



ALBEMARLE-CHARLOTTESVILLE REGIONAL JAIL AUTHORITY

(SERVING ALBEMARLE, CHARLOTTESVILLE, NELSON)

160 Peregory Lane

Charlottesville, Virginia 22902

Phone: (434) 977-6981 Fax: (434) 951-1339

Col. Martin Kumer, Superintendent (ext. 230)

Web: <http://www.acrj.org>

Mrs. Marce B. Anderson, Clerk (ext. 229)

Board Business Meeting

Thursday, January 11, 2017 (12:30 – 2 p.m.)

Muster Room • Albemarle-Charlottesville Regional Jail, 160 Peregory Lane, Charlottesville, VA

AGENDA

(Action/Information)

- I. **ACRJ Board Meeting – Call to Order**
Adopt Meeting Agenda (A)

- II. **Consent Agenda**
For Approval:
 - 1) Draft Minutes of January 11, 2018 ACRJ Authority Board Bi-Monthly Business Meeting (A)
Informational (I)
 - 1) Executive Summary - ICE Notification Recommendation

- III. **Matters from the Public** (Time Limits: Individuals: 3 minutes: Groups: 5 minutes)

(Parameters of public comment will be determined by the board prior to public comment)

(Per the Fire Marshal, Muster Room Capacity – 50 people)

- IV. **Matters from the ACRJA Attorney – Roger Wiley and Danielle Powell**

- V. **Matters from ACRJA Board Members**
 - 1) Motion for Moratorium on ICE Notification (A)

- VI. **Closed Session – (if needed)**

- IX. **Adjournment** (A)

NEXT MEETING: March 8, 2017

Agenda Items for upcoming ACRJA Board Bi-Monthly Business Meetings:

Authority Board

Doug Walker (Albemarle)
Sheriff J.E. “Chip” Harding (Albemarle)
Cyndra Van Clief (Albemarle)-Vice Chair
Diantha McKeel (Albemarle)

Sheriff James E. Brown, III (Charlottesville) - Chair
Kathy Johnson Harris (Charlottesville)
Wes Bellamy (Charlottesville)
Michael Murphy (Charlottesville)

W. Lawton Tufts (Joint)
Sheriff David Hill (Nelson)
Stephen Carter (Nelson)

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DRAFT

**Minutes of the
Albemarle Charlottesville Regional Jail Authority Board Meeting
January 11, 2018**

Jail Board Members Present:

Sheriff James Brown
Mrs. Cyndra Van Clief
Mr. Doug Walker
Mrs. Kathy Johnson Harris
Ms. Diantha McKeel
Dr. Wes Bellamy
Mr. Mike Murphy
Mr. W. Lawton Tufts
Sheriff "Chip" Harding
Mr. Steve Carter

Jail Board Members Absent:

Sheriff David Hill

Others Present:

Colonel Martin Kumer
Lt. Colonel Todd Rowland
Mrs. Marce Anderson
Mr. Jeff Brill
Mrs. G. Murray-Key
Ms. Stephanie Brown
Ms. Felicia Morris
Ms. Renee Vance
Captain Aaron Carver
Ms. Raven Brooks
Mrs. Vanessa Battle
Ms. Cynthia Neff
Mr. Gene Locke
Ms. Angela Ciolfi

Ms. Jana Cutlip
Captain William Thomas
Mr. Neal Goodloe
Mr. Sherman Patterson
Ms. Cynthia Neff
Mr. Roger Wiley
Sgt. Travis Seiler
Mr. Robert Barnabei
Major Charles Trader
Ms. Stephanie Brown
Ms. Laura Lewis
Ms. Margarita Figueroa
Ms. Jamie Price
Ms. Tanishka Cruz

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Ms. Deena Sharuk
Ms. Johanna Woodchild
Ms. Mary Frances Charlton
Mr. Edgar Lara
Mr. Frank Sullivan
Ms. Rebekah Coble
Mr. Jamie Amaya
Mr. Marcelino Arroyo
Ms. Molly McCumber
Ms. Esther Paveda

Ms. Lisa Hensley
Ms. Elaine Poon
Ms. Margaret Hennessy
Mr. Geri Greenspan
Mrs. Kristin Szakos
Ms. Martha Martinez
Ms. Karla Diaz
Ms. Grace Paine
Ms. Amanda Swanson

The meeting was called to order at 12:31 pm by Chairman Sheriff Brown. Sheriff Brown announced that the budget line item under Mr. Brill would be informational and not an action item. Sheriff Brown asked if the agenda was acceptable to everyone. Ms. McKeel made a motion to adopt the agenda as presented. Mrs. Johnson Harris seconded the motion. Dr. Bellamy abstained from voting. The motion carried by majority.

Sheriff Brown moved on to the consent agenda. Sheriff Brown asked if there were any corrections that needed to be made to the draft minutes or any questions regarding the financial reports. Mr. Walker made a motion to adopt the consent agenda. Ms. McKeel seconded the motion. Dr. Bellamy abstained from voting. The motion carried by majority.

Sheriff Brown presented plaques to Attorney Roger Wiley and former Board Member Kristin Szakos for their years of service on the Albemarle-Charlottesville Regional Jail Authority Board. Mr. Wiley and Mrs. Szakos both had remarks.

Matters from the Public:

Sheriff Brown asked for matters from the public. Everyone was reminded that individuals had 3 minutes to speak and groups would be allotted 5 minutes. Ms. Tanishka Cruz an attorney with the Legal Aid Justice Center came forward to

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speaking about the Jail's policy regarding ICE detainees. Ms. Cruz informed the board that when an ICE detainer is issued, there are 2 actions they are requesting from the local jurisdiction; notify ICE 48 hours prior to the release date, and/or maintain custody for 48 hours after their release date. Although the jail does not honor holding individuals past their release date, they do notify ICE 48 hours prior to release. Ms. Cruz passed out copies of the notifications and advised that this notification is voluntary. Ms. Cruz stated that whether to respond to ICE's request is a discretionary matter for this board to decide. Ms. Cruz asked that the board choose to work with the community and not ICE. Ms. Cruz went on to speak about a request she received from a young man trying to locate his father. The young man explained that his father, George, had been arrested for failure to pay child support, which is a civil charge, not a criminal charge. The family paid the purge amount of \$2500.00; however, George was not released. ICE officials were notified that his purge had been paid; however, he was not released. George was picked up by immigration officials from this jail. Although George did not have any criminal history in the United States, he was taken away from his wife, his children, and his community where he has lived and worked for over 10 years. He was initially taken to Farmville, VA but was transferred to a larger detention facility in Texas due to overcrowding issues in Farmville. George was granted a \$10,000 bond out of Texas which is the equivalent of not having a bond at all for his family. His teenage son is now working around the clock to try to make up for the fact that the family breadwinner is now gone and is desperately trying to come up with the money to liberate his father. It is not just families that are being torn apart and irreparably harmed. Cooperating with ICE erodes and undermines community trust. It creates a 2 tiered system where immigrants are treated differently in the criminal justice system. It is important that the community trusts local law enforcement. Community members equate a routine traffic stop with deportation. That connection is being made because the undocumented community in Virginia does not have access to driver's licenses. When they are cited for driving without a license, or driving on a suspended license in many jurisdictions including Albemarle County, this means active jail time and it will trigger an immigration detainer. Immigration detainees are not like criminal warrants. They are not made or approved by a judge, and they are not required to meet any standard of proof. Immigration enforcement is ICE's job, and it should be their job. Their job has changed significantly over the past year. During the Obama

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administration there were very specific priorities and a strict hierarchy, but the current administration did away with those priorities and has shifted starkly to the approach that all undocumented immigrants are criminals. Sheriff Brown advised Ms. Cruz that she had reached her time limit. Ms. Cruz advised that she had someone that was going to read a statement from George's employer.

Ms. Angela Ciolfi an attorney with the Legal Aid Justice Center came forward to speak. Ms. Ciolfi responded to some concerns that have been raised regarding the consequences of not complying with ICE notification request. If the jail declines to assist ICE with notification request, it is possible that ICE may retaliate by threatening to strip away federal funds. However, several federal district courts have granted nationwide injunctions blocking the Trump administrations attempt to penalize cities and counties that adopt non-communication and anti-detainer policies. The jail's stance on the 48 hour hold is already viewed by this administration as uncooperative. While the threat of increased immigration enforcement in our community is intimidating and troubling, it should be noted that complying with ICE notifications in no way inoculates our community from being raided or being subjected to heightened enforcement efforts. Complying with notification requests undermines public safety and adds mistrust among the community, devastates local families and directly feeds people into the mass immigration detention and deportation pipelines. If the city and the county are seen as extensions of ICE, community trust in local law enforcement will be eroded. Ms. Ciolfi read a statement from Winona Mesner, the employer of George, the young father that Ms. Cruz spoke of earlier. Ms. Mesner is the general manager of a restaurant in Charlottesville, VA. George began working for her over 10 years ago. He is one of her best employees and is greatly missed. He was always on time and came in on his days off when needed. We love George so much. He is a great person, and a family man. We, as a company were sad to hear about him being detained. We currently have him on a leave of absence until everything is worked out. I can't wait to have his smiling face back on our team. Ms. Ciolfi advised the board that when they asked Ms. Mesner if her statement could be shared with the Jail Board she responded "Please do. And let them know that George is a great man. We all love him, and he was treated unfairly. I certainly hope this never happens again. He has missed a lot of time with his kids."

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Mr. Gene Locke came forward to speak as a member of the community. Mr. Locke is a retired hospital chaplain and volunteers at the Farmville Detention Center. Mr. Locke takes initial information from new detainees in order to provide that information for possible pro bono attorneys to offer legal remedies. Mr. Locke described an encounter with a detainee that had been arrested for driving without a license. The detainee had received his 3rd offense of driving without a license, because he cannot get a valid license, and was placed in this jail. Upon his release, he was picked up by ICE and taken to Farmville. He was held there for a couple of months until he could make bond and be released. During that time, he was separated from his wife and children. They depend on his income to make ends meet. It was very distressing for his family members. I was surprised to hear of all the stories that I have heard in Farmville from different localities. I was surprised to hear that this happened in Charlottesville. If we want to keep families together and we want to build trust in our communities, I hope that you will find a way to adopt a policy so that people that are contributing to the community, who are law abiding and essential to our overall well-being do not have to go through being separated from their families.

Ms. Cynthia Neff, an associate with the Legal Aid Justice Center came forward to speak. Ms. Neff advised that this is an important issue to her personally. She knows people that are undocumented. Ms. Neff stated that many of these undocumented individuals are terrified to get into their cars. She believes we should join together with other communities and say no to ICE. We shouldn't do anything illegal, but do what we are entitled to do which is to say no, we are not going to inform ICE each time someone undocumented enters this jail. Most of the individuals are being arrested for driving without a license. It would be one thing if ICE was being contacted for murderers and violent criminals, but they are being contacted when someone isn't paying court costs/fines or failure to pay child support. Ms. Neff wants to make sure that we enforce everyone's rights.

Speaker Tammy, an 18 year resident of Charlottesville and active member of the Latino Community. Tammy stated that many undocumented individuals are humble, hardworking and try to do their best to encourage their kids. Don't separate husbands and wives. Don't separate families.

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Ms. Deena Sharuk, an attorney with the Legal Aid Justice Center stated that ICE does not operate under the same confines that are usually seen from other law enforcement agencies. They have exhibited a pattern and practice of deceitful practices. When ACRJ declined to honor their request to hold individuals for the 48 hours past their release date because it is unconstitutional, they produced warrants that were not signed by a judge or based on probable cause to compel the jails compliance. They constructed a form that had “warrant” listed at the top hoping to dupe the jail into believing this was an actual warrant signed by a judge. To obtain a judicial warrant, just like any other law enforcement agency, ICE has to establish probable cause that a crime or civil violations of immigration laws have been committed. If ICE has probable cause that someone in custody of a local law enforcement agency has committed a federal criminal offense, they should present the evidence to a judge or magistrate who can issue an actual warrant.

Sheriff Harding asked if being in the country undocumented considered a crime. Ms. Sharuk advised that it can be civil in some instances and criminal in others. Sheriff Harding asked what percentage of the individuals detained are bondable versus non-bondable. If they are given a bond, that is saying that they are not really a threat, but they can't afford to make the bond. Ms. Ciolfi said that is a tactic being used. Immigration bonds are on the rise and immigration bonds are very different from criminal bonds in that they have to be paid in full. If the bond is \$10,000, the amount paid would be \$10,000. Sheriff Harding asked if the majority or individual at detention facilities are given an opportunity to bond and can't afford it, or are they not given a bond at all. Ms. Cruz advised that they would go before an immigration judge. It is rare for ICE to issue bonds straight from detaining them. Sheriff Harding asked if these are mainly misdemeanor offenses. Ms. Cruz stated that our criminal justice system has guidelines. When individuals are being sentenced, we have sentencing guidelines. There are magistrates and judges to determine if someone is a flight risk or a danger to the community. Essentially, we are not forcing ICE to make a priority list the way they should. It is casting a wide net saying go out and detain everyone. Mr. Wiley stated that if you are incarcerated in this jail and released, it is either because you have served the sentence for whatever crime you have committed, which would

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typically be a misdemeanor or because you were acquitted. If you were convicted of a felony, typically you would not be eligible for release from this jail. Ms. Cruz advised that because of the stepped up enforcement, overcrowding is causing individuals taken to Farmville are being sent to Texas, and Georgia where they are displaced from council and from their communities, making it even more difficult to access a bond.

Matters from Roger Wiley, ACRJA Attorney:

Mr. Wiley advised that the leadership of the Department of Corrections is not going to change. The Secretary of Public Safety is being reappointed. He anticipates that the state policy on correctional matters is going to stay relatively stable.

Matters from the ACRJA Board Members:

Dr. Bellamy stated in regards to the issued pertaining to ICE and those who may be detained because of their immigration status, inaction is not neutral. If there are 4 people being detained per month, 8 in two months, it is important for us to deliberate but is just as important for us to not do harm. Dr. Bellamy asked the board to consider asking the Superintendent for a moratorium on the responding to ICE's voluntary request or notification of a person's release date until the next meeting where a vote can be taken. Dr. Bellamy stated that if most of the offenses are child support, or driving offenses, those are not reasons to have ICE involved. Mr. Wiley advised that he has had discussions with Legal Aid and his firm has consistently advised their jail authority clients that they should not honor any ICE requests to hold individuals beyond their release date. If they are presented with a document that claims to be a warrant, if not signed by a judicial officer, the jail is not obligated to hold that person and should not hold that person. We have also consistently advised people that they can as a matter of cooperation between law enforcement agencies that they can honor ICE's request for notification when someone is about to be released. Mr. Wiley agrees with the Legal Aid Justice Center that is it not a legal requirement. Mr. Wiley stated that on a personal level, he does not agree with the policy of rounding up individuals. However, he does not believe that his personal views should be involved in his client's decision about

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what to do in this situation. Mr. Wiley stated that many members of this board are elected officials; however, no one was elected to this Jail Board. The board should carefully think about what their appropriate role is when speaking for your collective communities. Mr. Wiley believes that this is a political decision. He does not think that there is a legal situation that forces the board to make a decision one way or another. He believes that it is incumbent for the board to consider whether it is appropriate to insert the Jail Board into that political decision.

Dr. Bellamy disagreed that this is a political decision. Dr. Bellamy believes that this is a legal and in his opinion a moral opportunity for the board to do the right thing. Dr. Bellamy advised the board that he will not make any decisions on this board that has anything to do with his political position. Dr. Bellamy stated that if there is no legal or binding reason for us to notify ICE, why we at the very least can't ask for the moratorium until we can take a vote, potentially at the next meeting. Mr. Wiley advised that he was not advising the board to refuse to declare a moratorium. If the board would like a month to think about it and you would rather not have the notifications be made during that month, he does not have a problem with that.

Mr. Tufts informed the board that in his opinion, many of the issues of the board can be considered political such as; women's programming or inmates getting out more in the community to make money. The argument can be made that every substantive issue that we deal with is a political issue. Mr. Tufts stated that it is not only appropriate but required of us to listen to the community. Mr. Tufts stated that the policies in the packet provided by Legal Aid show that under the current administration, there is a huge difference in the way ICE is reacting, and there may be more than 4 people a month. Mr. Tufts advised the board that it is not a requirement for the jail to contact ICE and it is his opinion that we should not. Mr. Tufts would join Dr. Bellamy in his suggestion of a moratorium.

Mr. Murphy stated that many of the programs of this jail reflect the community. Mr. Murphy wanted to know from Colonel Kumer and Mr. Wiley what the nature of the request is from ICE. It should be made clear to the board if it is a request or if it is advisory. Mr. Murphy also inquired about the procedure for an individual who is a citizen of this country but is wanted in another state. Is the policy the

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same or are they treated differently? Mr. Murphy advised that he has spent some time talking the City of Charlottesville's Commonwealth Attorney and there is potentially a role that the commonwealth plays in some middle ground decision making. The City's Commonwealth Attorney advised willingness to be consulted on a case by case basis about whether the charge profile prompts them to feel the notification should occur. Everyone would agree that certain charges in the interest of public safety may prompt the notification, while the types of charges that have been discussed may not. The other topic that was discussed with the City's Commonwealth Attorney is that ICE is clearly notified when the undocumented individual comes into the facility. Should another notification be done? Mr. Murphy would like these types of questions answered for the March meeting.

Mr. Walker stated that his preference would be to keep the policy that we currently have until more information has been presented. Mr. Walker stated that as a representative of the Albemarle County Board of Supervisors, there is an expectation that issues of this nature are significant enough to take back to the Board of supervisors.

Ms. McKeel advised that she is not an independent operator. She represents the board of supervisors and she would prefer more information in addition to speaking with the county's commonwealth attorney before a decision is made.

Sheriff Harding stated that he believes there needs to be a comprehensive national policy. Sheriff Harding stated that he would probably be in disagreement with the majority of people here; however, he has real concerns about government disrupting families.

Dr. Bellamy stated that they are appointed to their boards to act. He believes that we allow different things to stop us from doing what is right for fear of retribution.

Mr. Carter stated that he is in agreement with Ms. McKeel, Mr. Walker and Mr. Murphy that the board should wait. Mr. Carter advised that he did not realize that this was going to be presented today and he is not as sympathetic as some of the other individuals that presented. Mr. Carter advised Dr. Bellamy to tell his officers

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to stop arresting these people. Dr. Bellamy advised that they were working on that and hopes that Nelson will do the same.

Sheriff Brown advised that this is not an action item on the agenda to change the board's policy. So whatever happens today does not change the policy. We want to make sure that board member have an opportunity to speak to the members of their jurisdictions and Commonwealth Attorneys.

Colonel Kumer advised the board that the jail is not required to contact ICE. When an individual is brought in and fingerprinted, Virginia Law requires that we notify ICE if the person here is wanted by ICE. Once the individual's fingerprints hit the scanner, ICE is notified. ICE then comes to the facility to interview that individual and determine whether or not to put a detainer on them. The detainer asks the jail to notify ICE 48 hours prior to their release. Under the Obama administration, they would only want individuals who have been convicted of felonies and other serious crimes. Colonel Kumer advised that he has spoken with ICE and they no longer prioritize based on crimes committed. This administration now prioritizes on how quickly they can get here. With regard to a US Citizen with a detainer from another state, if they are wanted federally, we would hold those individuals because they have been charged with crime. We did receive documents from ICE that had "Warrant" listed at the top trying to make the jail believe that it was a valid warrant and detainee listed should be held. It was determined that it was not a valid warrant because it was not signed by a judge.

Colonel Kumer gave the board and members of the public background information stating that we previously held individuals for up to 72 hours past the release date. The Attorney General gave his opinion stating that detainers are not legally binding. Mr. Wiley then advised us to stop holding individuals past their release date but we will continue to notify ICE of their release date. If they are not present to pick up that individual, they are walked out the back door. They have now started getting here hours before the release time and waiting for that individual to be released. Dr. Bellamy stated that since ICE is notified upon fingerprinting, we have met our legal and technical obligation. It is up to ICE at that point to pick up the individual.

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Mr. Murphy asked if release dates are public information. Colonel Kumer advised that there is actually an app that gives scheduled release dates. However, the majority of releases are not scheduled releases. They don't take into account bonds, or purge bonds, which is why they ask for 48 hour notification or as soon as possible.

Dr. Bellamy stated that if the thought process was to slowly work toward changing the policy regarding notification, he is asking for a moratorium in regards to pausing notification until it can be brought before a vote. Based on Mr. Murphy's comment, ICE is already being notified upon fingerprinting. We are already moving in this direction. Even if it is just a minimal number in the eyes of some, should we be playing with the lives of those people?

Ms. Van Clief advised Chairman Sheriff Brown that there is no motion on the floor.

Dr. Bellamy made a motion to have a moratorium on responding to ICE's voluntary request for notification of a person's release date until our next meeting, when we can vote. Mr. Tufts seconded the motion. Mr. Murphy asked for discussion. Mr. Murphy asked Dr. Bellamy if he would consider a friendly amendment to seek the advice of the commonwealth attorney for the appropriate jurisdiction and its prosecutorial discretion. Mr. Murphy would support the motion until the board would be able to meet again, charging the superintendent with contacting the local commonwealth attorney for any cases of this type as to whether the charges for that individual would prompt ICE notification. Mr. Lawton suggested another amendment to the effect that if the Commonwealth Attorney did not respond to the request for input, the individual would be released. Mr. Tufts is concerned that the Commonwealth Attorney may not get back to the Superintendent in a timely manner. Ms. McKeel stated that she does not believe that any of this has been discussed with Albemarle County's Commonwealth Attorney. Sheriff Brown stated that what is being looked at right now is a moratorium on the notification of ICE. We are not looking to change the policy currently. Mr. Walker stated that there are several caveats, and he would like the opportunity to reach out to Albemarle's Commonwealth Attorney prior to making a decision on a moratorium. Colonel Kumer advised that he would prefer not

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implementing a moratorium just from a logistical and operational standpoint. Mr. Murphy suggested in the interest of not disrupting the process, the board meet again in 2 weeks. Dr. Bellamy advised that he would consider withdrawing his motion if the board does in fact meet in 2 weeks. After discussion and the board agreeing to meet on January 25, 2018 at 12:30 pm., giving board members an opportunity to speak with their respective Commonwealth Attorneys, Dr. Bellamy withdrew his motion.

Chairman Sheriff Brown took a 2 minute recess to give members of the public an opportunity to exit if they didn't choose to stay for the remainder of the meeting. Ms. McKeel and Dr. Bellamy exited the meeting during the recess. The meeting reconvened at 2:05pm.

Matters from Jeff Brill, Business Manager:

Mr. Brill advised that the budget would not be an action item because we were not able to get the Compensation Board numbers prior to the meeting. Mr. Brill then went over the FY19 operating budget for the board which was supported by the documentation attached in the packet.

Matters from Colonel Martin Kumer, Superintendent:

Mrs. Johnson Harris asked if the presentation on Women's Programming could be tabled until a later meeting due to the number of members that had to leave early. Colonel Kumer advised that we would table the presentation until a later date. Colonel Kumer reminded the board of the request for shift differential over the summer. It is now an item that has been listed in the budget and the cost to consider is approximately \$50,000. Mr. Murphy asked if that was based on workload or more on the social impact of working evening shift. It is more of the social impact. We reached out to Albemarle County and the City of Charlottesville to see if they offer shift differential. Both the City and the County offer shift differential. Colonel Kumer advised that we would be the first jail in this area to offer shift differentials for correctional staff. Other jails offer partial differentials for nurses but we would be the front runner in offering shift differential for sworn

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staff. This would be a good marketing point for hiring more employees. Colonel Kumer advised that the jail is looking between \$.50 and \$.75 per hour. That amount would be removed if they left the evening shift and went to a daylight shift.

Sheriff Harding made a motion to adopt the policy for shift differential. The motion was seconded by Mr. Carter. The motion carried.

There was no need for a closed session.

Sheriff Brown asked for a motion to adjourn until Thursday, January 25, 2018 at 12:30pm. Mr. Tufts made a motion to adjourn until Thursday, January 25, 2018 at 12:30 pm. Mrs. Johnson Harris seconded the motion. The motion carried unanimously.

The meeting adjourned at 2:25pm.

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ALBEMARLE-CHARLOTTESVILLE REGIONAL JAIL AUTHORITY

EXECUTIVE SUMMARY

<p><u>AGENDA TITLE:</u> ICE Release Date Notification</p> <p><u>SUBJECT/PROPOSAL/REQUEST:</u> Subject</p> <p><u>STAFF CONTACTS:</u> Martin Kumer, Superintendent</p>	<p><u>AGENDA DATE:</u> January 25, 2018</p> <p><u>FORMAL AGENDA:</u> <u>ACTION:</u> Yes</p> <p><u>CONSENT AGENDA:</u> <u>ACTION:</u></p> <p><u>ATTACHMENTS:</u></p> <p><u>REVIEWED BY:</u></p>	<p><u>ITEM NUMBER:</u> VI.1</p> <p><u>INFORMATION:</u></p> <p><u>INFORMATION:</u></p>
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BACKGROUND:

The Board has been asked to cease notifying Immigration and Customs Enforcement, ICE, of release dates for inmates with ICE immigration detainers. Please see attachment **A** for example of an ICE Immigration Detainer.

Currently this facility makes the initial notification as required by the Code of Virginia 53.1-218. Duty of officer in charge to inquire as to citizenship; notice to federal immigration officer of commitment of alien. Please see attachment **B** for complete code. This is accomplished during the booking procedure both by verbally asking the individual and when the person is fingerprinted. The fingerprint is done electronically and sent digitally to the Central Criminal Record Exchange, CCRE. This is the data system that notifies ICE that a person of interest is currently being detained in this facility. This procedure satisfies the Code of Virginia's notification mandate.

Once notified, ICE will determine if they want to send an ICE representative to our facility to interview the individual. ICE uses this interview to determine if they will place an immigration detainer, formally referred to as form I 247 A. According to ICE, they place detainers on aliens who have been arrested on local criminal charges and for whom ICE possesses probable cause to believe that they are removable from the United States, so that ICE can take custody of the alien when he or she is released from local custody.

Under our current policy and procedure and in compliance to a formal request, this is a request and is not legally required, from ICE per the I 247-A form, we notify ICE 48 hours prior to an inmate scheduled release or as soon as a release is known. This is the function that the Board has been asked to cease. When we inform ICE of the release date we also inform them that the individual will not be held past their scheduled release date if ICE does not take custody of them at that time. If ICE chooses not to take custody or fails to take custody prior to the scheduled release, the individual is released to the community.

Over the last year this facility averages approximately four transfers to ICE custody per month.

Regardless of the Board's decision there will be no immediate financial impact to the jurisdictions since the individuals are either released on their scheduled release date or immediately transferred to ICE custody.

RECOMMENDATION:

If after discussion the Board considers themselves adequately prepared to make a definitive decision, The Superintendent recommends a policy of deference as described below, to each member agencies duly elected Commonwealth Attorney. However, if the Board requires more time and or information to make a decision, the Superintendent does NOT recommend a moratorium on the notification process in the interim.

Over the last two weeks all three jurisdictions' Commonwealth Attorneys have been consulted regarding their preference as to whether or not this facility notifies ICE of an individual's scheduled release date.

Each one has made known their preference and will or already has put those preferences in writing to the Board.

This policy will establish a notification procedure based on each Commonwealth Attorney's predilection. Jurisdiction refers to the criminal jurisdiction and not the residential jurisdiction. Jail staff will apply that preference as a blanket policy and will only deviate from that policy if directed by the Commonwealth Attorney who has criminal jurisdiction over that individual. This will allow for a case by case review if they choose to exercise that option.

Example, an individual who resides in the County of Nelson but has been charged with and convicted of a crime in Albemarle County, we will defer to Albemarle County Commonwealth Attorney's policy for notification.

If an ICE detainer has been placed on an individual who has received charges out of two or more jurisdictions that have opposing notification policies, jail staff will defer to the jurisdiction's policy with the most severe conviction according to the Virginia Crime Commission. If the charges are equally severe, jail staff will apply the jurisdiction's notification policy with the longest sentence.

This initially sounds as though it may be labor intensive; however, this only applies to approximately 50 individuals per year. We process approximately between 3,000 and 4,000 people per year.

All other concerns will be communicated to the Commonwealth Attorneys who have jurisdiction for resolution.

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

Name of Alien: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2).

- A final order of removal against the alien;
- The pendency of ongoing removal proceedings against the alien;
- Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- Notify DHS as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at _____. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
 - Maintain custody of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien must be served with a copy of this form for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
 - Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
 - Notify this office in the event of the alien's death, hospitalization or transfer to another institution.
- If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

(Name and title of Immigration Officer)

(Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____.

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

- in person
- by inmate mail delivery
- other (please specify): _____

(Name and title of Officer)

(Signature of Officer) (Sign in ink)

Attachment - B

Code of Virginia
Title 53.1. Prisons and Other Methods of Correction
Chapter 10. Commitment of Aliens

§ 53.1-218. Duty of officer in charge to inquire as to citizenship; notice to federal immigration officer of commitment of alien.

Whenever any person is committed to a correctional facility the director, sheriff or other officer in charge of such facility shall inquire as to whether the person (i) was born in a country other than the United States, and (ii) is a citizen of a country other than the United States. The director, sheriff or other officer in charge of such facility shall make an immigration alien query to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement for any person who (i) was born in a country other than the United States, and (ii) is a citizen of a country other than the United States, or for whom the answer to (i) or (ii) is unknown.

In the case of a jail, the sheriff, or other officer in charge of such facility shall communicate the results of any immigration alien query that confirm that the person is illegally present in the United States to the Local Inmate Data System of the State Compensation Board. The State Compensation Board shall communicate, on a monthly basis, the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange.

In the case of a correctional facility of the Department of Corrections, the director or other officer in charge of such facility shall communicate the results of any immigration alien query that results in a confirmation that the person is illegally present in the United States to the Central Criminal Records Exchange of the Department of State Police in a format approved by the Exchange.

The information received by the Central Criminal Records Exchange concerning the person's immigration status shall be recorded in the person's criminal history record.

However, notification need not be made to the Central Criminal Records Exchange if it is apparent that a report on alien status has previously been made to the Exchange pursuant to § 19.2-83.2 or 19.2-294.2.

Code 1950, §§ 53-313, 53-314; 1970, c. 648; 1982, c. 636; 1985, c. 247; 1994, c. 579; 2008, cc. 180, 415; 2014, c. 641.