

Dana Schrad, Chair
Robert Vilchez, Vice Chair
Vacant, Secretary
Eric English
Tyren Frazier
William Johnson
Scott Kizner
David Mick
Synethia White



Post Office Box 1110
Richmond, VA 23218-1110
804.588.3903

COMMONWEALTH of VIRGINIA *Board of Juvenile Justice*

Meeting Minutes

March 22, 2023

Virginia Public Safety Training Center, Smyth Hall, 7093 Broad Neck Road, Hanover, VA 23069

Board Members Present: Tyren Frazier, William (Will) Johnson, Scott Kizner, David Mick, Dana Schrad, Robert (Tito) Vilchez, and Synethia White

Board Members Absent: Eric English

Department of Juvenile Justice (Department) Staff: Ken Bailey, Ken Davis, Mike Favale, Amy Floriano, Wendy Hoffman, Dale Holden, Joyce Holmon, Nikia Jones, G Leffler, Melodie Martin, Ashaki McNeil, Linda McWilliams, Guillermo Novo, Megan O'Brien (Office of the Attorney General), Kristen Peterson, Jesse Schneider, Lara Todd, James Towey, Rachel Wentworth, and Carmen Williams

Guests: James Butts (Crisis Intervention Home/Tidewater Youth Services Commission), Carlos Hooker (Westhaven Boys Home/Tidewater Youth Services Commission), and William Wimbish (Tidewater Youth Services Commission)

CALL TO ORDER AND INTRODUCTIONS

Chairperson Dana Schrad called the meeting to order at 9:33 a.m. Chairperson Schrad welcomed those present and asked for introductions.

CONSIDERATION OF BOARD MINUTES

The minutes of the September 21, 2022, and November 9, 2022, Board meetings were provided for approval. On a motion duly made by David Mick and seconded by Will Johnson, the Board approved the minutes as presented. All Board members present declared "aye," and the motion carried.

PUBLIC COMMENT

There was no public comment.

DIRECTOR'S CERTIFICATION ACTIONS

Ken Bailey, Certification Manager, Department

Mr. Bailey directed the Board to the packet, which contained the individual audit reports and a summary of the Director's certification actions completed up to December 19, 2022.

The 4th, 10th, and 21st District Court Service Units and the Chesterfield Juvenile Detention Home and Post-disposition Program received 100% compliance on their audit. Mr. Bailey noted that these audits occurred during the COVID-19 era, and it was amazing the facilities were able to maintain that level of compliance with the challenging circumstances.

The audit for the 14th District Court Service Unit found two documentation issues, which were misinterpretations on the part of supervisory personnel. The follow-up review showed both issues were brought into compliance, and there were no outstanding compliance issues.

The audit for the 16th District Court Service Unit found four areas of noncompliance. The 16th unit had a high turnover rate of supervisory staff and probation and parole officers, which contributed to the number of deficiencies. The main issues were review of supervision plans, keeping adequate records on the electronic monitoring program, and contacts were missed with the juvenile. The follow-up review showed all areas have been brought into compliance. The facility has a good plan of action that should resolve the issues.

The audit for the 22nd District Court Service Unit found two areas of noncompliance. One issue involved release from supervision, where there was a misunderstanding as to what should be done when the child is released by the judge and when the youth is released when reaching 19 years of age. The other issue of noncompliance was a contact that was not documented as required with the parent or guardian. The follow-up review showed these two issues corrected.

The audit for the 26th District Court Service Unit found two deficiencies. This was a great improvement from seven deficiencies found in an audit several years ago. The unit had training issues related to supervisory personnel. The follow up review showed the unit is now compliant regarding both issues.

The Northern Virginia Juvenile Detention and Post-dispositional Detention Program presented security issues, and Director Floriano gave them a deadline to have security fencing in place. The facility has completed the work and is now secure.

The audit for the Chesapeake Juvenile Services and Post-dispositional Program began in November 2021, with the initial audit finding four deficiencies. Issues included concerns with building inspections and evacuation drills, complaints about not washing sheets on a regular basis, and torn blankets. The Certification Team walked through the facility, saw the issues, and heard complaints from residents. All deficiencies were corrected. The audit report was ready to present to the Director when in January/February 2022, the Certification Team received notice that several youth had suffered concussions resulting from a physical restraint. This prompted a detailed review of the facility looking at the overall well-being of the residents in the Chesapeake facility. The Certification Team, along with a member from the Department's Quality Assurance Unit, visited the facility and found several areas that caused concern. The Certification Team interviewed 19 residents and 25 staff and assessed the behavior management system, due process for restraint confinements, staff training, use of force, and medical provisions. Several regulatory violations were discovered. The Certification Team met with the Deputy City Manager and the Director of Building Services for the City of Chesapeake, who have oversight over the juvenile detention center. The City Administration became vested in improving conditions.

The facility had been using an outdated behavior management program that was punitive, with no positive reinforcements. The Certification Team helped the facility with implementing a new program that was more therapeutic. The follow-up review showed the program met the requirements for a good behavior management program, but the review team asked the facility to continue refining the training.

It appeared the youth were given sanctions without due process protections, such as opportunities to present witnesses or have a hearing. The Certification Team subsequently reviewed the disciplinary process and found that residents no longer receive an immediate 48 hours/72 hours sanction. Hearings are conducted,

and the assistant superintendent reviews each sanction for justification, fairness, and equity. The Certification Team feels this program is now working and will continue to monitor all areas.

Some staff will need to be retrained in Handle With Care. Two facility staff were terminated because of the injuries the residents received during the physical restraint. Also, facility staff were not receiving 40 hours of retraining each year. As of the last review of the facility in October, staff were receiving the required hours of training. There were issues, however, regarding the maintenance of the building that have since been corrected, such as doors not being locked properly and musty odors resulting from leaving mop buckets stored in closets. As a result, on December 19, 2022, the Director reviewed the progress made by Chesapeake and granted certification until November 9, 2024.

The Certification Team reviewed every incident of physical restraint, watched video, interviewed staff, and reviewed documentation. Facility staff have become more astute to the de-escalation methods before resorting to a physical intervention. The facility is implementing the training, existing and new staff are completing their training, and a much more therapeutic program is being implemented.

Chairperson Schrad asked if there was a lot of staff turnover in the court service units. Deputy Director of Community Programs Linda McWilliams responded that there is turnover but operations were not significantly impacted by these vacancies.

Mr. Bailey directed the Board to the packet, which contained the individual audit reports and a summary of the Director's certification actions completed up to February 13, 2023.

The audits for the 2nd, 7th, 8th, and 28th District Court Service Units and the Merrimac Center and Post-dispositional Program, Newport News Juvenile Detention Center and Post-dispositional Program, Rappahannock Juvenile Detention Center and Post-dispositional Program, and Shelter Care of Northern Virginia received 100% compliance.

REGULATORY UPDATE

Ken Davis, Regulatory Affairs Coordinator, Department

Mr. Davis provided an update of the status of active guidance documents and regulations.

The Guidelines for Determining the Length of Stay for Indeterminately Committed Juveniles was subject to a 30-day public comment period, and the Department received 11 public comments. Mr. Davis noted that none of these comments triggered any mandatory response or change to the guidance document based on the statutory requirement. The final guidelines, which contained two clerical corrections, were posted on the Regulatory Town Hall in February, and the guidelines took effect on March 1. The Board requested to see the 11 comments made during the public comment period, and the Department agreed.

Director Floriano addressed the Senate Budget Bill, which included language stating that the Department could not adjust the guidelines and had to keep following the 2015 guidelines. Because the Budget Bill has not yet passed, the Governor's Office has advised the Department to move ahead with implementation of the updated guidelines. Director Floriano noted that she had several conversations with Senator Dave Marsden, provided him a tour of the Bon Air Juvenile Correctional Center, and has secured his support for the Department's updated guidelines. Senator Marsden was able to see the vocational program at the facility and met with the youth who now have an opportunity to learn electrical, HVAC, plumbing, and Certified Technician skills.

Chairperson Schrad said that Senator Marsden is well respected, and she was pleased to have his support.

Mr. Davis addressed the Regulation Governing Juvenile Correctional Centers, which was approved by the Board in September for advancement to the Final Stage of the Regulatory Process. The action is undergoing Executive Branch Review at the Final Stage and is currently with the Office of the Attorney General (OAG). Once the Department receives the OAG review, the next step is to prepare materials for the Department of Planning and Budget (DPB).

Mr. Davis reminded the board that it approved the Regulation Governing Juvenile Secure Detention Centers in April for advancement to the Final Stage of the Regulatory Process. The OAG has completed its review and the Department is preparing materials for DPB, which should be done within the next few weeks.

REQUEST AUTHORIZATION TO SUBMIT AMENDMENTS TO THE REGULATION GOVERNING JUVENILE GROUP HOMES AND HALFWAY HOUSES (6VAC35-41) TO THE FINAL STAGE OF THE STANDARD REGULATORY PROCESS

Kristen Peterson, Regulatory Affairs Coordinator, Department

Ms. Peterson introduced Carlos Hooker from the Westhaven Boys Home and William Wimbish from the Tidewater Youth Services Commission to provide a short summary about group homes. Mr. Hooker began the presentation.

The mission of group homes is to provide a temporary residential alternative to secure detention facilities dedicated to at-risk youth. Group home programs provide a safe, structured, nurturing, and supportive living environment, and encourage positive development. Youth learn the evidence-based tools needed for successful integration back into the community and their families.

There are four different ways youth are admitted into the group home program.

1. Emergency placement, such as from the Department of Social Services.
2. Placement of youth who are disruptive and moved from their own homes into a group home.
3. Shelter care orders that come through the court system for youth who are status offenders. For example, youth that run away from home or who do not attend school. Such orders are issued by a judge, ordering a youth into the group home program.
4. Formal placement from a residential facility. Youth are interviewed and, if determined appropriate for the program, accepted.

There are male and female group homes and independent living programs. Some group homes are attached to a juvenile detention center to better use services such as medical. There are also stand-alone programs responsible for obtaining their own level of services, which use the group home program. Virginia does not currently have family-oriented group homes, wilderness programs, or experimental outdoor living programs. Group homes do not place youth in locked rooms as a form of punishment. Group home youth spend a decent amount of time in the community for community service. Mr. Hooker explained that he recently had a young man who performed 100 hours of community service at a soup kitchen. Group home youth attend school, bowl, or engage in other recreational activities in the community such as rock climbing and zip lining.

Group home youth earn home passes in the post-dispositional program. The group home setting is made up of males and females from 8 to 18 years of age. Youth are at-risk meaning they have had family disruption, health issues, substance abuse issues, or are struggling and acting out at home. The Apartment Living youth are 17 to 21 years old. Group home resident programs are designed to serve at-risk youth and young adults; however, each program has a vetting process, and the criteria must be met to ensure the safety and well-being of everyone. If an individual has committed any of the exclusionary offenses, such as sexual offenses

or violent crimes, he or she may not be allowed into the program. To ensure the safety of the youth, group homes comply with the Prison Rape Elimination Act (PREA).

Group homes are different than juvenile detention centers and juvenile correctional centers in that group homes have a smaller staff. The staff might include an assistant director, director, administrative assistant, food service manager, two to four evening counselors, and one or two overnight counselors. Group homes offer individual group and family counseling, crisis management, educational services on site, opportunity for youth to attend school offsite, recreational, and nutritional services. Group homes must also meet requirements for medical needs, and often the family or other involved parties are called upon to meet those needs. Group homes work on social skills, mental health counseling, independent living counseling, and decision making and problem-solving skills. Group homes try to keep the youth at their own school if possible.

Chairperson Schrad asked about the availability of mental health services. Mr. Hooker responded that group homes are in communication with the local Community Services Board and the youth's primary doctor, if applicable to try to meet their needs.

Ms. Peterson thanked the group home stakeholders, who had significant input into the final proposed product. Ms. Peterson's presentation closely followed the memorandum provided in the Board packet on page 118. The below information was discussed during her presentation.

{Section 90} Serious incident reports

Ms. Peterson discussed the provision directing group home providers to notify the director or their designee within 24 hours of certain specified serious incidents, as well as "all other situations required by the board of which the facility has been notified." The Governor's Office would like state agencies to ensure their regulations are clear and easy to understand. The Department does not want its regulations to run afoul of the rule regarding incorporation by reference, which says that state agencies cannot incorporate a document into the regulation by referencing a specific document that the agency or board has developed. The idea behind this rule is if you have a separate document that is incorporated into the regulation that can be modified at any time, this would circumvent the entire process and is counterproductive to the purpose of the Administrative Process Act. Ms. Peterson could not recall the Board ever identifying additional specific categories that constitute serious incidents, so the recommendation of the workgroup was to remove that language.

Board Member Scott Kizner asked what is the substantial change to Section 90? Ms. Peterson responded that all the categories of serious incidents listed in subsection A (page 131) are still required to be reported. The nebulous language in subsection B is being deleted because the Board has never identified any additional categories of serious incidents. This is a minor change that will not have an impact. Serious incidents identified in subsection A are still required to be presented to the director or designee, the placing agency, and the parent or legal guardian. Thus, serious injuries, illnesses, incidents, accidents, overnight absences, and runaways are still required to be reported. The subsection B language is being deleted since the category of incidents in subsection A is comprehensive and covers most of the serious incidents that occur within the facility.

{Section 105}, Reporting Criminal Activity, page 132

Ms. Peterson discussed the provision that will require staff to report certain criminal activity known or suspected to have occurred at the facility or facility-sponsored activities. Board Member Kizner asked how "suspected" is defined. Ms. Peterson responded that the term has not been defined, and it would be up to the compliance team and the facility to establish procedures that would interpret this language. An example would be if someone made an allegation about sexual misconduct. That would be a suspected criminal act, but not substantiated.

Board Member Kizner noted his concern and discomfort with the word, "suspected," and asked what would be the appropriate action when criminal activity is suspected compared to known. Chairperson Schrad said when she hears the word suspected, she assumes alleged. Director Floriano gave an example about marijuana in the facility and indicated that in that scenario, staff would need to tell somebody with the ability to address the situation whether it be through investigation or counseling with the youth. Chairperson Schrad said it would trigger the need for an investigation.

Board Member Kizner provided an example about a student alleging another student was drinking, making them ineligible to play in a volleyball game. The investigation resolved the issue, but it was time consuming. Board Member Kizner felt reports to the facility administrator may be misused and there should be some criteria. Director Floriano said that anything written can be misused. She explained that some allegations must be investigated, such as sexual allegations, but that this provision does not dictate any action be taken against the youth based on the allegation. Any criminal case is alleged or suspected until an investigation is completed, followed by the trial. Deputy Director of Legislation and Policy Michael Favale said that an allegation is a mere accusation, while suspicion is on a higher level.

Board Member Kizner asked if the facility administrators understand when to investigate and when to conclude the situation does not warrant an investigation. Deputy Director of Residential Services Joyce Holman answered that trust is put in the facility administrator. They are aware that this is the environment when dealing with young people. When allegations against staff happen, we must err on the side of caution and initiate an investigation. Director Floriano said that this is a different mindset from school. There is an allegation, and the facility needs to make sure they are reacting to it and protecting the children in their care. It is a balance the administrator is charged with, and they have earned their way to that position.

{Section 115} Communication Access, page 120

Ms. Peterson explained the new language requiring group home providers, when required to give written or verbal information to certain parties, to take steps to ensure that those with certain conditions affecting communication understand such information. Chairperson Schrad asked if there was a requirement that these efforts be documented to ensure the information was communicated. Ms. Peterson replied that when assessing compliance, there should be some documentation. There is language in the group home regulation that any documentation necessary to demonstrate compliance with these provisions has to be maintained for three years. The Department has broad authority to mandate that documentation be required. Ms. Peterson speculated that the Department would put something in the compliance manual to address documentation.

{Section 140} Participation of Residents in Human Research, page 120

Ms. Peterson explained the minor amendment to remove the requirement that information regarding participants in human research projects be maintained in accordance with the regulatory provision addressing maintenance of records. Board Member Synethia White asked if the Department's process already considers a type of Institutional Review Board (IRB) process. The Department's Data and Research Director Jesse Schneider responded that the general process does require an IRB approval from that entity. An internal review is performed that parallels the IRB review but considers the Department's special circumstances and ensures its vulnerable populations are protected, especially because the variability in the strictness of the IRB adds an extra layer of protection.

{Section 400} Toilet Facilities, page 136

Ms. Peterson noted a minor error in line 437, and proposed an additional amendment not reflected in the packet to read, "each juvenile residential facility constructed or structurally modified on or after July 1, 1981."

The additional amendment will address any cases in which facilities were constructed or modified on July 1, 1981.

Chairperson Schrad asked if the motion will be modified to reflect this change. Ms. Peterson responded that the motion anticipates the possibility of modified language.

Direct Regulatory Requirements versus Procedural Requirements, pg. 124

Ms. Peterson discussed several provisions in the regulation that, rather than imposing a requirement outright, provide that a specific requirement needs to be placed in the written procedure. As an example, Section 1240 (suicide prevention) on page 155 says that the facility has to have a written procedure that requires a suicide prevention program, but there is no actual regulatory requirement that the facility have such a program. When the Department assesses compliance, they are looking at the procedure and not looking to see if there is a suicide prevention program, which raises the question of why the regulations do not impose the requirement outright instead of requiring the facility to place it in a written procedure. The Board had no further discussion on this issue.

Ms. Peterson explained several other proposed amendments to various definitions and to sections 20, 200, 210, 250, 410, 440, 510, 550, 670, 680, 820, 840, 1010-1070, 1100, and 1270, as detailed in the Board memo. The Board had no questions or further discussion regarding these changes.

{Section 565} Vulnerable Population, pg. 142

Board Member Kizner was concerned that residents with disabilities are not included in the vulnerable population definition and recalled a time at a group home when a young man had a significant language impairment and went through a difficult time with the other residents. Ms. Peterson confirmed that residents with disabilities are not listed in Section 565, but those factors that are listed are examples and not an all-inclusive list. For purposes of regulatory and statutory interpretation, the terminology “including”, means “including but not limited to.” Ms. Peterson cautioned the board that providing examples can sometimes risk omitting something important. The Board proceeded with a lengthy discussion about whether the language should incorporate residents with disabilities in the list of vulnerable population factors. It was noted that the Board should be cautious when characterizing someone as vulnerable.

Mr. Hooker was asked about his facility’s practice with residents with disabilities. He noted that at the intake phase, the child is asked if they see themselves as vulnerable and the facility uses this as a placement tool and to help the youth ensure they feel safe.

Board Member Kizner concluded that he did not want to rank the vulnerable groups, but if the board thinks children with disabilities are not a vulnerable population, then it should not have this vulnerable population subtitle since they are vulnerable in the school setting and community setting and are the largest population listed in that group.

The Board decided to retain the language as is.

On motion duly made by Synethia White and seconded by Tyren Frazier, the Board of Juvenile Justice approved the proposed amendments to the Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41) for advancement to the Final Stage of the Standard Regulatory process, as follows: all amendments previously adopted by the board during the Proposed Stage of the standard regulatory process, as modified and agreed upon at the March 22, 2023 meeting. All Board members present declared “aye,” and the motion carried.

REQUEST EXTENSION OF VARIANCE APPLICABLE TO JUVENILE CORRECTIONAL CENTERS; STAFFING CENTRAL INFIRMARY AND NURSING STATIONS

Kristen Peterson, Regulatory Affairs Coordinator, Department

Ms. Peterson detailed the variance request following the Board memo in the packet on page 158. The Board had no questions.

On motion duly made by Scott Kizner and seconded by Will Johnson, the Board of Juvenile Justice approved an extension of the variance to the regulatory requirement provided in subsection D of 6VAC35-71-830. The variance shall authorize security staff to supervise residents housed or receiving services in the correctional center's central infirmary or nursing station outside the presence of direct care staff. This variance is to remain in effect until conforming changes are made to 6VAC35-71 or for five years, whichever occurs first. All Board members present declared "aye," and the motion carried.

REQUEST AMENDMENT OF TWO POLICIES: 05-009 (CODE OF ETHICS AND CODE OF CONDUCT) AND 17-001.1 (LANGUAGE ASSISTANCE SERVICES), AND REQUEST RETENTION OF ONE POLICY: 03-007 (INTERNAL AUDIT FUNCTION)

Ken Davis, Regulatory Affairs Coordinator, Department

Mr. Davis explained the three policies following the Board memo on page 161 of the Board packet. He noted that the Board had reviewed one-third of the board policies.

Regarding the Department's recommendation to make nonsubstantive amendments to Code of Ethics and Code of Conduct 05-009, Board Member Johnson asked how this policy compares with the Commonwealth of Virginia Department of Human Resource Management (DHRM) code of conduct policy for state employees. Mr. Davis answered that the Department's policies may not conflict with the state's guidance. This policy drills down a little more to the specific work done at the Department and caring for its youth.

On motion duly made by Will Johnson and seconded by Tito Vilchez, the Board of Juvenile Justice approved the amendment of Board Policy 05-009 (Code of ethics and Code of Conduct) as proposed at the March 22, 2023, meeting, to take effect immediately. All Board members present declared "aye," and the motion carried.

Mr. Davis explained the proposed amendments to the Language Assistance Services Policy (17-001.1) to conform the policy to recommendations made by the National Association of the Deaf and proposed retaining the Internal Audit Function Policy (03-007). There were no questions by the Board.

On motion duly made by David Mick and seconded by Tito Vilchez, the Board of Juvenile Justice approved the amendment of Board Policy 17-001.1 (Language Assistance Services) as proposed at the March 22, 2023, meeting to take effect immediately. All Board members present declared "aye," and the motion carried.

On motion duly made by Tyren Frazier and seconded by Synethia White, the Board of Juvenile Justice approved retaining Board Policy 03-007 (Internal Audit Function) as recommended at the March 22, 2023, meeting. All Board members present declared "aye," and the motion carried.

DIRECTOR'S COMMENTS

Amy M. Floriano, Director, Department

The Workforce Development program is up and running at Bon Air. The Department is also in the process of communicating with various organizations, about youth who transfer back into the community or are on probation and parole to ensure they have the proper wrap around services in place.

Director Floriano has established an agency mental health workgroup to provide her with recommendations on how best to address mental health services for the Department's youth and is also looking at telehealth options that would allow for specialists, therapists, and family counseling.

The Data Resource Guide for FY2023 is now on the DJJ website.

BOARD COMMENTS

Dana Schrad, Chairperson

The Virginia Association of Chiefs of Police held their winter conference in February. Amy presented to the group and did a great job providing insights on the young people at Bon Air and the challenges that might be present. The police chiefs were appreciative of the information.

The Virginia Association of Chiefs of Police run the Revive Program in partnership with the Department of Behavioral Health and Developmental Services. They have a training program on the distribution of NARCAN and Fentanyl strips, particularly for universities. The program now includes DJJ staff who will be going through the training.

James Towey was thanked for his work on providing legislation updates.

Anita James Price has resigned from the Board. The Board has elected to wait until September to fill the vacancy she left as Secretary.

NEXT MEETING

The next meeting of the Board will be June 21 at Hanover.

ADJOURNMENT

Chairperson Schrad adjourned the meeting at 11:44 a.m.