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Robert Vilchez, Secretary  
David R. Hines  
Scott Kizner  
Robyn D. McDougle  
Quwanisha H. Roman  
Dana G. Schrad  
Gregory D. Underwood

**COMMONWEALTH OF VIRGINIA**  
*Board of Juvenile Justice*

P.O. Box 1110  
Richmond, VA 23218  
(804) 371.0700  
Fax: (804) 371.6497  
[www.djj.virginia.gov](http://www.djj.virginia.gov)

## MEETING MINUTES

March 11, 2020

Main Street Centre, 600 East Main Street, 12<sup>th</sup> Floor North Conference Room, Richmond, VA 23219

**Board Member Present:** Tyren Frazier, Scott Kizner, Robyn McDougle, Gregory Underwood, and Robert (Tito) Vilchez

**Board Members Absent:** David Hines, Quwanisha Roman, Dana Schrad, and Jennifer Woolard

**Department of Juvenile Justice (Department) Staff Present:** Ken Bailey, Melinda Boone, Eli Bowles, Valerie Boykin, Ken Davis, Mike Favale, Wendy Hoffman, Joyce Holmon, Ken McGee, Linda McWilliams, Margaret O'Shea (Attorney General's Office), Jamie Patten, Kristen Peterson, James Towey, and Angela Valentine

**Guests Present:** Jason Houtz (Fairfax Juvenile Detention Center), Cathy Roessler (Blue Ridge Juvenile Detention Center)

### CALL TO ORDER

Board Vice Chair Tyren Frazier led the meeting as Chairperson due to Jennifer Woolard's absence. Chairperson Tyren Frazier called the meeting to order at 9:35 a.m.

### INTRODUCTIONS

Chairperson Frazier welcomed all who were present and asked for introductions.

### APPROVAL OF NOVEMBER 13, 2019, MINUTES

The minutes of the November 13, 2019, Board meeting were provided for approval. On motion duly made by Greg Underwood and seconded by Robyn McDougle, the Board approved the minutes as presented.

## **PUBLIC COMMENT PERIOD**

There was no public comment.

## **OTHER BUSINESS**

### **SALE OF NATURAL BRIDGE**

James Towey, Legislative and Regulatory Affairs Manager, Department

Mr. Towey made a rare request of the Board to approve a resolution for the sale of approximately 99.08 acres of property in Rockbridge County. In 2000, the Commonwealth of Virginia purchased property in Rockbridge County to use for the Natural Bridge Juvenile Correctional Center. The property was purchased under the name of the grantee, the Board of Juvenile Justice. In 2013, pursuant to the *Code of Virginia*, the Board approved the designation of the Natural Bridge Juvenile Correctional Center as surplus property given the needs of the Commonwealth. The budget bill language directs that the Natural Bridge Juvenile Correctional Center be sold and the proceeds of the sale be deposited into the general fund. The Department of General Services has entered into a contract for sale with Green Lea, LLC, and is expected to close by late summer or early fall.

By virtue of this resolution, the Board will be (i) approving that the property is surplus to the needs of the Department, (ii) approving the conveyance of the property to Green Lea, LLC, and (iii) ratifying the sale agreement and authorizing the Director of the Department to execute any contracts and other necessary documents.

The signatory on the resolution is Chairperson Jennifer Woolard. If the Board approves the resolution, Mr. Towey will scan and email the resolution to Chairperson Woolard for her signature. Mr. Towey will then send the signed document to the Department of General Services and the Office of the Attorney General.

On motion duly made by Tito Vilchez and seconded by Robyn McDougle, the Board of Juvenile Justice: (i) approved that the property commonly known as the Virginia Natural Bridge Juvenile Correctional Center is surplus to the needs of the Department; (ii) approved the conveyance of the property to the purchaser, Green Lea, LLC; and (iii) ratified the Sale Agreement and authorized the Director of the Department to execute such further documentation, including contracts and a deed, as may be necessary to complete the sale of the property to the purchaser.

### **SPIT GUARDS PRESENTATION**

Kristen Peterson, Regulatory and Policy Coordinator, Department

In November 2018, the Board asked the Department to develop options for restrictions on the use of mechanical restraints, restraint chairs, protective devices, and spit guards. The Department convened a workgroup to review existing regulatory revisions applicable to juvenile detention centers and juvenile correctional centers and developed several options to present to the Board. One option was to eliminate the use of spit guards. In January and May of 2019, the Board reviewed the proposed amendments and options and determined that spit guards should not be used in juvenile detention centers and juvenile correctional centers. Based on that ruling, the Department incorporated changes into the juvenile detention center regulations to prohibit the use of spit guards and advanced those changes through the regulatory process. The Department used the juvenile detention center regulations as the vehicle for the proposed amendments because those amendments were before the Board at the time the Department presented the various options.

The Department did not provide the Board with as much information on spit guards as mechanical restraints. While the Board heard detailed presentations from representatives of juvenile detention centers, Georgetown University, and the Commonwealth Center on the impact of the mechanical restraint chair, the Department did not give spit guards the same level of attention. Because the Board is hearing discussions at today's meeting on the Regulations Governing Juvenile Correctional Centers, the Department thought it was the right time for the Board to reconsider the use of spit guards.

Ms. Peterson introduced the Virginia Juvenile Detention Association and Bon Air Juvenile Correctional Center (JCC) representatives and asked them to share information regarding the use of spit guards.

### **Spit and Bite Guards Presentation**

Dr. Ken McGee, Dentist, Department

Dr. McGee introduced himself as a graduate of Virginia Commonwealth University who has worked as a contract dentist and correctional officer with the Department of Corrections, a dentist with the Department of Behavioral Health in Petersburg, and currently is a dentist at the Bon Air JCC. Dr. McGee shared several slides with the Board regarding potential impacts of being spit on and bitten.

#### Slides Two - Four: Staff Health and Safety

Saliva can contain 50 different types of bacteria and close to 100,000,000 microbes per milliliter.

- Bacterial pathogens are transmissible through saliva.
- Strep is transmissible through sputum, and causes sore throat, necrotizing fasciitis, septicemia, and is responsible for toxic shock syndrome, rheumatic fever, and scarlet fever.
- Meningococcal invasive disease is Meningitis. Treponema pallidum is the spirochete responsible for Syphilis.

Board Member Tito Vilchez asked for an explanation of septicemia. Dr. McGee responded that septicemia is a systemic infection that starts with a localized infection, but once in the blood stream, travels throughout the body. It is then considered septicemia, which can produce multiple organ failures.

Saliva also contains viruses that can be transferred between people, including the following:

- Herpesvirus, which can be transmitted mouth-to-mouth. If someone has Herpesvirus, and spits in your eye, it could lead to blindness.
- Epstein-Barr, which is responsible for mono.
- Human papillomaviruses
- Hepatitis B, but Hepatitis C also can be transmitted through the sputum.

Saliva also can convey other material.

- Blood
- Feces

A cut in the mouth can easily transmit blood by an open wound, like a cut or lesion. HIV or Hepatitis are possibilities of transmission.

#### Slide Five: Bites

- Human bites can cause pressure damage to skin, tendon, and bones. It can also cause tetanus, commonly called lockjaw.
- Infections can travel along tendons into lymph systems, and cause permanent damage, septic arthritis, necrotizing fasciitis, and could lead to amputation in worst-case scenarios.

#### Slide Six: Youth in Restraint

- Most youth involved in restraint have emerging borderline personality traits. Persons with borderline personality disorders and adolescents both seek to test limits and often resist de-escalation until they find limits. Spitting is a way to prolong conflict in restraint.
- Rhinovirus is responsible for sore throat, flu virus, and is transmitted by sputum.
- Cytomegalovirus puts unborn children at risk and is transmitted by sputum.
- Spit creates small particulates, which can transmit Tuberculosis, along with a host of exotics like Ebola because of the aerosol process.

### **The Use of Spit Guards in Juvenile Detention**

Jason Houtz, Virginia Juvenile Detention Association

Mr. Houtz has been with the Fairfax County Juvenile Detention Center (Fairfax) for almost 25 years, and has worked at every level in a facility. Mr. Houtz shared that he has been spit on as a direct care

staff, administrator, and manager and noted that it happens frequently in juvenile correctional settings. Mr. Houtz offered several slides regarding spit guards.

#### Slide Two: What is it?

A spit guard has many different forms. Spit guards or bite guards are protective devices for preventing the spread of communicable disease and blood borne pathogens, which can come with spitting.

Mr. Houtz explained that Fairfax does not view the spit guard as a restraint device, but rather a protective device used to protect staff involved, as well as the resident.

#### Slide Three: Used By

Spit guards are used in many applications when addressing out-of-control human behavior by law enforcement, jails, secure juvenile facilities, and hospitals.

#### Slides Four and Five: Is Spitting Considered Assault?

This slide details the significant case law that establishes spitting as assaultive behavior, and in some cases, as a battery offense.

Board Member Greg Underwood asked if the spit guard Mr. Houtz is referring to is a mask, hood, or shield and asked how it is placed on a youth to prevent spitting?

Mr. Houtz replied that the proposed regulatory language was drafted to identify the characteristics that make a device a qualifying spit guard; such as mesh fabric to allow for visibility and that it does not restrict breathing. Products falling under the classification would protect staff and residents, but not overly restrict the resident.

#### Slides Six through Twelve: Purpose and Use

Managing combative residents is one of the most stressful duties a staff member performs. The staff is trying to safely control a youth who is out of control and escalating, and staff need appropriate tools and training to perform in this situation in the safest way possible.

Youth coming into detention often are combative or under the influence, and staff have no established relationship with them. The staff have no real time and ability to deescalate the situation and must deal with the behavior.

Staff are subjected to exposure from bites, spit, or blood and are at a high risk of contracting a blood-borne pathogen such as HIV or Hepatitis. Testing can take weeks and can be stressful for the employee. Treatments can be costly and require time off from the job.

Residents in an agitated state with a history of biting and spitting are likely to repeat this behavior. Residents have been known to intentionally bite their tongues or cheeks and spit blood on staff.

Being spit on can evoke strong reactions from even the most seasoned and controlled staff. While staff can be trained to respond and react appropriately during a physical restraint of a resident, it is difficult to train staff to control their emotions in that situation. Staff can talk to the youth, encourage them not to be reactive, but the situation is very reactive. There may be no level of agitation at the moment, and then the resident spits to start the aggression.

Spit and bite guards are specifically designed for the purposes of prevention and are known to be safe and effective. As with any protective equipment, spit guards may not always be readily available in the moment when needed; however, prohibiting them increases the risk of harm to staff and other residents.

Without a properly designed piece of equipment, staff managing a resident who is actively spitting or biting may resort to physical control, which can perpetuate the aggression and potentially cause injury to staff or the resident. Staff might use items not designated for this purpose as a barrier, such as a shirt, towel, or blanket, which could be extremely harmful to the resident. Staff also might resort to an unsanctioned process to prevent the youth from spitting or biting. Attempts to prevent such actions by restricting or re-directing the head during a restraint makes staff more susceptible to a bite, which is equally, if not more, dangerous and increases the risk of injury to the resident.

Protective equipment designed specifically for the prevention of spitting or biting is made with mesh fabric and provides the following benefits: does not restrict breathing; does not present a choking hazard; prevents fluid from exiting the guard; limits the youth's ability to bite; and reduces the need for physical force to prevent spitting and biting.

Mr. Houtz analogized spit guards to the use of a fire extinguisher. It may not be readily available when needed, staff may have to resort to another device in those situations, and staff may not always predict when the incident necessitating its use might occur, but staff should have the proper equipment available to help them control the situation.

### **The Use of Spit Guards in Juvenile Correctional Centers**

Joyce Holmon, Deputy Director of Residential Services, Department

Deputy Director of Residential Services Joyce Holmon presented the Board with a sample of one type of mesh spit guard that is primarily used in juvenile detention centers and the juvenile correctional center and explained to the Board that the proposed regulations specify the type of device that can be used.

Deputy Director Holmon indicated that the Department does not want staff using another device to prevent a young person from spitting on staff. Spitting creates a visceral response. Deputy Director Holmon shared a recent experience in which a staff member was restraining a resident who did not have a history of spitting. The resident spit and as a reflexive action, the staff reached forward and connected with the young person's face. Staff complete many hours of training on deescalation; however, until they encounter a situation, they do not know how they will respond. Deputy Director Holmon advocates for the protection of youth in the facility. If the appropriate device is available, it puts a safety measure in place so that staff does not use jackets, towels, or articles of clothing in order to shield and protect themselves.

Board Member Greg Underwood said that he googled spit guards and spit hoods and some results showed people have died from these types of devices, and lawsuits have been filed. He asked whether the Department researched the dangers of using spit guards?

Ms. Peterson answered that the Department conducted preliminary research and drafted regulatory amendments to ensure residents with spit guards in place are closely monitored by staff to prevent any such hazards.

Policy and Legislation Manager Michael Favale added that a lawsuit is not necessarily a finding of fact. Just because a lawsuit indicates that an individual was wearing a spit guard, this does not mean there is a correlation between whatever occurred and the spit guard. There may have been a number of factors to contribute to the incident. Based upon the analysis done by the Department, a product specifically designed for a purpose is always better than trying to use a product not designed for that purpose.

Ms. Peterson then presented the proposed amendments to the regulation addressing spit guards, found on page 84 of the Board packet. She explained that the proposed amendments are similar to a proposal presented to the Board last May.

The proposed amendments define protective device as an approved device placed on a portion of a resident's body to protect the resident or staff from injury. A definition was also developed for a spit guard, which is a protective device designed to prevent the spread of communicable diseases as a result of spitting or biting.

Ms. Peterson directed the Board to Section 1180, which deals with mechanical restraints. Subsection D provides that juvenile correctional center staff may not use a protective device unless the use is in connection with a restraint and shall remove the device when the resident is released from the restraint. This language addresses the concern that staff will use the spit guard as a knee-jerk reaction. The

Department wants to make sure that spit guards are being used only in limited circumstances. The amendment allows for use of the spit guard only “in the course of a restraint,” which includes a physical restraint, mechanical restraint, or the use of the mechanical restraint chair.

Subsection E requires juvenile correctional center staff who use a spit guard to control resident behavior to observe a number of additional requirements. Ms. Peterson explained that this language was crafted to allow the facilities to choose the type of spit guard they need, provided it meets the parameters in the regulation.

- The design of the spit guard may not inhibit the resident’s ability to breathe. If the spit guard’s design could restrict the resident’s ability to breathe, it would not be permitted for use under the proposed amendments.
- The spit guard must be constructed to allow for visibility. The purpose of this provision is to ensure, to the extent possible, that the resident is not being overly traumatized. If a spit guard covers a resident’s face, it may contribute to or increase their level of trauma.
- The spit guard must be manufactured and sold specifically for the prevention of biting and spitting. This means staff would be prohibited from using any other type of device that does not meet these requirements, such as an article of clothing or a towel.

The spit guard may be used only on a resident who: (i) previously bit or spit on a person at the facility, and (ii) in the course of a current restraint, threatens or attempts to spit on or bite or actually spits on or bites a staff member. A youth coming into a juvenile correctional center from a detention center has a clean slate, even if they habitually spit at the detention center.

The spit guard must be applied in a manner that will not inhibit the resident’s ability to breathe. This is a training issue. The Department wants to ensure staff is utilizing the device properly.

While the spit guard remains in place, staff shall provide for the resident’s reasonable comfort and ensure the resident’s access to water and meals, as applicable. The resident does not lose his rights just because the spit guard is in place.

Staff must employ constant supervision of the resident. This is the provision the Department thinks will provide additional protection. Staff will be supervising the resident constantly for the entire time the spit guard is in place. If there are signs of respiratory distress, staff shall take immediate action to prevent injury and notify supervisory staff.

If a resident is unconscious, vomiting, or in obvious need of medical attention, staff would not be authorized to use the spit guard.

Ms. Peterson formally requested the Board to consider the proposed amendments for inclusion in the Regulations Governing Juvenile Correctional Centers. She explained that if the Board agrees to the proposed amendments, the Department would make the same changes to the Regulations Governing Juvenile Detention Centers. If the Board decides to oppose the use of spit guards and retain and preserve their original ruling, the Department would retain the language in the juvenile detention center regulations.

Board Member Robyn McDougale asked how long a resident wears a spit guard, on average?

Mr. Houtz responded that in his experience, the longer a staff member maintains physical contact with a resident, the longer it will perpetuate their aggression. The sooner a staff member can release physical contact, the quicker the resident will deescalate. In Mr. Houtz's program, even mechanical restraints do not typically stay on long. The resident must receive medical attention for restraints exceeding two hours. Mr. Houtz believes his program only reached the two-hour window on rare occasions when the resident is in perpetual risk of self-harm and even then, staff typically does not use mechanical restraints. Mr. Houtz said not very long.

Board Member McDougale asked whether, once the spit guard is in place, the need for physical contact by staff immediately decreases because of the spit guard, thus helping to deescalate the resident.

Mr. Houtz agreed with Board Member McDougale, and emphasized that at this point, staff's objective would be to remove all protective devices as quickly as possible.

Board Member Underwood asked how residents are physically restrained in order to apply a spit guard, particularly when the resident is belligerent and agitated, and whether staff use handcuffs?

Mr. Houtz responded that in his experience, the most common time a resident might spit on staff is when they are agitated with that staff. Mr. Houtz explained that Fairfax uses Handle with Care, which is training sanctioned by the Department and includes a physical restraint technique. Every staff member is trained annually in Handle with Care. From the moment the staff member encounters a situation such as two residents in a physical altercation, a resident in an act of self-harm, or aggression towards staff, this technique is employed to safely gain physical control over the resident.

Blue Ridge Juvenile Detention Center Director Cathy Roessler said that Handle with Care is focused on deescalation first and doing everything else to deescalate the situation before it becomes unreasonable.

Director Valerie Boykin added that Department staff are certified annually in the use of Handle with Care and offered to provide a presentation to the Board at a future meeting, if desired.

Board Member Scott Kizner asked why the facilities are currently using spit guards if the Board has prohibited their use.

Ms. Peterson explained that at the May 2019 Board meeting, the members reviewed the Regulation Governing Juvenile Detention Centers and agreed to prohibit the use of spit guards in juvenile detention centers and juvenile correctional centers. At today's meeting, the Department is requesting to revisit that decision and to allow the use of spit guards in both juvenile detention centers and juvenile correctional centers. These facilities are still using the spit guards because amendments to the regulations have not taken effect. The regulatory process is lengthy.

Board Member Kizner asked when a young person spits, whether they are reacting to a situation, spitting to show their anger and frustration, or acting at random..

Mr. Houtz answered that both scenarios are probably correct. Mr. Houtz shared a story where he tried to deescalate a resident verbally and, unprovoked with no sign of aggression, the resident spit in Mr. Houtz's face. During the course of a physical restraint, the resident may become agitated with staff, and, without their ability to swing or punch, may then bite or spit.

Board Member Kizner asked whether the spit guard is a device to protect the staff or merely a deescalation process.

Mr. Houtz speculated that the spit guard protects the staff member, but also, in many ways, protects the resident.

Board Member Kizner acknowledged his opposition to the spit guard back in May and asked if the group has any anecdotal information as to whether, when a spit guard is placed on the young person, it makes them angrier, and eventually they get so exhausted the spit guard comes off and they stop spitting. Does the Department think placing a spit guard on a resident is what makes them comply?

Deputy Director Holmon responded that the spit guard is a deterrent because, as Mr. Houtz described, once the resident loses the ability to swing and kick, the resident generally turns to spitting or biting. Deputy Director Holmon speculated that it is not because the resident is exhausted that the spit guard is effective, but because the spit guard acts as another deterrent. In addition, during the restraint process, staff are verbally deescalating the resident and trying to sway their behavior.

Board Member Kizner asked how often a spit guard is used.

Deputy Director Holmon said the juvenile correctional center does not use the spit guard more than once a month.

Board Member Kizner asked if a secondary injury might occur while placing the spit guard on a resident.

Mr. Houtz discussed an incident where a resident was not wearing a spit guard, and staff were trying to redirect the head to prevent the spitting and were bitten by the resident.

Ms. Roessler added that the time she witnessed a spit guard being used, she did not witness a secondary injury.

Board Member Kizner commented that he worked five years at Grafton School as a residential staff and was involved in many restraints of young people resulting in being spit on, and suffered 13 stitches in his back from one of those restraints. Board Member Kizner explained his objective of trying to determine whether spit guards are helping the young person or potentially further escalating an incident. Board Member Kizner asked for confirmation that spit guards are a way to reduce the situation.

Mr. Houtz responded that his biggest concern is if the spit guard is not available, what other measures staff will resort to prevent being spit on.

Ms. Roessler added that juvenile detention centers see many adolescents with mental health issues, and sometimes the use of the spit guard prevents escalation. Staff is trying to help the resident control himself because during those moments the resident is not thinking rationally.

Board Member Underwood asked the rationale for the Board's opposition to spit guards last June, when it seems the device would increase employee safety.

Ms. Peterson responded that the Board focused most of its discussion on the mechanical restraint chair. There was little discussion on the use of spit guards. Having reviewed the minutes from that Board meeting, Ms. Peterson indicated that only one comment was made on the spit guard before voting, which involved a concern with the possibility of asphyxiation.

Board Member McDougle added that the focus of the entire presentation at the previous meeting was the mechanical restraint chair. The spit guard was almost an afterthought. Board Member McDougle indicated how glad she was that this topic was brought back to give it proper attention. Board Member McDougle thought that members were not voting against spit guards as much as they were focused on the restraint chair.

Director Boykin thought the Department did not do justice to the spit guard and give the Board enough information.

On motion duly made by Robyn McDougle and seconded by Tito Vilchez, the Board of Juvenile Justice approved the Alternative Spit Guard Provisions presented to the Board on March 11, 2020, and authorizes the Department of Juvenile Justice to incorporate these proposed amendments into the Regulation Governing Juvenile Correctional centers.

Board Member Robyn McDougle commented that she would need to leave the meeting for another priority appointment, which would result in the Board not having a quorum. After discussion, the Board decided to schedule a special session in May to review the Regulations Governing Juvenile Correctional Centers.

It was also decided that Board packets will be mailed to the members in a timely manner so they can review the material prior to the meeting.

#### **DIRECTOR'S CERTIFICATION ACTIONS**

Ken Bailey, Certification Manager, Department

Included in the Board packet were the individual audit reports and a summary of the Director's certification actions completed for December 9, 2019.

The Summit Transitional Living Program is a new residential facility that continues to struggle with following proper protocols in administering medication. The Certification Team monitored the program and worked with staff, and the program has made improvements. The certification for the Summit Transitional Living Program was extended until June 8, 2020. The Certification Team will complete a monitoring visit at that time.

The audit for the 4<sup>th</sup> Court Service Unit in Norfolk found two deficiencies related to not maintaining proper documentation and leaving blank some elements on a social history report. The 4<sup>th</sup> Court Service Unit was certified for three years through December 1, 2022.

The 10<sup>th</sup> Court Service Unit is a large rural area encompassing the jurisdictions from the North Carolina border to Prince Edward, Charlotte, and Appomattox Counties. The audit of the 10<sup>th</sup> Court Service Unit found five deficiencies, mostly related to documentation required by the Department's Reentry Manual. The Reentry Manual frequently has been misinterpreted and has created requirements for minutiae documentation. The Division of Community Programs is working to retrain on the manual

requirements. The Certification Team completed a monitoring visit, and the 10<sup>th</sup> Court Service Unit was in compliance.

The audit of the 14<sup>th</sup> Court Service Unit in Henrico had similar issues with forgetting to place documentation in the record file. The Certification Team performed a monitoring visit to review the five audit issues, and all but one was brought into compliance. The missing element in the audit compliance has been referred to the regional program manager for additional follow up. The 14<sup>th</sup> Court Service Unit was certified for a three-year period.

Although the audit for the 21<sup>st</sup> Court Service Unit in Martinsville found three minor deficiencies, including lack of documentation, the subsequent monitoring visit showed excellent compliance with the plan, and the unit was certified for three years.

The audit for the 22<sup>nd</sup> Court Service Unit in Rocky Mount found five deficiencies including lack of documentation related to the Reentry Manual. The monitoring visit indicated all deficiencies compliant with the regulations. The 22<sup>nd</sup> Court Service Unit was certified for three years.

The audit for the 23<sup>rd</sup> Court Service Unit in Salem found only one deficiency of a minor oversight in the social history report. The 23<sup>rd</sup> Court Service Unit corrected the deficiency during the monitoring visit and was certified for three years.

## **LEGISLATIVE UPDATE**

James Towey, Legislative and Regulatory Affairs Manager, Department

James Towey offered a presentation on the 2020 General Assembly session. This session was extremely busy for the Department, especially in the criminal justice arena. During last year's session, the Department tracked 206 bills that impacted the agency or juveniles in the juvenile justice system. This year, the Department tracked 511 bills, a 248% increase, which shows the volume of work done by the legislative team. The Department also completed 35 Legislative Action Summaries, which provide in-depth legal analysis that informs the Governor's Office on the effects of certain bills. The legislative team is currently completing ten Enrolled Bill Reviews on bills that were passed and will have more in the coming weeks. The Department focused primarily on agency bills, but monitored and followed other bills seeking amendments that could have been problematic to the juvenile justice system or affected agency operations. Although the agency tracked 511 bills, the legislative team had eyes on over 2,000 bills. It was a great team effort.

The legislative team meets during the summer months to discuss proposals. Many of the proposals originate from the court service units, based on their needs and issues they encounter. The Department solicits legislative ideas from the Board usually around June. Mr. Towey extended an invitation to the

Board again for their ideas on improving the *Code of Virginia* provisions impacting the juvenile justice system or the agency and requested that the Board let Department staff know in the coming summer months of any proposals or ideas for the next General Assembly session.

The Department presents its legislative ideas to the Secretary of Public Safety and Homeland Security. The Secretary's Office reviews and sends a smaller package to the Governor's policy team, who decides which bills will be included in the Administration's legislative package. For the 2020 session, the Department submitted six bills and three were accepted for inclusion in the Governor's legislative packet. All three bills passed and will become law on July 1.

The Department has been working on an age eligibility for transfer bill for a few years. The bill finally met with success this session. This bill increases from age 14 to age 16 the minimum age at which a juvenile must be tried as an adult in circuit court for certain offenses involving murder or aggravated malicious wounding enumerated in § 16.1-269.1(B) of the *Code of Virginia* and for certain violent juvenile offenses for which there is prosecutorial discretion to certify the case to circuit court under § 16.1-269.1(C). The bill also requires that for cases in which the Commonwealth's Attorney provides notice of intent to certify the case to circuit court under subsection C of the statute, the court service unit or other qualified agency must prepare a report regarding the juvenile, and the Commonwealth's Attorney must review such report prior to filing his notice of intent to proceed with trying the juvenile as an adult. The bill allows the juvenile and his attorney to waive this report, but tolls the required statutory periods if and while the report is being prepared. Under the bill, youth who have committed any of the offenses enumerated in subsections B or C of this section and who are at least 14 years old but are not yet 16 may be transferred to circuit court only after the court holds a transfer hearing and determines that a transfer is appropriate in accordance with subsection A of 16.1-269.1.

Another of the agency bills dealt with the different provisions in the intake statute in the *Code*. The bill increases the diversion period for truancy from 90 days to 120 days. Under current law, truancy is the only offense that has a 90-day diversion period by statute. Regulations call for a 120-day diversion period. Thus, a youth with a marijuana offense may have a diversion period of 120 days; however, a youth with a truancy offense will have a 90-day period. Many court service units have indicated that the 90-day diversion period was not enough time to develop and implement a successful truancy diversion plan. The Department's data showed that 66% of diverted truancy complaints were completed successfully, but 84% of all other diverted complaints were completed successfully. By increasing the truancy diversion period to 120-days, the Department hopes to close that gap and have more successful truancy diversions. The bill made additional minor changes to the intake statute.

The Department had to amend a statute on confinement for valid court orders for status offenses. There is a *Code* provision that deals specifically with truant juveniles. The court issues an order and imposes requirements on the juvenile for being truant. Under the provision, if the juvenile then violates the

truancy order, he can be confined in a facility for up to ten days. The federal Juvenile Justice and Delinquency Prevention Act (JJDP), which started in 1974, was reauthorized for the first time in several years in December 2018 and imposed additional requirements, some of which the Department will be addressing this year in advance of the 2021 session. The federal act provides that a juvenile cannot be confined for more than seven days. To comply, the Department needed to reduce the permitted ten-day confinement to seven days. In addition, the Department had to ensure that the statutory requirements are included in the court's written order whenever the court confines juveniles for a violation of a status offense or violation of an order stemming from a status offense. Federal funds attached to this federal legislation come through the Department of Criminal Justice Services (DCJS), which administers the state plan, and most of the funds are used for delinquency prevention in communities and schools and may also go to the Department. The Department's legislation is a first step to ensure compliance with the federal JJDP. A workgroup consisting of the Department, DCJS, Department of Social Services, the Office of the Executive Secretary of the Supreme Court, and other stakeholders meets throughout the year to ensure the Department's compliance with the JJDP.

Senator Adam Ebbin addressed the Board at last year's June meeting on regulations he wanted promulgated relating to contracts between local juvenile detention centers and the federal government's Office of Refugee Resettlement. Senator Ebbin's concerns stemmed out of the Shenandoah Valley Juvenile Center lawsuit. The Senator attempted to get a bill passed during the 2019 session, but was unsuccessful by a tie vote in committee of seven to seven. Senator Ebbin came back this legislative session and was successful in getting his bill passed. Senator Ebbin wanted separate regulations for specific contracts with the federal government. The Department will be creating and proposing new regulations for the Board's approval.

The Department's data shows that disorderly conduct charges are being used excessively in schools. For example, a school resource officer may charge a youth with disorderly conduct for behavior such as incessant talking or chewing gum. Rather than being handled by school administration, this behavior goes to intake, and the youth can be charged with a Class 1 misdemeanor. There were a number of bills this session dealing with disorderly conduct in schools. Senate Bill 3, patroned by Senator McClellan and part of the Governor's platform, provides that a student at any elementary or secondary school is not guilty of disorderly conduct in a public place if the disorderly conduct occurred on school property, on a school bus, or at any activity conducted or sponsored by any school. The bill decriminalizes the type of conduct that was being overly charged in schools.

The Department develops a legislative manual that explains all the bills relating to juvenile justice, and Mr. Towey trains the court service units on this material in June. The legislative manual will be available on the Department's website.

The Board thanked Mr. Towey for keeping them informed during the session, expressing that they found the information very helpful.

Board Member Kizner asked whether there are certain jurisdictions or communities in which a status offense of truancy is deemed a court order violation resulting in a ten-day confinement, and whether the juvenile would be confined to a local facility in that scenario.

Mr. Towey said there is one jurisdiction in the Commonwealth where the judge will automatically put a youth in a local detention center for ten days for a status offense of truancy.

Board Member Kizner asked if the youth is the only one in trouble, or whether it also affects their parent/guardian.

Mr. Towey answered that under the truancy provision, a parent also can be penalized if they do not participate in school conferences.

Director Boykin noted that there are different practices around the Commonwealth, and the court service units are doing a good job of not automatically filing truancy petitions. The laws were amended last year to require more work for the local school division before a truancy petition can be filed. The Department has worked diligently with communities, and continues to develop diversion programs to ensure young people stay in school. Director Boykin noted that she worked in a jurisdiction that filed few truancy petitions, but the judge would bring charges against a parent for failure to send their child to school. Both provisions are allowed under the law.

Board Member Greg Norwood said his experience in Norfolk involves the judge incarcerating youth for truancy, which he believes is inherently unfair because the youth will be incarcerated with other youth who have committed crimes. Board Member Norwood was concerned about this practice because he does not believe a youth should be incarcerated for a status offense with other youth alleged to have committed criminal offenses. Board Member Norwood believes the confinement reduction from ten to seven days is a step in the right direction.

Director Boykin noted that the Department was anticipating a bill that would curtail the confinement completely in Virginia, but that bill was not introduced this session.

Deputy Director for Education Dr. Melinda Boone said too often, when youth come back to school after being truant, the school immediately suspends the youth for failing to be in school. This response does not address the underlying issues.

## **DIRECTOR REMARKS AND BOARD COMMENTS**

Director Boykin expressed her appreciation of the Board's time and attention in these longer meetings and providing experiences and input in difficult decisions. Director Boykin also thanked the legislative team, who worked hard during the session and provided valuable weekly updates to the Board and to managers.

Director Boykin addressed COVID-19 and indicated that plans are being developed to ensure continuation of operations. The Department's Risk Manager is tasked to work across divisions to ensure staff and residents are safe. She then asked Deputy Director of Residential Services Joyce Holmon to provide the Board an update on COVID-19 plans at Bon Air.

Deputy Director Holmon noted that at Bon Air staff have developed a four-stage approach.

- Stage One:
  - Bon Air is already in the first stage, which includes training residents on appropriate handwashing and making sure the campus has proper protective equipment. Bon Air has 17 units open, and the medical staff are going to each unit training the young people and staff.
  - Stage One, Phase Two will introduce the utilization of black light training. Staff will apply a powder to the resident's hands and use a black light to show how well they cleaned. If their hands are not clean, they will be sent back for more handwashing.
  - Bon Air is providing hand sanitizers in the facility and in common places to include the lobby.
  - On March 12, the Virginia Department of Health Epidemiologist will visit Bon Air and provide training for the medical staff.
  - Medical supplies such as N95 masks are on back order, and additional goggles and gowns have been ordered.
- Stage Two would require screening of all young people coming from the juvenile detention centers and continue with increased cleaning. In addition, Bon Air would begin screening visitors and would reduce operational contact when possible. Bon Air may implement the utilization of teleworking.
- Stage Three would be triggered when a staff is infected. This would entail the entire population of youth being screened with repeat screenings every 72 hours.
- Stage Four will be triggered if there is a confirmed case at Bon Air, which would require shutting down school operations, quarantining residents to their respective units, and moving infected residents to the Central Infirmary.
- These stages will continue to grow and change as more information is received.

Chairperson Frazier asked if these expanded operations will include probation?

Director Boykin responded that information on the CDC pamphlets have already been emailed to staff. The Department sent out its first communique to all staff two weeks ago. The Department and the Division of Community Programs are working on distributing more specific information to the court service units.

Director Boykin then asked Dr. Boone, who has served as the Department's Interim Superintendent since August, to discuss winter graduation and a recent quilt show.

Dr. Boone noted that Yvonne B Miller High School had a winter graduation in January for 15 young men who received their high school diplomas or GEDs. It was Dr. Boone's first graduation and gave her the opportunity to see families come together to honor these young men. The Division of Education provides a traditional cap-and-gown high school graduation. The inspirational speaker was a former NFL player. The June graduation, which tends to be the larger of the events, is on June 19 at Bon Air at 10 a.m. It is important to have a winter graduation because some residents move on and otherwise would not have the opportunity to experience graduation.

On February 28, the Yvonne B. Miller Quilting and Upholstery program residents were invited to showcase their handmade quilts at the East Coast Quilting Show at the Hampton Convention Center. The residents displayed 21 quilts. Roy Mitchell, the quilting instructor, made sure the young men were dressed in suits and wore bow ties. They talked about their quilting experiences, shared the stories behind their quilts, and had a chance to see future opportunities in the quilting and upholstery field. The residents observed new techniques, the latest equipment, and classes on sewing techniques. The residents were proud and were recognized, not as youth in a correctional center, but as young men with a passion and skill in quilting.

Director Boykin noted that Department staff had to obtain permission from the resident's judges to take these quilting residents off campus. A woman from the Richmond area and local quilting company talked with many of these young men, and observed how powerful it was to see men in this field.

The Department operates the Virginia Public Safety Training Center (VPSTC), formerly Hanover Correctional Center. It is co-located with other public safety sectors. Director Boykin introduced Deputy Director of Administration and Finance Jamie Patten to talk about an exciting discovery.

Deputy Director Patten said the Department of Historic Resources (DHR) located a map from the 1800s appearing to depict slave quarters located on VPSTC property. The DHR came out with the map and located what they believed to be the slave quarters. The DHR archeologist will be performing an archeological dig at the end of March or beginning of April to locate and preserve and to tell the story from their findings. The Division of Education currently is working on lesson plans on this topic. Some

Bon Air students may be able to visit the site and talk with the archeologist. In addition, the Department has been working in partnership with the Department of Mines, Minerals, and Energy to put a solar array on the property of the VPSTC through an initiative from the Governor's Office. The solar array was built last year and finally became operational last month. It is producing a quarter of the electricity usage for the entire facility, and the Department is excited to see what kind of savings this will produce.

Mr. Towey announced a 5K event at Bon Air scheduled for May 16. The last 5K had over 70 resident participants. Mr. Towey invited the Board to attend to run, walk, or cheer on the participants. This will also be the start of a more formalized running program for the residents at Bon Air.

DJJ is the recipient of the L. Douglas Wilder Award for Innovations in State Government. The Department is proud to receive this award, and staff will be attending the honoree luncheon on April 15. Former director Andy Block will be present, along with some of the executive team. This is a team effort with Department staff and its multiple partners across the Commonwealth who supported our activities to make this all happen. Transformation was led by the Department but involved a host of partners. Those partners included operation of the community placement programs, and a host of new direct service providers in the community. The heavy lift was the Department's probation officers learning new skills and practicing new ways to support young people. The second heavy lift was done by the residential team, who had to reapply for their jobs and learn a more rehabilitative approach.

#### **NEXT MEETING**

The Board of Juvenile Justice meets on June 24, 2020, at 9:30 a.m.

#### **ADJOURNMENT**

Chairperson Frazier adjourned the meeting at 11:35 a.m.