

INDEPENDENT REGULATORY REVIEW COMMISSION

ORDER

Commissioners Voting:

Public Meeting Held September 11, 2024

George D. Bedwick, Chairman

John F. Mizner, Esq., Vice Chairman

John J. Soroko, Esq.

Murray Ufberg, Esq.

Dennis A. Watson, Esq.

37 Pa. Code Chapter 91
Department of Corrections
Administration

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- **Chapter 91 Administration;**
- Chapter 93 State Correctional Institutions and Facilities;
- Chapter 94 Release and Prerelease Programs;
- Chapter 95 County Correctional Institutions; and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

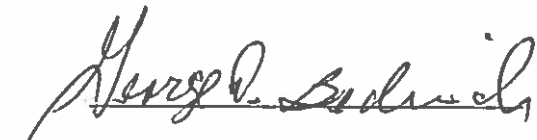
This order addresses Chapter 91 which applies to an institution, motivational boot camp, or community corrections center operated or contracted by the Department. The content of Chapter 91 includes reception and discharge of inmates, catchment areas, and use of force and restraints.

Chapter 91 regulations identified by the Committee for the Commission's review include:

- No. 19-5 (#2196) Administration and State Correctional Institutions and Facilities; and
- No. 19-6 (#2403) Administration, State Correctional Facilities and Release and Prerelease Programs).

The Department has acknowledged the need to amend these regulations to address statutory changes resulting from Act 33 of 2009 (Act 33) and Act 59 of 2021 (Act 59), as well as litigation and policy changes that have occurred since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2001 and 2005, we find that the delay in updating those

regulations in Chapter 91 renders them no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 91 regulations to align with Act 33 and Act 59 as well as Department practices resulting from litigation and policy changes.



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37 Pa. Code Chapter 93

Department of Corrections

State Correctional Institutions and Facilities

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- **Chapter 93 State Correctional Institutions and Facilities;**
- Chapter 94 Release and Prerelease Programs;
- Chapter 95 County Correctional Institutions; and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

This order addresses Chapter 93 which applies to Department institutions and facilities. The content of Chapter 93 includes inmate rights and privileges and motivational boot camps.

Chapter 93 regulations identified by the Committee for the Commission's review include:

- No. 19-3 (#2010) Motivational Boot Camps;
- No. 19-5 (#2196) Administration and State Correctional Institutions and Facilities; and
- No. 19-6 (#2403) Administration, State Correctional Facilities and Release and Prerelease Programs).

The regulation at 37 Pa. Code Subsection 93.12(e) contains fees that were specified in the regulation more than 15 years ago. This provisions states:

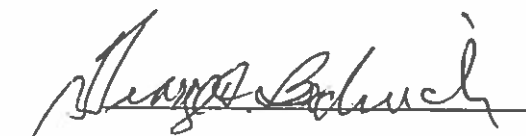
“The fee for any medical service in subsection (c) is \$3. This amount will be increased to \$4 on July 1, 2005, and \$5 on July 1, 2007, except that an inmate is required to pay a fee equivalent to

the total cost of medical services provided to another inmate as a result of the inmate's assaultive conduct.”

Given that the fees in Subsection 93.12(e) have been in place for over 15 years, we find that the above-listed fees contained in Chapter 93 are no longer in the public interest under the criteria of comments by the Committee, reasonableness and economic impact.

The Department has acknowledged the need to amend these regulations to address statutory changes resulting from Act 33 of 2009 (Act 33), Act 115 of 2019 (Act 115), and Act 59 of 2021 (Act 59), as well as litigation and policy changes that have occurred since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2000 and 2005, and fees for medical services have been in place for over 15 years, we find that the delay in updating those regulations in Chapter 93 renders them no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. See 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 93 regulations to align with Act 33, Act 115 and Act 59 as well as Department practices resulting from litigation and policy changes.




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37 Pa. Code Chapter 94

Department of Corrections

Release and Prerelease Programs

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- Chapter 93 State Correctional Institutions and Facilities;
- **Chapter 94 Release and Prerelease Programs;**
- Chapter 95 County Correctional Institutions; and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

This order addresses Chapter 94 which applies to Department release and prerelease programs. The content of Chapter 94 includes prerelease programs and procedures for participating in such programs, application and notification processes, and staff responsibilities.


Chapter 94 regulations identified by the Committee for the Commission's review include:

- No. 19-5 (#2196) Administration and State Correctional Institutions and Facilities; and
- No. 19-6 (#2403) Administration, State Correctional Facilities and Release and Prerelease Programs).

The Department has acknowledged the need to amend these regulations to address statutory changes resulting from Act 33 of 2009 (Act 33) and Act 59 of 2021 (Act 59), as well as litigation and policy changes that have occurred since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2000 and 2005, we find that the delay in updating those regulations in Chapter 94 renders them no longer in the public interest under the RRA criteria of

statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 94 regulations to align with Act 33 and Act 59 as well as Department practices resulting from litigation and policy changes.




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37 Pa. Code Chapter 95
Department of Corrections
County Correctional Institutions

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- Chapter 93 State Correctional Institutions and Facilities;
- Chapter 94 Release and Prerelease Programs;
- **Chapter 95 County Correctional Institutions;** and
- Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.

This order addresses Chapter 95 which applies to county correctional institutions. The content of Chapter 95 includes administrative standards, regulations and facilities, and grants to counties for prison construction.

Chapter 95 regulations identified by the Committee for the Commission's review include:

- No. 19-4 (#2011) County Correctional Institutions; and
- No. 19-9 (#2544) Correctional Institutions.

The Department has acknowledged the need to amend these regulations to address core correctional practices that have evolved since the regulations were initially promulgated and is working towards making the necessary updates. However, given that the regulations listed above were finalized between the years of 2000 and 2008, we find that the delay in updating those regulations in Chapter 95 renders them no longer in the public interest under the RRA criteria of

statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. *See* 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 95 regulations to align with correctional practices that have evolved since the regulations were initially published.



A handwritten signature in black ink, which appears to read "George D. Bedwick". The signature is written in a cursive style with a long, sweeping underline.

George D. Bedwick, Chairman

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37 Pa. Code Chapter 97

Department of Corrections

State Intermediate Punishment Drug Offender

Treatment Program

The House Judiciary Committee (Committee) submitted a letter to the Independent Regulatory Review Commission (Commission) requesting review under Section 8.1 of the Regulatory Review Act (RRA) (71 P.S. § 745.8a) of existing regulations of the Department of Corrections (Department) in 37 Pa. Code including:

- Chapter 91 Administration;
- Chapter 93 State Correctional Institutions and Facilities;
- Chapter 94 Release and Prerelease Programs;
- Chapter 95 County Correctional Institutions; and
- **Chapter 97 State Intermediate Punishment Drug Offender Treatment Program.**

This order addresses Chapter 97 which applies to certain defendants convicted of drug-related offenses. The content of Chapter 97 includes commitment for assessment, assessment for addiction and other treatment needs, selection committee personnel and duties, selection criteria, program standards, program advancement and regression, community-based therapeutic community, outpatient addiction treatment facility, supervised reintegration into the community, treatment and disciplinary sanctions, suspension and expulsion from the program, and consent to disclosure of information.

The Chapter 97 regulation identified by the Committee for the Commission's review is:

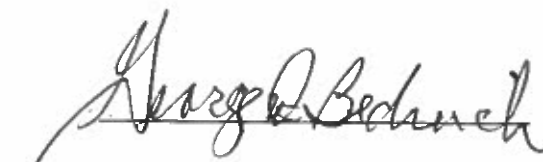
- No. 19-9 (#2590) State Intermediate Punishment.

The regulation at 37 Pa. Code Subsection 97.116(d)(3) contains a fee that was established more than 15 years ago. This provision states:

“A participant who is indigent as defined in Department policy DC-ADM 803, ‘Inmate Mail and Incoming Publications,’ will be afforded copy service and legal postage up to a maximum of \$10 per month and all moneys received in the inmate’s account shall be used to pay for the cost of the copies and legal postage. A nonindigent inmate will incur copying charges in accordance with Department policy 3.1.1, ‘Fiscal Administration.’” Emphasis added.

The Department has acknowledged the need to amend Chapter 97 to address statutory changes resulting from Act 115 of 2019 (Act 115) and programmatic changes that have occurred since the regulation was initially promulgated and is working towards making the necessary updates. However, given that the regulation listed above was finalized in 2008, and the monetary allowance for copy service and legal postage has been in place for over 15 years, we find that the delay in updating the regulation in Chapter 97 renders the regulation no longer in the public interest under the RRA criteria of statutory authority, legislative intent, comments by the Committee, reasonableness, clarity, and economic impact. See 71 P.S. § 745.5b. We recommend that the Department amend the Chapter 97 regulations to align with Act 115 and programmatic changes.




George D. Bedwick, Chairman