAC15-40-1140 for Virginia Beach Correctional Center**

During the September unannounced inspection, it was determined the jail was not in compliance with the above-indicated Standards. The inspector reviewed the training records, which failed to demonstrate that all staff had received training for suicide prevention and emergency procedures within the past 12 months. Documentation was requested but was not produced. In addition, the inspector observed and noted physical plant cleanliness issues at the time of the inspection.

The Sheriff and members of his staff appeared to discuss the inspection results with the Committee. After much conversation, it was recommended that the Board deny the appeals; therefore,

By **MOTION** duly made by Mr. Blank, seconded by Mr. Osborne and approved by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed), the Board **DENIES THE APPEALS** on Standards 6VAC15-40-450, 6VAC15-40-1080 and 6VAC15-40-1140 for the Virginia Beach Correctional Center. The jail will submit corrective Plans of Action to the Board within 14 days.

There were no questions and there was no discussion. There were no opposing votes. Mrs. Alksne was absent. The Chairman **ABSTAINED** from the vote. The Motion carried.

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

Mrs. Curtis presented the following jail certifications for consideration:

- d) **Unconditional Certification for Roanoke City Jail to include male and female juveniles in accordance with §16.1-249. G. of the Code of Virginia;**
- e-j) **Unconditional Certification for Hampton City Jail; Newport News Department of Corrections and Blue Ridge Regional Jail – Halifax Adult Detention Center; and,**
- f-h) **Unconditional Certification as a result of 100% compliance for Altavista Town Lockup, Madison County Lockup, and Gloucester 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. Curtis and seconded by Mr. Osborne, the Board **APPROVED** the above recommendations by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed).

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

k) **Rubicon, Inc.**

Mr. Lawrence Everette, Executive Director of Rubicon, Inc., was present to address the Board. He explained his history with the facility and stated he had just recently joined them on a full-time basis. He noted he was aware of the problems which led to the current crises and stated he appreciated the time and consideration the Board has provided since last year. He indicated he is working hard to get things in order and understands the facility has many struggles ahead,

only one of which is the completion of the 2010 financial audit, the subject of the out of compliance issue from the certification audit. During his conversation, he advised that the attorney for the facility is McGuire Woods. When that information came to light, Mr. Blank **RECUSED** himself from the discussion as he is affiliated with that law firm.

At the time of the compliance audit in March, 2011, nine Standards were found out of compliance. By the time the report was made to the Board in July, all had been addressed except Standard 6VAC15-40-50F, which requires that an independent financial audit of the three years covered by the certification audit be performed by a certified public accounting firm or governmental auditing agency. 2008 and 2009 have been completed. 2010 has yet to be completed.

Mr. Everette went on to explain what he has been doing to try to get this accomplished. He noted that audits for two of the years in question were subsequently completed and previously reported to the Board but acknowledged the financial audit for 2010 is still incomplete. He understands the Board placed the facility on probation with the hope that this could be accomplished within a reasonable timeframe and had even requested the Internal Audit Unit of Department of Corrections to assist with getting the financial audit completed. Guidance and assistance was provided by the Department, who reported that the facility was well on its way to compliance at the time they finished.

Mr. Everette indicated the CPA who was performing the 2010 financial audit has agreed to a reduced fee but still has not been paid and until that happens, the report will not be released. He indicated that should the Board agree to keep the facility on probation, it was his intent to pay the CPA with a check, today.

While the Board appreciates the ongoing efforts expended by staff at Rubicon, it does not feel it can, in good conscience, continue the facility on probation. This compliance issue has been ongoing since July of 2011 and since that time other financial difficulties have come to light and the Board has serious concerns about the financial stability of the facility. It was therefore recommended that the facility be decertified and for the Department to remove all state-responsible inmates. Therefore,

By **MOTION** duly made and seconded and approved by verbally responding in the affirmative and as indicated below (Boshart, Cabacoy, Curtis, Osborne, Paige, Peed), the Board **DECERTIFIED** Rubicon, Inc. The Motion read:

“That Rubicon, Inc., be decertified due to its inability, since its certification audit in March, 2011, to correct the one remaining non-compliance Standard requiring the submission of an independent financial audit. All state-responsible inmates are to be removed from the facility.”

There were no questions and there was no discussion. Mr. Blank had earlier **RECUSED** himself. There were no opposing votes. Mrs. Alksne was absent. The Chairman then voted his approval of the Motion. The Motion carried.

2) **Compliance and Accreditation Unit (Unannounced Inspections Section):
Local and Regional Jails and Lockups**

a) **Board Motion to Approve Suspension of 2012 Unannounced Inspections**

Section 53.1-68 of the Code of Virginia authorizes the Board of Corrections to grant suspensions of annual Life, Health and Safety Inspections if full compliance with Standards is attained during the jail's Triennial Certification Audit. Since the Board's last meeting, two jails and two lockups have achieved 100% compliance with Board Standards during their certification audits. They are as follows: Blue Ridge Regional Jail – Amherst Adult Detention Center, Gloucester County Jail, Alta Vista Town Lockup and Madison County Lockup.

Therefore, by **MOTION** duly made by Mrs. Curtis and seconded by Reverend Paige, the Board **APPROVED** the below by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed).

“The Board of Corrections, in recognition of the outstanding achievement of 100% compliance with 6VAC15-40, Minimum Standards for Jails and Lockups, approves suspension of the 2012 annual inspections for the Blue Ridge Regional Jail – Amherst Adult Detention Center, Gloucester County Jail, Alata Vista Town Lockup and Madison County Lockup.”

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

3) **Policy & Regulations**

a) **Board Motion to Approve Initiation of Regulatory Process to Amend 6VAC15-40, Minimum Standards for Jails and Lockups, to Add Language Regarding Restraint of Pregnant Offenders in Accordance with the Administrative Process Act**

As directed by the Board in October, the Agency Regulatory Coordinator is continuing the formal process to add language regarding restraint of pregnant offenders (see language on Minutes Page 7) to 6VAC15-40, Minimum Standards for Jails and Lockups, and presented the following Motion:

By **MOTION** duly made by Mr. Blank and seconded by Mr. Osborne, the Board **APPROVED** the above recommendation by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed).

“The Board moves to initiate the Proposed Stage of the regulatory process to add regulations controlling restraint of pregnant offenders to 6VAC150-40, Minimum Standards for Jails and Lockups, in accordance with the Virginia Administrative Process Act.”

Standards Language:

6VAC15-40-985. Restraint of Pregnant Offenders.

- 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.
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.
- 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.
- 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.
- 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.
- 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.
- F. All staff shall annually review policy related to restraining pregnant inmates.
- 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 chains/belts shall not be used.

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

b) **Board Motion to Approve Implementation/Enforcement Date for *Minimum Standards for Jails and Lockups***

After several years, the revised *Minimum Standards for Jails and Lockups* is finally on its final leg of its journey through the Virginia Administrative Process Act process. The revised Standards have been published in the Virginia Register for public comment and barring none, are slated to become effected November 22, 2012, the day after the public comment period closes.

There have been some changes to the Standards during this process, and localities will need some time to come into compliance with the revised Standards. In the past, localities have been given six months to effect these changes. This allows

them to train staff, to write new policies and procedures and to have documentation available for review during compliance audits and unannounced inspections. It is therefore recommended that the effective date of these new Standards be July 1, 2013.

Therefore, by *MOTION* duly made by Mr. Blank and seconded by Mr. Osborne, the Board *APPROVED* the below recommendation by verbally responding in the affirmative (Blank, Boshart, Cabacoy, Curtis, Osborne, Paige, Peed).

“That the Board of Corrections shall begin enforcement of the revised *Minimum Standards for Jails and Lockups*, 6VAC15-40 of the Virginia Administrative Code, effective July 1, 2013.”

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

The Inspection Report Results Report for the period ended November 14, 2012, was presented for the Board’s information. No action was required by the Board.

There being nothing further, the Chairman thanked Mr. Boshart for his report.

VI. Closed Session

No Closed Session was held.

VII. Other Business (Ms. Gardner)

Director Clarke was out of town. Ms. Gardner spoke and noted in an effort to improve communications between staff and the Board, the Department is now publishing a newsletter and will be including the Board when it is distributed. This will be in addition to the weekly reports.

The Board thanked Ms. Gardner for this offer and looks forward to seeing the newsletters and reports in the future.

VIII. Board Member Comment (Mr. Decker)

Happy Thanksgiving and Holiday wishes were extended to all from the Board. Comments were shared and Mr. Boshart asked what the Board thought about implementing an awards system to recognize those who go above and beyond in the local and regional jails, such as a life-saving award. He believes this would be a good thing, and the Board could work with the Sheriffs and Regional Jail Administrators to accomplish this. Other Board members agreed this is a good idea and further discussion will be held in March about this initiative.

IX. Future Meeting Plans (provided for informational purposes)

The **March 20, 2013**, meetings are scheduled as follows:

Liaison Committee – 9:30 a.m., Board Room, 6900 Atmore Drive, Richmond, Virginia;
Correctional Services/Policy & Regulations Committee – 10:30 a.m., Board Room, 6900
Atmore Drive, Richmond, Virginia;
Board Meeting – 1:30 p.m., Board Room, 6900 Atmore Drive, Richmond, Virginia.

X. Adjournment

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

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

(Signature copy on file)

PETER G. DECKER, III, CHAIRMAN

KURT A. BOSCHART, SECRETARY