

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

Regular MeetingMay 18, 2011

Location6900 Atmore Drive, Richmond, Virginia

Presiding..... John Roberts, Chairman

PresentPeter Decker, III, Chairman, Board of Corrections
B. A. Washington, Member, Board of Corrections
Rev. Anthony C. Paige, Member, Board of Corrections
William Osborne, Member, Board of Corrections
Kurt Boshart, Member, Board of Corrections
Cynthia Alksne, Member, Board of Corrections
Felipe Cabacoy, Member, Board of Corrections
Harold W. Clarke, Director, DOC
Dick Hickman, Senate Finance Committee
Paul Van Lenten, House Appropriations Committee
Gabe Morgan, Sheriff, Newport News City Jail
David Simons, Hampton Roads Regional Jail
Ron Werdebaugh, Northwestern Regional Adult Detention Center
Glenn Aylor, Superintendent, Central Virginia Regional Jail
Steven Hoffman, Central Virginia Regional Jail
Frank Dyer, Central Virginia Regional Jail
Mike Jones, Moseley Architect
Robyn deSocio, Compensation Board
Jim Parks, Classification and Records, DOC
Mike Leininger, Legislative Liaison, DOC
Kim Lipp, Architecture and Engineering, DOC
Brooks Ballard, Architecture and Engineering, DOC
Bill Wilson, Compliance and Accreditation, DOC
Donna Foster, Compliance and Accreditation, DOC

The meeting was called to order and attendees were welcomed.

I. **Committee Chairman (John Roberts)**

- Mr. Roberts welcomed the committee members. He then called for a motion to approve the March minutes. By **MOTION** duly made and seconded, the minutes were unanimously **APPROVED**. The Motion carried.

II. Meeting Summary

In attendance were several guests of the committee including Felipe Cabacoy, member of the Board of Corrections as well as Steven Hoffman and Frank Dyer from the Central Virginia Regional Jail. Also in attendance were Mr. Dick Hickman, from the Senate Finance Committee and Mr. Paul Van Lenten, from the House Appropriations Committee who were introduced by Mike Leininger. Mr. Harold Clarke, DOC Director joined the meeting in progress.

Mr. Hickman and Mr. Van Lenten reported the following:

- After thanking the committee for the invitation, Mr. Hickman acknowledged the questions from the committee regarding the language written in the recommendations of the senate subcommittee asking the BOC to prepare a new report on the capacity of jails including reasonable double bunking. The background of the request is the result of the new fiscal environment since 2008. In the past 20 years, tremendous strides have been made in improving, expanding and building the jail capacity going back to the Baliles administration and there is a need to become accustomed to lower revenues and lower expectations. The degree of cuts made to the operating budget of the state is almost overwhelming. The DOC has gone from an operating budget of almost \$1 billion and has been reduced by 10%, a feat not easily mastered. The holding of positions and employees filling in to maintain these positions while awaiting approval to fill them has resulted in very few layoffs.

The ability of the General Assembly to approve capital projects has completely changed since 2008. There is no money for these projects. Mr. Van Lenten added that the process has changed to request approval for funding as well. Previously, the General Assembly could approve funding without full knowledge of total costs. Now the costs must be established prior to approval of any project. Mr. Hickman explained that capital outlay projects are primarily financed with bonds. The debt capacity of the General Assembly is limited to about 5% of the operating revenues of the general fund. Last year, projects were at the limit if not somewhat over the limit. The bond rating agencies had been favorable to Virginia's actions to maintain the debt limit over the past decades. This past session, there was a level of tweaking the allowed some additional funding that was allocated to transportation which was the priority of the session, followed by colleges and universities. Once there is more robust growth within the general fund, there will be some additional capacity for funding for jails, but they will compete with funds for higher education, general government projects, mental health and mental retardation projects, water and sewerage treatment contributions in the Chesapeake Bay plan and other broad public needs. He predicts that we will not see the growth in jail capacity in the next 20 years like we saw in the past 20 years and the state will not be able to borrow for state contributions as in the past for capital outlay projects. He predicts a review of the usage of our current resource and reasonable

alternatives in incarceration. Mr. Van Lenten stated that the 2011-2012 budgets are only slightly higher than that of 2006. Mr. Hickman added that Virginia is to be commended for reacting to the financial emergency of 2008 in the manner in which it has. Virginia is in much better shape going into the future than many other states.

Mr. Hickman addressed the language regarding the double bunking of the jails. The rated capacity has been used in the past as a basis for beds space but it does not include double bunking. The assumption has been that jails would be at a capacity of 50% over the rated capacity as an acceptable level by the safety subcommittee and the appropriations committee in approving capital projects over the years. The expansion projects have been approved based on 50% over rated capacities. While this is not a guarantee, it has been a general benchmark in the past of the General Assembly. There is also no expectation of a single room for local jail populations by the legislature or the taxpayer. Of course, there are inmates who need to be in segregation. Old jails are in a different category as well. In most of the newer facilities, double bunking has been built into expectations of most architects allowing better capabilities of kitchens and support services. He stressed that this is not an argument to return to conditions that lead to the Commission on Prison and Jail Overcrowding created 25 years ago, just reasonable double bunking that meets constitutional standards.

With the current economy in mind, they are reviewing a measure of reasonable double bunking with consideration of facility age and segregation requirements. The committee is aware that jails, unlike prisons must accept all people. Funding has been maintained for pre-trial release and community corrections programs diverting a large number of inmates received. Therefore, the language in the 2010 session was an initiation of this review process. There is more to be done in the development of this process.

Cynthia Alksne stated that the request for the report didn't use the word "reasonable" it just counted, which she said is a huge difference. "We did not look at "reasonable" double bunking, just hardcore numbers. If we do it again this year, how do we look at reasonable and how do we set that up? There are jails where it is not reasonable." She added that she is from the Justice Department, it is where she was trained and does not want to bring them to Virginia, so she does not want to write a report stating that this is constitutionally overcrowded, but added that the jails are overcrowded. She requested guidance defining what is to be considered reasonable. She asked if Mr. Hickman should determine parameters, or should the BOC determine them.

Mr. Hickman said that this was a fair question and added that he was well aware that this process would take longer than a year. He initially thought the conversation would occur within the BOC who would ultimately make recommendations to the General Assembly how to best define what is reasonable and can be done.

Ms. Alksne asked if the term “reasonable” was in this year’s language because it was not included in last year’s language. Mr. Hickman said he was not sure, but thinks it is the intent. Ms. Alksne said that this would be the assumption going forward. Mr. Van Lenten added that the language does include “with exceptions as appropriate in the judgment of the Board.” Bill Wilson asked if the Board determines what is appropriate, is the Board liable if the population is over the appropriate figure as every jail is different. A direct supervision jail can be double bunked because there are officers on duty 24/7 whereas an intermittent supervision jail may make rounds twice an hour. A lot can happen in that 30 minute interval. There are differing philosophies about how jails are run, from paramilitary to treatment based. He asked if 35% over design capacity is reasonable as is the national standard. Ms. Alksne said that design capacity does not mean anything. Mr. Wilson stated that the language of the standards has been changed to replace the terminology operational capacity with the terminology design capacity since it is more suitable in determining appropriate bed space.

Sheriff Gabe Morgan thanked Mr. Van Lenten and Mr. Hickman for attending the meeting. He advised that he would speak from the perspective of a local facility. He has been upset about the bed count survey since the request was first made. If beds only are counted, it presents an unrealistic picture. He advised that he has requested that they and their staff go into the field after receiving these reports and visit jails to visibly see the actual picture in person. He stated that they cannot sit in Richmond and determine accurately the available beds space. Using the nearest facility as an example, he cited the Richmond City Jail. The report reflects 200 empty beds that can support 200 additional people. After Sheriff Morgan asked if this was true, Mr. Hickman stated that he did not agree and that they approved a new jail facility and were awaiting the City of Richmond to move forward on their responsibilities to complete the facility. Sheriff Morgan stated that he understands that, however, according to the report 200 people could go into the jail. Mr. Hickman stated that from his experiences visiting the jail, he would question that statement. Sheriff Morgan added that there is no way that anyone could agree with the report nor could anyone who visited the jail and suggested little validity in the accuracy of the report. Mr. Van Lenten asked if the Richmond City Jail annotated their number and Sheriff Morgan answered yes. Mr. Van Lenten said that when asked for guidance, annotating these numbers is necessary and as the process goes forward, refinement is necessary. He said that as the process works now, the numbers are compiled with out-of-compliance rates, what’s in the pipeline, etc., and they know how many beds are there according to the rated capacity and the spreadsheet basically says this is the number of beds with 50% double bunked. He asked if Sheriff Morgan would prefer to have a more refined number than this to determine if a project goes forward. Sheriff Morgan said that the reason for the rated capacity has been documented. If the legislature is trying to eliminate the rated capacity, then it needs to be stated that this is how the process will go forward in Virginia and it needs to pass the requirements at

the federal level to prevent litigation. He said that when you have to deal with a critically injured employee and their family due to overcrowding, it is a different story. When you close eight facilities at the state level and back them up into the local facilities and on top of that, accept inmates from out of state, what do you say to the local facilities? When it is blamed on finances, he understands, but there has to be a balance between public safety and finance. He asked for realistic manipulation of the rated capacity. He stated that they put the policy determination on the DOC, yet he is hearing different stories from the DOC. He asked if they are hearing the voices of the localities.

Mr. Hickman stated that he agrees with everything that Sheriff Morgan said and added that it was well stated. He advised that in consideration of the Richmond City Jail, the report request stated that exceptions to this measure may be made for jails which were constructed prior to 1980. Richmond City Jail is a key example of this exception as is Newport News City Jail. The newer jails are in a different category. 1980 may not be a firm time line, just an approximate time line. The determination of actual capacity in reality comes from the architects who designed the jails at the time. He does not recommend elimination of the rated capacity, not considering the double bunking capacity, just inclusion of a second capacity measure that considers reasonable double bunking capacity with consideration of support services. He suggested a similar measure as used by the "feds". Ms. Alksne stated that she wants to change the rated capacity to something that means something. She added that she thinks using double bunking as a rated capacity is silly. Mr. Wilson said that the square footage requirements changed from 70 square feet per single cell to 80 square feet for a two man cell. Sheriff Morgan said that after an inspection, his staff is putting the second beds back in the cells. He added that he was hit on per diems and now he's being hit on beds due to the bed space report. Mr. Hickman offered a statistic that he suggested should be remembered, the Commonwealth has shifted cost to the localities over the past ten years, from 1998 through 2008, with the Commonwealth paying 58% for the operating costs of jails previously to paying 48% on average. This is why the amendments for the funding of the jails under the compensation board have been such a critical area in the conference committee. Sheriff Morgan said that the local authorities consider the jails to be a state function while the state considers them a local function. In the meantime, he's asked to do the impossible with \$12 per day per inmate and something being taken away daily. In addition he's being told he can hold more out-of-compliance offenders. If he brings in federal prisoners, the state gets a slice of that too. Mr. Hickman said that \$12 per day is not the entire picture. The compensation board pays for the salaries of the employees. Sheriff Morgan stated the state contribution for his jail is 37%. Mr. Hickman advised that 37% is a very good number as most states do not provide that kind of cost support adding that it's lower than that in northern Virginia due to higher salaries.

David Simons thanked Mr. Hickman and Mr. Van Lenten for visiting the Hampton Roads Regional Jail and added that the frustration level has increased

because these changes are being made without their input. They set a cap on numbers of beds, but then are told they must accept all people as necessary. In addition, they have closed mental health facilities only to incarcerate the mentally ill in the jails and to that, added a reduction in the per diems. He asked what was the end goal, what the impacts on the jails are and can they have some say in the decisions. They have five years plans and need to be able to make long term plans and wanted to know what role the DOC will play in these plans. Mr. Hickman said that he was glad that Mr. Simon raised the issue of mental health in the jails and asked for input from the attendees about the impacts on their facilities. He said that one of his favorite graphics, which tracks the prison population over the past 50 years, shows the prison population increasing at astonishing levels while the mental health hospitals population have declined at just as an astonishing rate. This has caused a tremendous burden on jails as they are running the largest mental health hospitals in Virginia. He advised that the legislators are aware of this situation. Sheriff Morgan stated that he served on the mental health commission and the only effect that it has had legislatively is in the area of transportation. The cost of psychotropic drugs in his facility is the number one pharmaceutical cost. He said that the mental health hospitals no longer have to pay this cost. Mr. Hickman advised that the policy is that the jails are the least expensive method to deal with the mental health problems. Mr. Simons added that an inmate in a state mental health facility is a state expense but when incarcerated in a jail, the same inmate becomes a local expense at probably the same dollar cost. Mr. Hickman stated that the Department of Juvenile Justice faces the same problem. He added that good data is the best tool to provide to the legislators to handle the issues. Mr. Van Lenten reiterated the comment saying that the cost reports have become a tool to use in this manner, but the issues were not immediately apparent. This ideology is changing as the methodology is further developed.

Ms. Alksne asked if any of the attendees had any advice on what can be done to report the local facilities needs while reflecting the needs of the appropriators. Sheriff Morgan stated that classification is another issue that creates a problem. An empty bed may not be able to accommodate the needs of the facility at the moment. Ms. Alksne advised that the special purpose beds were removed from the report. Mr. Hickman reiterated that in 1977, the Supreme Court determined that double bunking was permissible constitutionally. In consideration of the totality of conditions, the determination of reasonable is best made by the professionals involved. Ms. Alksne stated that she could not do a "totality of conditions analysis" by jail on a spreadsheet. Mr. Hickman suggested that an architect should make that determination, particularly for more recent construction, i.e., since around 1980. Ms. Alksne stated that, she had no problem with that, but she was not able to write a big fat report adding that architects do not work for free. She stated that if they wanted a report that includes detailed design elements, an expert report, she would be happy to do that, but frankly they would need to come up with some cash. Mr. Hickman said that he was unable to make a commitment to funding.

Reverend Anthony Paige stated that he knew what they were trying to do with the report, but that he felt it came down to public service. Jails are a public service as are schools and mental health and he does not believe that the story is being told. Transportation is out there ringing their bells and they are finally getting their attention. Higher education is out there ringing their bells and they are getting their attention. Jails and prisons need more opportunity to go before appropriation committees to present their stories to inform them that they are providing a vital public service. Many people believe that you can lock them up and that is their problem and that is the wrong attitude. He would like to make the public more supportive of what we are trying to accomplish. He stated that, to their advantage, since the mental health program has suffered such reductions and the jails are picking up the mental health patients, he thinks there is a substantial argument for improvement.

Mr. Hickman noted that he understood Rev. Paige's argument, but added that colleges and universities have powerful alumni backing. Having said that, he added that the appropriations subcommittee always appreciate hearing from DOC and visiting the local facilities to present the needs of the community to the General Assembly. He said that if this is not done, the corrections facilities will deteriorate in the same manner as the mental health facilities did in the mid-century. This was primarily due to the lack of remaining educated about societal needs.

Glenn Aylor stated that everything that was said was correct and could not disagree with anything that was said, however, he asked the attendees what could be done to present the documentation in a manner that is accurate and is factual, not opinionated in any manner. While the original report was being created, the report was created using the double bunking number presented. The problem is that there is insufficient staff and resources to maintain this level of population safely and efficiently. He saw the report and there were differences in the report for the house and the report for the senate. The DOC took it on the chin because that is not what was sent over and not what was reported. He asked that Mr. Hickman and Mr. Van Lenten attend the Liaison Committee meetings more often and maybe guide Ms. Alksne in creating a report that provides the information that they want. This would put everybody at the same table without agendas. Sheriff Morgan said that he and others felt betrayed. He blamed the DOC, who denied tweaking the report in the senate finance retreat in October. This is why Mr. Van Lenten and Mr. Hickman were invited to attend this meeting. Mr. Hickman stated that he received the letter (including the bed space report) from Chairman Decker and Ms. Alksne on October 14, 2010. After reviewing the report, he saw that it was showing more beds than population and was not comfortable presenting the report as received. It raised more questions than answers, so he decided to file the report and determined that it would require more scrutiny. Mr. Aylor said he saw both reports, the house and the senate, and felt the house report presented a better reflection of reality than the senate report. Sheriff Morgan noted that it was a

Power Point presentation. Mr. Hickman stated that he did not present a slide presentation. Ms. Alksne wanted to devise a plan of how to create the next bed space report. Asking when it was due, Mr. Hickman answered that it is due October 1st, each year. Ms. Alksne then asked if it should include all the jails or if it should just be an update. It was determined that jails built prior to 1980 should be excluded. Mr. Wilson asked if jails that have completed expansions would have to update their information saying that there is not sufficient time to complete this task. Ms. Alksne noted that the expansions were expected to be included with the reasonable consideration.

Mr. Hickman suggested that if it was the conclusion that this report would not be ready in final form, that other groups have instead presented discussion of the process and constraints detailing what the next step needs to be as well as a more realistic time frame for completion. Ms. Alksne suggested possibly reporting on a group of problem areas. Mr. Hickman added that a select sample of facilities that would highlight specific areas that need consideration would be a possible suggestion. Mr. Van Lenten agreed saying that the select sample would be illuminating in itself. Mr. Wilson stated that one of the problems is that double bunking is one thing, but there are standards that require 1 to 3 staffing ratios except when over rated capacity which requires a staffing ratio of 1 to 5, yet if the compensation board had to fill all the positions required by the standards, a multitude of unfunded positions would need to be funded. He added that some jails previously allowed the offenders time outside all day, but now can only allow two hours of recreation time due to staff shortages.

Rev. Paige suggested that we try to stop the bleeding on the budget. He expects further reduction next year and feels it is not advisable to make reductions. He added that he thinks there needs to be a clear position taken that stops the budget reductions to jails. He warned of a twenty year requirement to rebuild the facilities if the reductions continue.

Mr. Van Lenten advised that he does not consider these to be operating issues. When they were considering the language, the measure of rated capacity versus double bunking is less considerable than the requirement of expansion. In the past, before the process involved going through the BOC, submitted to the DOC and then to the governor's office for inclusion in the budget, a moratorium exception was used. One particular jail submitted an extremely detailed request and another, the most simplistic requests offering very little detail. Obviously, the project request that detailed need and forecasts, etc., was the more likely of the two to be recommended to proceed.

John Roberts suggested that Mr. Van Lenten and Mr. Hickman attend future meetings as this meeting had run past the allotted time schedule. Ms. Alksne noted that it would require more frequency than bi-monthly or the report would have little chance for completion.

Mr. Hickman reiterated that his retreat report did not include the data from the bed space report because of the lack of refinement. It included a large amount of raw data that would cause more confusion than it would provide clarity. Mr. Van Lenten did not use the report for the same reasons. Kim Lipp said that she thought the issue with the retreat report may have originated from the local forecasts. The forecast included the overall local numbers together as a system, when they are really not a combined system. The conclusions drew an incorrect picture with a high level comparison. Mr. Hickman said he presented a chart showing populations and capacity as of June 2010 with the total state and local population was 26,000 and the rated capacity was 20,000, making the double bunking rate 30%. Ms. Lipp clarified 30% as a system. Sheriff Morgan asked to put it in context. You guys are using this as a part of a decision making matrix. What he sees is a continuation of the decline in funding over time. Mr. Van Lenten stated that he tried to use the information for expansion project requests. Sheriff Morgan stated that in his world, it a continuation. Once the genie is out of the bottle, more than the respective subcommittee has access to this information. Mr. Roberts said that there was a subcommittee appointed to meet prior to the Liaison Committee meetings to discuss some of the specifics.

Ms. Alksne stated that, since the board had to submit the report, the point of origin needs to begin at the board level. She then asked if in a scenario in which a group of ten was selected to use in this global manner for an actual analysis, should it include architects, someone from programs, staffing levels, etc.? Would they want ten samples with problems, mental health problems, small jails, large jails, or do they want the board to pick ten without problems, five with problems, five without problems, suggesting different combinations. Mr. Hickman and Mr. Van Lenten agreed that a combination of examples would exhibit the best picture. They suggested inclusion of medical problems, older facilities, new facilities, a variety of sample.

Mr. Aylor asked if this information was designated for budgeting issue usage such as for expansion requests. Mr. Hickman answered that it was an analytical base for the purpose of the capital outlay subcommittee that competes for funding for other state services. Mr. Aylor asked why a community corrections and planning study would be necessary with this information available. There are substantial costs involved in the studies required by the board and the legislators. Mr. Hickman said that there are whole host of projects that will come before the board that the state cannot afford and will be turned down. Mr. Aylor suggested that they just tell them no. Mr. Hickman advised that in order to get in line for funding, the justification is necessary. Other projects, such as college funding require the same rigorous justification for consideration. They want jails projects to begin at the local level. They want them to include local community corrections and pre-trial release. The General Assembly does not want to direct how many people will be diverted into pre-trial release or community corrections. These are local decisions best made by the local community corrections boards. They want to ensure that the

maximum amount of funds has been built into the budget for the project and is available when the facility is scheduled to open.

Mr. Roberts thanked Mr. Hickman and Mr. Van Lenten for attending and offered an open invitation to future meetings.

Robyn deSocio reported the following:

- Nothing new to report and she will defer to a future meeting.

Kim Lipp reported the following:

- No new construction to report and the Mt. Rogers facility remains empty and unfunded.

Mike Leininger reported the following:

- Nothing new to report.

By MOTION duly made by the Chairman of the Liaison Committee, John Roberts, and seconded by several members in attendance, and unanimously APPROVED, the meeting was adjourned.