STATE STATUTES ALLOCATING AUTHORITY FOR CARE OF STATE PRISONERS CONFINED IN LOCAL JAILS

I. Miscellaneous Definitions

§ 53-19.18. **"Correctional institution" or "penal institution" defined.** — The term *"correctional institution"* or *"penal institution"* as used in this title means and includes every prison, prison camp, prison farm, correctional field unit, community correctional facility, halfway house or other place used for incarceration or detention heretofore or hereafter established with funds appropriated from the State treasury, and every jail, jail farm, lockup or other place of detention owned, maintained or operated by any political subdivision of the Commonwealth, but shall not be taken to include any institution established solely for the detention of juvenile delinquents or any institution established pursuant to § 53-330. (Code 1950, § 53-9; 1966, c. 300; 1970, c. 648; 1974, cc. 44, 45; 1977, c. 187.) (1978)

The 1977 amendment substituted "correctional field unit, community correctional facility, halfway house or other place used for incarceration or detention" for "or correctional field unit" near the middle of the section, deleted "industrial school or other" preceding "institution established solely for the detention of juvenile delinquents" near the end of the section and added "or any institution established pursuant to § 53-330" to the end of the section.

II. Control of Transfer of Prisoners into State System

§ 53-19.17. **Transfer of prisoners.** — The Director is authorized to transfer, or to require to be transferred, any person accused or convicted of an offense against the laws of the Commonwealth of Virginia or of any other state or country or any offense in violation of any city, town or county ordinance within the Commonwealth, or any witness held in any case to which the Commonwealth is a party, if confined in any penal institution within the Commonwealth, from (1978)

any penal institution in which such person is confined to such other penal institution in the State as is designated by the Director. (Code 1950, § 53-8; 1971, Ex. Sess., c. 110; 1974, cc. 44, 45.)

A prisoner has no right or expectancy to be assigned to any particular institution. Peterson v. Davis, 421 F. Supp. 1220 (E.D. Va. 1976), aff'd, 562 F.2d 48 (4th Cir. 1977).

Under Virginia law, prisoners have no liberty interest in remaining in a particular prison. Ward v. Johnson, 437 F. Supp. 1053 (E.D. Va. 1977).

§ 53-21.1. **Transfer of convicts to custody of Director of Department of Corrections.** — Every person sentenced by a court to confinement in the State penal system shall, as soon as space is available and transportation capabilities permit, be conveyed to the custody of the Director of the Department of Corrections in the manner hereinafter provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Central Criminal Records Exchange the report of disposition required by § 19.2-390. The Central Criminal Records Exchange shall ensure that the correct CCRE number for the positively identified person arrested and charged is entered on the report of disposition of each charge and immediately transmit the report to the Director of the Department of Corrections. The clerk of the court within thirty days from the date of the judgment shall forthwith transmit to the Director of the Department of Corrections a certified copy or copies of the order of trial and a certified copy of the complete final order, and if he fails to do so he shall forfeit one hundred dollars. (1981 Supp.)

The Director shall use his judgment in determining, on a relative need basis, which jails or lockups shall be given relief first in matters pertaining to the transportation of prisoners. The Director shall dispatch a guard to the county or corporation with a warrant directed to the sheriff authorizing him to deliver the convict, and it shall be the duty of such guard to take charge of the person and convey such person to the custody of such Director. (Code 1950, § 19-270; Code 1950 (Repl. Vol. 1960), § 19.1-296; 1960, c. 366; 1966, c. 522; 1970, c. 67; 1972, c. 145; 1973, c. 330; 1974, cc. 44, 45, 506; 1981, c. 529.)

The 1981 amendment rewrote the first paragraph.

§ 53-135.1. Director may transfer jail inmates. — The Director shall have the power to transfer any jail inmate, except inmates convicted under § 20-61, whose sentence is final from a jail to any State or city farm, State training school or correctional field unit; provided that any jail inmate whose sentences are final and excluding fines and costs total more than twelve months, shall in all instances be so transferred; provided further that nothing in this section shall interfere with the control and maintenance of the State correctional institutions and training schools, as provided by law. (Code 1919, § 3510; 1928, p. 1361; R. P. 1948, § 53-135.1; 1952, c. 557; 1962, c. 326; 1970, c. 648; 1976, c. 462.) (1978)

§ 19.2-310. Transfer of convicts to custody of Director of Department of Corrections. — Every person sentenced by a court to confinement in the State penal system upon conviction of a felony shall be conveyed to an appropriate receiving unit operated by the Department of Corrections in the manner hereinafter provided. The clerk of the court in which the person is sentenced shall forthwith transmit to the Central Criminal Records Exchange the report of dispositions required by § 19.2-390. The Central Criminal Records Exchange shall ensure that the correct CCRE number for the positively identified person arrested and charged is entered on the report of disposition of each charge and immediately transmit the report(s) to the Director of the Department of Corrections. The clerk of the court within thirty days from the date of the judgment shall forthwith transmit to the Director of the Department of Corrections a certified copy or copies of the order of trial and a certified copy of the complete final order, and if he fails to do so he shall forfeit one hundred dollars. Such copy or copies shall contain, as nearly as ascertainable, the birth date of the person sentenced. The jailor or sheriff shall certify to the Director of the Department of Corrections any jail credits to which the person to be confined is entitled at such time as that person is transferred to the custody of the Director of the Department of Corrections. (1981 Supp.)

Following receipt of the report of disposition, the Director or his designee shall dispatch a guard to the county or corporation with a warrant directed to the sheriff authorizing him to deliver the convict to the guard whose duty it shall be to take charge of the person and convey him to an appropriate receiving unit designated by the Director or his designee. Under no circumstances shall persons be conveyed to the receiving unit or units of the State penal system beyond the maximum capacity of the unit or units as established by the Director; in this regard, the Director or his designee shall allocate space available in the receiving unit or units by giving first priority to the transportation, as the transportation facilities of the Department of Corrections may permit, of those persons held in jails who in the opinion of the Director or his designee require immediate transportation to a receiving unit. (Code 1950, § 19.1-296; 1960, c. 366; 1966, c. 522; 1970, c. 67; 1972, c. 358; 1974, cc. 44, 45; 1975, c. 495; 1981, c. 529.)

The 1981 amendment rewrote the first paragraph and substituted "the report of disposition" for "such abstract" near the beginning of the first sentence in the second paragraph.

III. The Sheriff's Duties as Jailor

§ 53-168. Sheriffs to be keepers of jails; employment of jail administrators. — The sheriff of each county and each city shall be keeper of the jail thereof. (1981 Supp.)

The word "jail" as used in this section, notwithstanding any contrary provision of law, general or special, shall include all facilities of each county and city, excluding regional jails, regional jail farms and jail farms established pursuant to § 53-195 et seq., juvenile detention homes, and facilities operated by the federal government or the Commonwealth, in which adults are detained because they have been charged with or convicted of violations of law but does not include a facility maintained by a county, city or town police department when such facility's primary use is to detain persons for a period not in excess of twelve hours until they can be delivered to the custody of the sheriff. Provided, however, a county or city jail farm established pursuant to § 53-195 et seq., which is not presently under the jurisdiction of the sheriff, may be transferred to the jurisdiction of the sheriff by a resolution to such effect adopted by the appropriate governing body. An attested copy of the resolution to vest control, management and supervision of such jail farm in the sheriff shall be mailed to the Director and the State Treasurer. Such resolution shall be adopted and mailed at least eight months prior to the effective date of the

succeeding Commonwealth's biennial budget to become effective with such budget.

The sheriff in any locality may, subject to the approval of the local governing body, employ a jail administrator who shall be under the supervision of the sheriff when the sheriff is the keeper of any jail with a rated capacity of one hundred fifty beds or more for adults who are detained because they have been charged with or convicted of violations of law. (Code 1919, § 2868; 1936, p. 381; R. P. 1948, § 53-168; 1978, c. 623; 1979, cc. 673, 676.)

The 1979 amendments. — The first 1979 amendment added the third paragraph.

The second 1979 amendment substituted the language beginning "of each county" and ending "Commonwealth" in the first sentence of the second paragraph for "other than juvenile detention homes, within the sheriff's political subdivision, excluding those operated by the federal government or the Commonwealth" and added the second, third and fourth sentences of the second paragraph.

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§ 18.2-476. **Officers negligently suffering prisoner to escape or refusing to receive prisoner.** — If any sheriff, jailer or other officer, or any guard or other person summoned or employed by such sheriff, jailer or other officer, negligently suffer a prisoner convicted of or charged with felony, or voluntarily or negligently suffer a prisoner convicted of or charged with an offense not a felony, to escape from his custody, or wilfully refuse to receive into his custody a person lawfully committed thereto, he shall be guilty of a Class 2 misdemeanor. (Code 1950, § 18.1-287; 1960, c. 358; 1975, cc. 14, 15.) (1975)

Sheriff is not liable for escape permitted by deputy. — The sheriff in Virginia is ex officio jailer of his county, but may devolve the duties of jailer on a deputy, and will not be criminally liable for a negligent escape permitted by him. If, however, a prisoner is permitted to go at large with the knowledge and approval of the sheriff, and by his direction and authority, and while so at large the prisoner escapes, the sheriff is himself criminally liable for the escape. Watts v. Commonwealth, 99 Va. 872, 39 S.E. 706 (1901).

Indictment held insufficient.—An indictment against a jailer, for permitting a prisoner in his custody to have an instrument in his room with which he might break the jail and escape, and for failing carefully to examine at short intervals the condition of the jail, and what the prisoner was engaged at in said jail, in consequence of which the prisoner escaped, does not state an indictable offense. Commonwealth v. Connell, 44 Va. (3 Gratt.) 587 (1846).

Venue. — A criminal prosecution against a sheriff cannot be maintained in another county for his act in wilfully permitting the escape of a prisoner in the sheriff's own county. Commonwealth v. Lewis, 31 Va. (4 Leigh) 664 (1833).

IV. The State's Control over Local Jailors

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§ 53-129. **Courts to order jails erected and repaired.** — When it shall appear to the circuit court of any county or the corporation court of any city that there is no jail therein, or when it appears to such court, from the report of persons appointed to examine the jail or otherwise, that the jail of such county or city is insecure or out of repair, or otherwise insufficient, it shall be the duty of such court to award a rule, in the name and on behalf of the Commonwealth against the governing body of the county, or the governing body of the city, as the case may be, to show cause why a peremptory mandamus should not issue, commanding them to erect a jail for the county or city, or to cause the jail of such county or city to be made secure, or put in good repair, or rendered otherwise sufficient, as the case may be, and to proceed as in other cases of mandamus, to cause the necessary work to be done. (Code 1919, § 2865; R. P. 1948, § 53-129.) (1978)

Jurisdiction under this section is to be exercised by mandamus, and not by a bill in equity. Manly Mfg. Co. v. Broaddus, 94 Va. 547, 27 S.E. 438 (1897).

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§ 53-133. **State Board to prescribe minimum standards.** — The State Board is authorized and directed to prescribe minimum standards for the construction and equipment of local jails, jail farms and lockups, herein referred to as local penal institutions, whether heretofore or hereafter established, and minimum requirements for the feeding, clothing, medical attention, attendance, care, segregation and treatment of all prisoners confined in such jails and lockups and at such jail farms. (1942, p. 300; Michie Code 1942, § 4992(11); R. P. 1948, § 53-133.) (1978)

Applied in Payne v. Rollings, 402 F. Supp. 1225 (E.D. Va. 1975); Stinnie v. Fidler, 75 F.R.D. 462 (E.D. Va. 1977).

(1978)

§ 53-133.1. State reimbursement of localities for construction. — The Commonwealth shall reimburse any city or county, or any combination thereof, as the case may be, one half of the cost of construction or enlargement of a jail constructed or enlarged upon a basis approved by the Board. Provided, however, that no such reimbursement for costs of construction shall be had unless the construction of such jail has been approved by the Governor in such manner as he deems appropriate; nor shall any such reimbursement exceed twenty-five thousand dollars for each city or county participating in such construction or enlargement thereof for any one such jail. Such reimbursement shall be paid by the State Treasurer out of funds appropriated in the general appropriation act for criminal costs; provided, however, that the provisions hereof shall also be applicable to the cost of constructing or enlarging any city or county jail, which was under construction, but not completed, prior to January one, nineteen hundred sixty-eight, and to the cost of constructing or enlarging any such jail for which the contract was entered into between January one, nineteen hundred sixty-eight, and March one, nineteen hundred sixty-eight, the plans and specifications for which were not approved by the Governor. In the event that a county or city requests and receives financial assistance for costs of construction of such jail from the Division of Justice and Crime Prevention or from other public fund sources outside of the provisions of this law, the total financial assistance and reimbursement shall not exceed the total construction cost of the project exclusive of land and site improvement costs. (1968, c. 304; 1970, cc. 252, 373; 1973, c. 233.)

(1981 Supp.

§ 53-133.1. (Effective July 1, 1982) State reimbursement of localities for construction, etc. — The Commonwealth shall reimburse any city or county one-half of the cost of construction, enlargement or renovation of a jail constructed, enlarged or renovated upon a basis approved by the Board. Provided, however, that no such reimbursement shall be had unless the plans and specifications thereof have been submitted to the Governor and construction has been approved by him; nor shall any such reimbursement exceed the amount set forth in § 53-133.4 of the Code. Such reimbursement shall be paid by the State Treasurer out of funds appropriated in the general appropriation act for criminal costs. In the event that a county or city requests and receives financial assistance for costs of construction of such jail from the Division of Justice and Crime Prevention or from other public fund sources outside of the provisions of this law, the total financial assistance and reimbursement shall not exceed the total cost of the project. (1968, c. 304; 1970, cc. 252, 373; 1973, c. 233; 1981, c. 380.)

Cross reference. — For this section as in effect until July 1, 1982, see the bound volume.

The 1981 amendment, effective July 1, 1982, rewrote this section.

(1981 Supp.

§ 53-134. Board may prohibit confinement and require transfer of prisoners in substandard institutions. — The Board is authorized to limit, by its order, the confinement of prisoners in any jail or lockup, or at any jail farm, which is not constructed, equipped, maintained and operated so as to comply with minimum standards prescribed by the Board either by prohibiting confinement of any prisoners in such local correctional institution or by limiting the maximum number of prisoners to be confined therein, as the Board deems appropriate. The Board may designate some other jail, jail farm, lockup, or place of detention in or at which shall be confined all persons who otherwise would have been confined in the local correctional institution subject to the Board's order. Copies of each such order shall, upon being issued, be sent to the officer in charge of the local correctional institutions affected, to the governing bodies of the counties, cities and towns, affected, and to the judge of the circuit court of each county and city in which are located the local correctional institutions affected. (1942, p. 301; Michie Code 1942, § 4992 (11); R. P. 1948, § 53-134; 1981, c. 487.)

The 1981 amendment rewrote this section.

§ 53-135. **Jurisdiction of court to enforce orders of Board; proceedings.** — (1978)
Any court of record having general chancery jurisdiction in any county or city which maintains and operates any such jail, jail farm or lockup, or in any county in which is situated any town which maintains and operates any such jail, jail farm or lockup, affected by any such order of the Board, shall have jurisdiction to enforce such order by an injunction or other appropriate remedy at the suit of the Board. In the city of Richmond such jurisdiction shall be vested in the Hustings Court of the city. Such proceeding shall be commenced by a petition of the Board at the relation of the Commonwealth and shall, insofar as possible, conform to rules of procedure applicable to chancery practice. The governing body of each county, city or town, which maintains and operates any jail, jail farm or lockup affected by the order of the Board, and the officer in charge of each such jail, jail farm or lockup affected, shall be made parties defendant. In every such proceeding the court shall hear all relevant evidence, including evidence with regard to the condition of the jail and any other evidence bearing upon the propriety of the Board's action, and may, in its sound discretion, refuse to grant the injunction if it appears that the action of the Board was not warranted. (1942, p. 301; Michie Code 1942, § 4992(11); R. P. 1948, § 53-135.)

§ 53-136. **Cost of maintenance of jails.** — (1) *Borne ratably by counties, cities and towns using.* — In any instance in which a penal institution of a county, city, or town is designated by the Board as the place where prisoners committed by the courts or other authorities of any other county, city or town shall be confined, any capital outlays incurred for necessary repairs, improvements or additions to such penal institution, and all costs of maintenance of such jail chargeable to the localities, shall be borne ratably by the several counties, cities or towns using it. (1978)

(2) *How proportioned.* — The share of each respective county, city or town involved in such costs shall be such proportion of the total cost of such repairs, improvements, additions and other such costs as the total aggregate number of days spent in local penal institutions by prisoners committed by the courts or other authorities of such county, city or town, for the five year period next preceding the year in which such repairs, improvements or additions are begun, or other costs incurred, bears to the total aggregate number of days spent in local penal institutions by the prisoners committed by the courts or other authorities of both or all of the counties, cities and towns using the penal institution to which such repairs, improvements or additions are made, or in which such other costs are incurred. The amount to be paid by each county, city or town involved shall be determined by the Board on the basis herein set forth.

(3) *Statements to be furnished by Board; approval of expenditures over two thousand dollars.* — The Board shall furnish a statement of the several shares of the cost so determined to the governing body of each county, city and town involved, and the respective shares shall be paid within thirty days from the date upon which such statement is furnished. If the costs of any such repairs, improvements or additions will not exceed two thousand dollars they may be authorized by the governing body of the county, city or town to whose penal institution such repairs, improvements or additions are to be made; but if the costs will exceed two thousand dollars, such repairs, improvements or additions shall be recommended by the Board and agreed on in advance by the governing bodies of both or all of the counties, cities and towns involved.

(4) *Court to determine disagreements.* — In case of disagreement the matter of the extent of the repairs, improvements or additions and the proportionate cost to the respective localities involved shall be determined by the circuit or corporation court of the locality which owns or maintains the penal institution proposed to be repaired, improved or added to, upon the petition of the Board.

(5) *"Local penal institution,"* as used herein, means a jail, jail farm, or lockup, maintained and operated by a county, city or town, or by two or more such political subdivisions of this State. (1942, p. 301; Michie Code 1942, § 4992(12); R. P. 1948, § 53-136; 1970, c. 648.)

§ 53-173. **Failure of sheriffs and sergeants to comply with requirements of State Board.** — If any sheriff or sergeant through his default or neglect fails to comply with the requirements of the State Board of Corrections in the operation and management of any jail or jails under his control or management, the Board shall file a complaint with the judge of the circuit court of the county or city in which such jail is located giving ten days' notice to the sheriff or sergeant that on a date fixed in the notice, or so soon thereafter as convenient to the court a hearing on the complaint will be had. If after hearing the evidence the court is of the opinion that the complaint is justified it shall enter an order directing the State Compensation Board to withhold approval of the payment of any further salary to such sheriff or sergeant until there has been compliance with the requirements of the State Board of Corrections. If the court is of the opinion that the charges are unfounded, the complaint shall be dismissed. (1944, p. 321; Michie Suppl. 1946, § 3487(6); R. P. 1948, § 53-173; 1974, cc. 44, 45.) (1978)

(1981 Supp.)

§ 53-179. Reimbursement of counties and cities. — The Commonwealth shall reimburse the county or city, as the case may be, for such proportionate part of the reasonable cost of office furniture and equipment for the jailer if such expenses are not expenses of the sheriff as provided for in § 14.1-75, of furniture for matron offices, of laundry equipment, of food (other than the cost of preparing and serving the same, which shall be included as a part of the expenses of the sheriff or sergeant pursuant to § 14.1-75) and of the clothing, medicines, lights, electric light bulbs, water, heat, disinfectants, bedding, mops, brooms, brushes, cloths and other cleaning supplies, soap, towels, toilet tissue, sanitary supplies for women, dishes, pots, pans, cutlery and other utensils used in preparing and serving food, water buckets and garbage cans and other similar supplies required for the prisoners confined in any county or city jail, but not including beds, chairs, tables, benches, desks, furnaces, toilet fixtures, heating stoves, paint and painting equipment, locking devices and building material, as the aggregate number of days spent in such jail by prisoners accused or convicted of violation of the laws of the Commonwealth, by persons held as witnesses in cases to which the Commonwealth is a party, by persons confined in jail for contempt of court, and by persons suspected of being mentally ill or adjudged insane under the laws of the Commonwealth, bears to the total aggregate number of days spent in such jail by all prisoners confined therein; provided, however, that the counties and cities working prisoners on projects shall pay the entire cost of feeding and caring for such prisoners even though they are serving sentences for violation of the laws of the Commonwealth; provided, further, that any county or city which receives reimbursement for a prisoner pursuant to this section for whom another county, city or town has paid a part or all of the costs of detaining such prisoner pursuant to § 53-182, and such total reimbursement from both the Commonwealth and the other local government exceeds the total aggregate costs of maintaining such prisoner, the county or city operating the jail shall reimburse the other local government the excess over such total costs. (1942, p. 617; Michie Code 1942, § 3487 (9); 1944, p. 323; R. P. 1948, § 53-179; 1970, c. 648; 1972, c. 348; 1980, c. 117; 1981, c. 334.)

The 1980 amemdment added the second proviso at the end of the section.

The 1981 amendment substituted "a part or all of the costs" for "the reasonable costs" near