

VIRGINIA CODE COMMISSION
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

Wednesday, October 20, 2004 - 10:00 a.m.

MEMBERS PRESENT:

William C. Mims, Chairman
R. Steven Landes (by telephone)
John S. Edwards
S. Bernard Goodwyn
Thomas M. Moncure, Jr.
Diane Strickland
E.M. Miller, Jr.
Robert Hurt

STAFF PRESENT:

Amy Marschean
Ginny Edwards
Jane Chaffin
Bryan Stogdale

MEMBERS ABSENT:

Robert L. Calhoun
Frank S. Ferguson

OTHERS PRESENT:

Susan Ward, Virginia Hospital & Healthcare Assoc.
Jane Hickey, Attorney General's Office
Jim Martinez, Department of Mental Health, Mental
Retardation and Substance Abuse Services
Paul Gilding, Department of Mental Health, Mental
Retardation and Substance Abuse Services

CALL TO ORDER AND APPROVAL OF MINUTES

Chairman William C. Mims called the meeting to order at 10:05 a.m. Judge Goodwyn made a motion to approve the minutes of the September 15, 2004, meeting as written. Mr. Moncure seconded the motion and the motion was approved.

TITLE 37.1 RECODIFICATION

Amy Marschean stated that today's objective is to finalize several outstanding issues and for the Commission to approve the draft report. Ms. Marschean plans to post the approved draft report on the Internet and solicit comments until November 5, 2004. At the November 17, 2004, meeting, staff will address the comments received and request the Commission to approve the final report.

In the Definitions section, staff explained that the definition of "director" appears to have arisen from a time when the term referred to "state facility director." Ms. Marschean removed the titlewide definition of "director" and, throughout the title, has clarified the language when the term refers to the director of a state facility.

Ms. Marschean has eliminated the definition of "judge" and added the definition of "special justice." Ms. Marschean stated that she located all references to judges throughout the title and found the term is used in the ECO/TDO context. At each reference, Ms. Marschean has specified which judicial officer is performing a specific function.

Staff deleted the definition of "legal resident" and replaced the term with language that is more appropriate in each section where the term is used.

1 In the definition of "licensed hospital," Ms. Marschean explained that Delegate Landes
2 had previously asked whether a generic term could be used within the definition in place
3 of naming specific hospitals as was proposed in the last draft. Ms. Marschean stated that
4 she spoke to the UVA and MCV Councils and they are comfortable with including the
5 phrase "a psychiatric unit of a general hospital."

6 Regarding the definition of "mental illness," staff explained that advocates have
7 expressed concerns that emotional dysregulation is not included in the existing definition
8 and, at the advocates' request, she has added the word "emotion" as a specified
9 disorder (see line 106 on page 5).

10 Staff recommends deleting the definition of "property" (page 6, line 149), which refers to
11 §§ 37.1-12 and 37.1-13 and provides that the term "property" as used in these two
12 sections includes "land and structures thereon." Ms. Marschean stated that she has
13 reviewed §§ 37.1-12 and 37.1-13 and has determined that it is clear within those
14 sections that the term as used includes land and structures thereon.

15 At the September meeting, Judge Goodwyn had asked if the term "principal caregiver"
16 as used within the definition of "family member" should be set out as a separate
17 definition. After looking into this issue, Ms. Marschean stated that the term is only used
18 within the "family member" definition and would not stand alone in the titlewide
19 definitions section.

20 On page 12, lines 313 and 314, staff noted that the language regarding the Board's
21 budget review power has been reinstated.

22 Four agencies are charged with promulgating regulations regarding joint residential
23 facilities for children. Ms. Marschean explained that the added language on lines 1222
24 and 1223 of page 47 clarify that the provision refers to "CORE" licensing.

25 Ms. Marschean had originally recommended repealing Chapter 12 of Title 37.1,
26 Disclosure of Patient Information to Third Party Payors by Professionals, in its entirety.
27 Meanwhile, a HIPPA committee has been reviewing this chapter and is expected to
28 present a recommendation to repeal the chapter to the Joint Health Care Commission.
29 Some people feel that this chapter gives greater protection to persons with disabilities
30 and are advocating that it not be repealed. An issue of concern is found in § 37.1-231 on
31 page 72, which sets forth remedies for persons who have been injured by a violation.
32 Therefore, Ms. Marschean suggests that the Commission reinstate the chapter in the
33 title revision.

34 The use of the term "hospitalization" has been carefully reviewed in the ECO/TDO
35 criteria. There are occasions when people are committed to residential treatment
36 centers and crisis stabilization centers that are not in hospitals. Ms. Marschean has
37 combed through the title and specified "or treatment" after "hospitalization" to cover
38 these situations.

39 In certain places, the term "hospital" has been changed to "facility," where appropriate, to
40 allow treatment in facilities other than hospitals.

41 Ms. Marschean pointed to subsection H of § 37.1-48.2, which deals with specific
42 institutions of higher learning language that should not be codified because it has
43 specific, not general, application. However, staff is not comfortable striking the language
44 without placing it elsewhere. Staff was instructed to check with Senator Norment who

1 was the patron of the language to see if the provision is necessary. If Senator Norment
2 wants to retain the language, move it to a separate enactment clause.

3 Ms. Marschean advised that there is a drawback to a suggestion from the last meeting to
4 remove fees from the code and to place fees in the appropriation act. The General
5 Assembly would be voting on these fees every two years and adding the fees would
6 lengthen the budget. The consensus of the Commission was to retain the fees in the
7 code.

8 The judicial authorization of treatment provisions were contained in a single, lengthy
9 section. To address the Commission's concern that the section was too long, Ms.
10 Marschean has attempted to break the single section into multiple sections. The
11 provisions are contained in a single chapter containing five sections placed in the
12 guardianship/conservatorship subtitle. No substantive changes were made.

13 Ms. Marschean outlined the Commission's options for handling the default guardian
14 issue (page 229). At present there is no default guardian--the provision that designated
15 the sheriff as default guardian expired January 1, 2000. After discussion, the
16 Commission decided against the option of providing a default guardian in the title
17 revision since the amendment has a fiscal impact and is substantive in nature. The
18 Commission discussed whether it should sponsor separate legislation to establish public
19 guardian programs as the default guardian and include a budget amendment to allow
20 the public guardian programs to go statewide. Senator Mims suggested writing a letter to
21 Secretary Woods, with a copy to the money committees and the Governor, recognizing
22 the need for a default guardian and encouraging the administration to include legislation
23 on this issue in its legislative package.

24 Staff noted that the proposed name for Title 37.2, "Individuals with Mental Illness, Mental
25 Retardation, or Substance Abuse; Community and Facility Services," was crafted
26 keeping in mind the need to maintain title names in alphabetical order. Mr. Miller pointed
27 out that the alphabetical order rule was breached when the name of Title 66 was
28 changed from "Youth and Family Services" to "Juvenile Justice." The consensus of the
29 Commission was to name Title 37.2, "Mental Health, Mental Retardation and Substance
30 Abuse Services."

31 The Commission recognized the task force's dedication and hard work on the
32 recodification and thanked the task force members for their assistance.

33 Ms. Marschean advised that she will post the draft report for public comment and bring
34 the final report to the Commission for final approval at its November meeting.

35 **OBSOLETE LAWS**

36 Jane Chaffin introduced Bryan Stogdale who took over this year's project of identifying
37 obsolete laws after Reg Snider resigned at the end of September.

38 Mr. Stogdale explained that the first item was carried over from the 2003 project and
39 deals with obsolete references in §§ 58.1-3941 and 58.1-3942. These sections establish
40 items that may be distrained for taxes and refer to § 58.1-2101, which has been
41 repealed. Section 58.1-2101 contained a definition of "highway vehicle." The current
42 definition of "highway vehicle" is found in § 58.1-2201 and is broader than the term as it
43 was defined in former § 58.1-2101. Mr. Stogdale presented two options for the
44 Commission's consideration: (i) incorporate the old definition from § 58.1-2101 into
45 §§ 58.1-3941 and 58.1-3942, which would ensure there is no change in the law or (ii)

1 refer to the new definition of "highway vehicle" as found in § 58.1-2201. Mr. Miller
2 suggested that staff contact the Tax Department, the Farm Bureau and the Department
3 of Motor Vehicles before pre-filing the legislation. Judge Goodwyn made a motion to
4 incorporate the language from repealed § 58.1-2101 into §§ 58.1-3941 and 58.1-3942 if
5 there are no objections from the affected agencies. Judge Strickland seconded the
6 motion. The motion was approved.

7 There are three outstanding repeal bills dealing with hunting and wildlife provisions that
8 were approved last year, but were not drafted. Legislation will be drafted to repeal
9 Chapter 197 of the 1950 Acts of Assembly, Chapter 116 of the 1952 Acts of Assembly
10 and Chapter 96 of the 1954 Acts of Assembly.

11 Chapter 506 of the 1950 Acts of Assembly deals with the prohibition of carrying or
12 possessing a loaded firearm while on a public highway when one is not authorized to
13 hunt on the private property on both sides of the highway along which one is standing or
14 walking. This act was presented to the Commission last year, but the issue was deferred
15 until the Commonwealth's attorneys in the 21 affected counties could be contacted for
16 their input. Staff recommended repealing the act since § 15.2-1209.1 is substantively the
17 same as this act, as amended, except that the statute gives counties the discretion of
18 creating an ordinance. Out of the 21 Commonwealth's attorneys that were contacted,
19 only one expressed reservation about repealing the chapter, indicating that hunters
20 relied on the provision and he was concerned that the county would be reluctant to pass
21 an ordinance to do same thing. After discussion, Mr. Moncure made a motion to repeal
22 Chapter 506 of the 1950 Acts of Assembly, as amended by Chapter 148 of the 1960
23 Acts of Assembly. Delegate Hurt seconded the motion and the motion was approved.

24 **VIRGINIA ADMINISTRATIVE CODE REPLACEMENT VOLUMES**

25 Lilli Hausenfluck presented the Virginia Administrative Code replacement volume
26 recommendations for Spring 2005. Volumes 2, 10 and 12 are the most viable candidates
27 for replacement. She explained that the recommendations are based on the size of the
28 supplement and the amount of activity and referred to a chart showing the size of each
29 supplement. Judge Strickland made a motion, seconded by Mr. Miller, to approve
30 Volumes 2, 10 and 12 for replacement in Spring 2005. The motion was approved.

31 **REVISION OF TITLE 1**

32 At the last meeting, Mr. Moncure was appointed to look into the question regarding to
33 what extent original boundaries should be replicated in the title revision. Mr. Moncure
34 reported that Lexis has pulled all statutory language that relates to compacts into one
35 volume. In addition, Lexis has incorporated the original act that precipitated the code
36 section. Since the original act remains in the compacts volume, Mr. Moncure sees no
37 reason to leave the language in Title 1.

38 The consensus of the Commission is to revise Title 1 to refer to the original authority and
39 to continue setting out the original authority in its entirety in the compacts volume.

40 Mrs. Edwards referred to the chart she prepared on references to boundary compacts.
41 She advised that she has found a few compacts that are not included in the compacts
42 book. The Commission agreed that Lexis should be notified of these omitted compacts
43 and ask that they be included in future updates.

1 Chapter 2, Coast Survey, is recommended for repeal. The chapter was left in the code
2 40 years ago at the request of the United States Coast and Geodetic Survey. The
3 successors to the United States Coast and Geodetic Survey concur that the section is
4 no longer needed.

5 No significant changes are proposed to the "Emblems" chapter. The chapter is
6 reorganized into two articles--"Symbols of Sovereignty" and "Emblems, Designations,
7 and Honors."

8 Mrs. Edwards reported on the status of the Title 1 revision. She stated that there is one
9 more chapter in Title 7.1 to be reviewed that deals with jurisdictions concurrent with the
10 United States. At the next meeting, Ms. Edwards intends to cover the jurisdiction chapter
11 and review unresolved issues. She plans to present the report for final adoption at the
12 December meeting. Mr. Miller suggested placing the draft report on the Internet
13 between the November and December meetings.

14 **OTHER BUSINESS AND PUBLIC COMMENT**

15 Mr. Miller suggested exploring the possibly of undertaking a renumbering of the entire
16 code to coincide with completion of the capitol renovation in 2007. Mr. Miller's proposal
17 would be to establish a format and renumber the entire code within the statutory powers
18 given to the Code Commission. Mr. Miller made a motion to explore with Lexis the
19 concept of renumbering, rearranging and republishing the entire code in 2007. Senator
20 Edwards seconded the motion and the motion was approved.

21 The Chairman asked for comments from the public and no one came forward.

22 There was no further business to be conducted and the meeting adjourned at 2:00 p.m.