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COMMONWEALTH *of* VIRGINIA
Board of Juvenile Justice

MEETING MINUTES

November 8, 2017

Main Street Centre
600 East Main Street, 12th Floor, South Conference Room
Richmond, Virginia 23219

Board Members Present: Tyren Frazier, Michael Herring, David Hines, Scott Kizner, Robyn McDougale, Quwanisha Roman, Robert "Tito" Vilchez, and Jennifer Woolard

Board Members Absent: Dana Schrad

Department of Juvenile Justice (Department) Staff Present: Dhara Amin, Ken Bailey, Andrew "Andy" K. Block, Jr., Patrick Bridge, Carol Brown, Greg Davy, Lisa Floyd, Daryl Francis, Wendy Hoffman, Joyce Holmon, Russell Jennings, Kristen Peterson, Deron Phipps, Maurice Sessoms, James Towey

Guests Present: James Braxton (Rise for Youth), Tom Breedlove (Missouri Youth Services Institute), Kerry Chilton (disAbility Law Center of Virginia), Barry Holman (Annie E. Casey Foundation), Gina Mingee (Merrimac Juvenile Detention Center), Amy Woolard (Legal Aid Justice Center)

CALL TO ORDER

Chairperson Jennifer Woolard called the meeting to order at 9:35 a.m.

INTRODUCTIONS

Chairperson Jennifer Woolard welcomed all who were present and asked for introductions.

APPROVAL of September 13, 2017, MINUTES

The minutes of the September 13, 2017, Board meeting were provided for approval. On MOTION duly made by Michael Herring and seconded by Robyn McDougale, the Board approved the minutes as presented.

PUBLIC COMMENT PERIOD

Amy Woolard, Legal Aid Justice Center's Attorney and Policy Coordinator, addressed the Board and commended the Department on its work with regard to the Juvenile Correctional Center (JCC)

regulation. Ms. Woolard noted that this shows progress and is a testament to the important work being done inside the facility. Ms. Woolard expressed her appreciation and looks forward to working with the Department further on the regulations, particularly regarding room confinement.

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 on October 24, 2017.

The 12th and 23-A Court Service Units (CSUs) both had audit findings involving documentation issues, which they immediately corrected. The CSUs have made significant improvements in learning the new procedures but occasionally have misinterpreted what is required.

Chairperson Woolard asked if there is a miscommunication or misunderstanding of what needs to be reported.

Mr. Bailey explained that CSU procedures have changed recently, and one of the new procedures mandates the development of a standard template for social histories. Often, CSUs put information in the wrong area of the social history form. Another change is the Department's new reentry manual, which the Certification Team began auditing this year. The manual requires a probation officer to follow numerous steps in order to help a juvenile through the program. Confusion persists about what is required for the audit process. Mr. Bailey recently met with the CSU Directors, reviewed the entire process, and emphasized the importance of following the requirements in the reentry manual.

The audit for ANCHOR House in Martinsville found numerous deficiencies. The ANCHOR House program has undergone significant changes in the past year, including hiring a new director who is experiencing a learning curve. The Certification Team worked closely with the new director, and some issues were immediately corrected during the audit. The Certification Team believes that continued monitoring of this program is necessary. Director Andy Block certified the program for one year. The Certification Team will continue to perform regular monitoring visits to ensure the program stays on track.

Argus House in Arlington and Molinari Shelter in Manassas both had deficiencies in their audits; however, they immediately corrected the deficiencies.

Three detention homes (Crossroads Community Youth Home, Fairfax Boys' Probation House, and Westhaven Boys' Home) were audited during this timeframe, and all three were found 100% compliant. They were 100% compliant for both their detention homes and their post-dispositional programs. This was significant due to the number of regulations a detention home is required to follow. All three detention homes received a congratulatory letter from the Board.

HUMAN RESEARCH UPDATE

James Towey, Legislative and Regulatory Affairs Manager, Department

Under the *Code of Virginia*, the Department established a Human Research Review Committee composed of individuals from different backgrounds who ensure research studies are conducted in a competent, complete, and professional manner and do not violate confidentiality provisions. The Committee is tasked with reviewing study requests and either approving, disapproving, or deferring action until a more refined proposal is received. The *Code of Virginia* also requires that two reports be completed annually: (1) a report sent to the Department Director and the General Assembly with the approved studies and (2) a report presented to the Board that details the studies approved and denied.

Page 71 of the Board packet provides a summary of study proposals that were approved, pending, and denied. Each denied proposal includes an explanation of the rationale for the denial.

Mr. Towey provided additional information on why “The Connection, Safety, Fairness, and Purpose: A Follow-Up Study (VERA)” was denied. The denial was due to the closure of Beaumont JCC and the ongoing Community Treatment Model evaluation. This study was considered beyond the resources and priorities of the Department’s Division of Residential Services. VERA has the option of resubmitting the request at a later date and refining its protocol.

VARIANCE REQUEST REGARDING BEHAVIOR MANAGEMENT PROGRAMS AND DISCIPLINARY PROTOCOL

James Towey, Legislative and Regulatory Affairs Manager, Department

Merrimac Secure Juvenile Detention Center (Merrimac) in Williamsburg submitted a variance request regarding behavior management programs and disciplinary protocol. Mr. Towey explained the variance, and Gina Mingee, Executive Director of Merrimac, spoke to the request.

Merrimac has used the Cognitive Behavioral Training Program (CBT Program) for the past ten years. The CBT Program is aimed at replacing a punitive method of correcting behavior with a more rehabilitative method to give residents a different perspective. The CBT Program does not have rules for prohibited conduct; rather, it provides a list of expected behaviors. For example, while the CBT Program has no rules against fighting, one of the behavior expectations is that residents treat each other respectfully.

Under the CBT Program, residents who fail to adhere to behavioral expectations serve a timeout period. Residents may be required to serve one of the following:

- A 5-minute timeout in the program area.
- A 30-5, which consists of a 30-minute room confinement period followed by a five-minute timeout served outside of the room.
- A 30-30-5, which consists of 60 minutes of room confinement, followed by a five-minute timeout period served outside the room. 30-minutes of that room time is spent completing a self-analysis form that reflects on the resident’s behavior and identifies alternatives for handling situations.

The Board has approved variance requests in the past for Merrimac. Merrimac hopes to continue the CBT Program, which requires a variance to two of the Department's regulatory requirements. The regulatory provision governing behavior management programs in detention centers, 6VAC35-101-1070(B)(3), allows detention centers to impose a "cooling-off" period capped at 60 minutes. If a resident is on a 30-30 timeout and decides not to complete a self-assessment report, the room time may be expanded. The second regulatory requirement, 6VAC35-101-1080, Disciplinary process, requires a report be completed when sanctions are imposed. Merrimac does not impose sanctions because they do not subscribe to the implementation of penalties. They support a more positive approach for residents to think about changing their behavior.

If this variance is approved, the Board has the authority to determine its duration. The variance would expire when the regulation is amended. Merrimac requests that the variance be in place for five years or until the regulation is amended, whichever occurs first.

Board Member Michael Herring asked if the Director's position is reflected in the October 18 letter found in the Board's packet (page 88).

Director Block responded that the October 18 letter was intended to grant Merrimac a continuance until the Board's review and vote on the variance. Director Block's position is neutral; however, he noted that the Department has a Community Placement Program at Merrimac and that Merrimac is viewed as a good partner. He encouraged the Board to give full consideration to Merrimac's request.

Mr. Towey introduced the Director of Merrimac, Gina Minge, who provided additional information.

Merrimac has operated this program for the past ten years. The original Director determined that room time exacerbated a child's problems and ultimately led to more anger, more distrust, and more trauma. Merrimac personnel traveled to Page County, Illinois and viewed their program. The staff implemented twenty-one groups focused on rational behavior training, restorative justice, and moral decision making. Merrimac coordinated national trainers to train staff on the program. The 5, 30-5, and 30-30-5 timeout periods were a significant departure from the conventional practice of imposing 24-, 48-, and 72-hour room times.

The program focuses on cognitive behavior and encourages changes in the youth's perspective that will lead to different feelings, behaviors, and consequences in order to reduce recidivism. Since the program's inception, Merrimac has reduced the average amount of room time from 48 hours to an average of 40 minutes per consequence. Merrimac has also seen a decrease in the maximum amount of time spent in the room for any consequence to 2.75 hours. The number of room times that exceed 60 minutes has also been reduced.

This program has made a tremendous difference by reducing room time, changing the way residents think, reducing trauma for the resident, and providing more positive reinforcement. As a component of the program, Merrimac does not issue sanctions; rather, staff tell the residents how much time they have earned. The program expectations are for the resident to spend 30 minutes in a room thinking about their actions, 30 minutes in their room completing a self-analysis, and five minutes outside the room processing the worksheet with a mental health professional. For every room confinement that exceeds 60 minutes, the resident may file a grievance, which is reviewed by the supervisor on duty

immediately and subsequently, by the Deputy Director. When a consequence is issued, the supervisor reviews the consequence through video and audio surveillance to ensure it is fair. Director Mingee indicated that this is a good program that Merrimac would like to continue.

Board Member Scott Kizner asked whether residents typically comply with the 30-30-5 and whether, if a resident wanted to complete the self-analysis in the first 30 minutes, that would be an option?

Director Mingee responded that the 30-30-5 begins with 30 minutes in the resident's room, followed by 30 minutes in the room to complete the worksheet, and five minutes in the program area where the resident processes the worksheets with a mental health professional and takes responsibility. The resident may not complete the self-analysis in the first 30 minutes.

Chairperson Woolard asked about the documentation process.

Director Mingee noted that the 30-5 is documented with observation notes; the control room operator documents the amount of time spent in the room, which is tracked through the CBT statistics. A resident is subject to a 30-30-5 for the following behavior: threats to others, gang incidents, property destruction, or possession of dangerous contraband. An internal incident report is completed. The supervisor and Deputy Director review it and document whether the resident files a grievance and the ultimate resolution of the issue. Residents rarely file grievances because they understand that staff view the camera recordings to ensure the proper consequence is applied.

Chairperson Woolard asked about the facility's capacity to learn how often and under what circumstances disciplinary actions are applied in order to track the trends. She also asked whether the residents receive multiple timeouts.

Director Mingee explained that the program does not allow for stacked timeouts. The consequences are never combined to increase room time. Residents may receive additional timeouts or room confinement because of their acting out, but their behavior does diminish over time as the residents get acclimated to the culture. The majority of the residents do not get any timeouts or room confinement. The facility's expectations and the conditions under which the resident may be subject to a 30-5 or 30-30-5 are in the resident's handbook and point sheets. The policy is to discourage staff from arguing with residents and instead, to remove the resident from the stimuli so that negative behaviors are not reinforced.

Board Member Tyren Frazier asked how the facility responds when a resident fails to complete his self-analysis and whether this has occurred in the last 12 months.

Director Mingee answered that if the resident does not complete the self-analysis, his timeout starts over. This has occurred in the past 12 months. The resident completes the self-analysis, but refuses to take responsibility for his behavior, thereby restarting the process.

Chairperson Woolard asked when the Board has considered variance requests in the past, whether the members tended to remove parts of a regulation and replace them with other regulations.

Mr. Towey responded that the regulations for a variance are silent on precisely how a variance may be given. It is up to the Board to determine the parameters and duration of the variance.

Board Member Frazier noted that the regulatory review for the regulations is currently in process, and asked the Department's anticipated timeframe for completing and reviewing them.

The Department's Regulatory and Policy Coordinator, Kristen Peterson, responded that the Department is currently in the process of reviewing and revising all residential regulations. Either at the January meeting or the following meeting, the Department will present the revisions to the Juvenile Detention Center (JDC) regulations. Director Block is hoping to finish over the next couple of meetings.

Board Member Robyn McDougale asked whether the Department anticipates any conflict with the room confinement changes.

Ms. Peterson responded that the Department is not aware of issues. Mr. Towey added that once the amendments to the JDC regulations are made effective, even if it is within the five-year period, the variance will be voided.

On MOTION duly made by Robyn McDougale and seconded by David Hines, the Board approved the request for a variance, in accordance with *6VAC35-20-92 of the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities*, to *6VAC35-101-1070(B)(3) and 6VAC35-101-1080(B), (C), and (D) of the Regulation Governing Juvenile Detention Centers*, in order to allow the Merrimac Secure Juvenile Detention Center to continue its Cognitive Behavioral Training Program. This variance shall remain in effect until such time as any or all of the regulatory provisions for which this variance is granted are amended, or for five years, whichever occurs first.

REGULATION GOVERNING JUVENILE CORRECTIONAL CENTERS (JCCs) TO THE PROPOSED STAGE OF THE REGULATORY PROCESS

Kristen Peterson, Regulatory and Policy Coordinator, Department

Beginning on page 89 and page 108 of the Board packet, are the proposed revisions to the regulation governing the JCCs. These regulations are set out in Chapter 71 of the Department's regulations. The Department respectfully requests that the Board adopt the amendments as proposed and advance the regulations to the Proposed Stage of the Regulatory Process.

The proposed revisions to the regulations are a product of an internal workgroup and several months of discussion. The internal workgroup included representatives from the Department's Training Unit, Certification Unit, Legislative and Regulatory Unit, Division of Residential Services, and Health Services Unit. The workgroup conducted a line-by-line review of the regulation and sought feedback from other individuals intimately involved in facility operations.

The primary objective of the regulatory review was to ensure that the regulations are in line with the changes being made as a result of the Department's transformation process and the Community Treatment Model.

If the Board votes in favor of the proposed revisions, the Department will submit the information to the Virginia Regulatory Town Hall. That information will go through an extensive executive review process by the Office of the Attorney General, Governor's Office, the Cabinet Secretary, and the Department of Planning and Budget (DPB). DPB will conduct the economic impact analysis to determine whether a fiscal impact is needed. After the executive review, the regulation will be published in the Virginia Register with a 60-day public comment period. Those comments will be considered and the regulation presented back to the Board for a second review and approval before it is advanced to the Final Stage of the Regulatory Process.

The Commonwealth is in the process of transitioning with a new administration in January. This makes it difficult to predict how long the executive level review process will take. It is the Department's estimation that the remaining process will take another year at a minimum.

The Department has decided to delay the room confinement provisions of the JCC regulation until the next Board meeting. This is a controversial issue that requires proper attention and due consideration. There is nothing to prevent the Department from proceeding with the remaining changes to the JCC regulation.

The Board asked for clarification on what actions the Department wants the Board to take.

Ms. Peterson explained that if the Board approves the proposed revisions to the JCC regulation at this meeting, the Department will proceed with the process of advancing the regulation to the Proposed Stage of the regulatory process. The Department understands that the Board would have liked to see public comments before being presented with the JCC regulation. When a state agency files regulatory paperwork to initiate a regulatory action in the first stage of the process, called the Notice of Intended Regulatory Action (NOIRA), proposed text may accompany the NOIRA. In this instance, there was no public comment during the NOIRA period of the JCC regulation because there was no text for the public to review. The Department did not have much content at that point in the process to provide text for public comment.

Board Member David Hines noted that he had a short time to read the changes to the JCC regulation and was concerned with endorsing changes and moving the process ahead without public comment.

Ms. Peterson responded that as a Board, members can review the material and make a determination outside of public comment. Once public comment is received, the Board will have the opportunity to review it and consider additional items before sending the JCC regulation to the Final Stage. If the Board has reservations with the JCC regulation, the Proposed Stage of the regulatory process can be reinstated if necessary.

The Board agreed to review the proposed changes to the JCC regulation.

◆DEFINITIONS◆

Under the regulatory process requirements, all definitions contained within a regulation must be located together in the beginning of the regulation. The existing JCC regulation had numerous definitions scattered throughout the document. In order to meet those requirements and make the regulation easier to read, all definitions were moved into the definition section. Definitions added to

Section 10 that were moved from other sections include *aversive stimuli, boot camp, human research, legal mail, mechanical restraint, medication incident, physical restraint, protective custody, rest day, sick call, and vulnerable population*. Additional definitions were added for terms used throughout the regulation that needed additional explanation or clarification.

◆SECTION 160 – REQUIRED INITIAL TRAINING◆

Under the existing JCC regulation, a number of position categories have mandated training hours. Administrative and managerial staff receive 40 hours required initial training; clerical and support staff receive 16 initial training hours; medication administration employees receive the Board of Nursing approved medication program; and medical service employees receive training in tuberculosis control. The existing JCC regulation is silent on the hourly requirements for medical service providers.

Under the current JCC regulation, direct care staff and direct supervision staff are required to receive 120 hours of training prior to providing direct supervision to residents. Direct care staff are the individuals responsible for maintaining the care and well-being of the resident, implementing the program of care and the behavior management program, and ensuring the safety and security of the facility. The position formerly was referred to as juvenile correctional officer but now is called resident specialist.

Direct supervision staff, which include the Department’s teachers, therapists, and counselors, also are required to receive 120 hours of training under the existing regulation before they directly supervise residents.

In 2014, the Board granted a variance allowing the Department to reallocate the training hours for direct supervision staff. The variance authorized direct supervision staff to receive 40 hours of training prior to directly supervising residents, provided they received the remaining 80 hours of training before the end of their first year of employment. Direct supervision staff currently are following this requirement.

The Department’s Training Unit packs a lot of material into 40 hours of training. The proposed change to the JCC regulation would incorporate the variance language allowing direct supervision staff to receive 80 hours of training prior to assuming direct supervision responsibilities and receive the remaining 40 hours of training before the end of the year.

Under the existing JCC regulation, medical staff do not have specified hourly requirements and do not work alone with residents. A direct care staff member is always present and has constant sight or sound supervision of those staff members. Arguably, the heightened need for training is not present for medical staff in the same manner as direct care and direct supervision staff. The proposed change would require medical services staff to receive 40 hours of initial training prior to working directly with residents, with the remaining 80 hours of training completed before the end of their first year of employment.

Board Member Kizner commented that he is not comfortable with the term, “hours” versus “competencies.” He noted that employees may receive 80 hours of inadequate training and still not know anything.

Ms. Peterson answered that as part of the regulatory requirement, direct care and direct supervision staff must receive 120 hours, but there is a specified list of topics that must be covered.

Board Member Kizner asked whether currently those positions are receiving 120 hours of training, but the Department is distributing the hours differently.

Ms. Peterson agreed with that statement, then introduced Patrick Bridge, the Department's Training and Development Coordinator, to elaborate.

Mr. Bridge indicated that since the 2014 variance was issued, many changes have been made and topics have been added to the category of "other required training," including the new Community Treatment Model, the Prison Rape and Elimination Act (PREA), civil liability, and gang training. It has become a challenge to incorporate all of these topics into the initial training. The Training Unit did not want this requirement to turn into just checking a box to say training was completed, before letting the staff be responsible for residents. The 120 hours of initial training will remain, but the advantages for the proposal is that the Training Unit will have more time to deliver a training program that is more specific to job training.

The Training Unit offers a ten-week academy program that follows prescribed Department of Criminal Justice Services standards, which includes 100 hours of field training prior to graduation. Mr. Bridge noted that he shares the Board's concern about hourly requirements because the focus should be on competencies and quality. Mr. Bridge indicated that the Department's training program helps staff develop competencies and that the hourly requirements are consistent with national standards.

Board Member David Hines questioned whether the 80 hours of training will be fulfilled at the academy and whether the 40 hours of training will be similar to "in-service" hours taken throughout the year.

Mr. Bridge responded yes. The staff will fulfill 80 hours at the academy, and the remaining 40 hours would consist of a prescribed set of learning objectives for that position and would be provided at the facility as on-the-job training. The remaining 40 hours would be agency-approved training specific to the individual's occupational class.

Board Member David Hines asked if the Department has determined which subjects will be covered in the 80 hours of training and which will be covered as part of the remaining 40 hours of training over the 12-month period.

Mr. Bridge responded that the subjects for the 80 hours of training have been designed. The remaining issue left to consider, in consultation with the employee's direct supervisors, is the type of training needed based on the position for the remaining 40 hours.

Director Block emphasized that the Department is trying to move from a "one size fits all" to a "focused" training approach that recognizes the complexities of the work.

Mr. Bridge stated that the initial 80 hours of training focuses on working in a secure environment. For example, teachers are not attending academy to learn to be better school teachers, but to learn how to teach in a secure facility.

◆SECTION 170 - RETRAINING◆

Ms. Peterson directed the Board to page 121, subsection C, of the Board packet, which lists the topics that will be included as part of the 40 hours of annual retraining. On page 122, new subsection E, direct care staff, security staff, and direct supervision staff will receive training to maintain their current CPR certification. There are additional requirements for employees who failed to timely complete their retraining requirements.

Under the existing JCC regulation, only direct care staff who have not completed their required retraining, are prohibited from working and performing their direct supervision responsibilities. Under the proposed revisions to the JCC regulation, that list is expanded to capture all staff, including direct supervision staff.

◆SECTION 215 – PHYSICAL OR MENTAL HEALTH OF PERSONNEL◆

This language is currently in the JDC regulation and gives the Department the authority to remove an employee who has direct care or direct supervision responsibilities who is jeopardizing the safety or health of residents. An example of this behavior may include when the employee is sick or experiencing mental health issues. The workgroup recommended that language be added to the JCC regulation prohibiting those employees from having any direct care or direct supervision responsibilities. Additionally, the proposed revision would give the Department authority to require an employee to receive a mental health examination prior to returning to his direct care or direct supervision responsibilities.

◆SECTION 480 – SEARCHES OF RESIDENTS◆

Under the existing JCC regulation, manual and body cavity searches of residents are authorized by the facility administrator or by court order. The workgroup recommended language to prohibit these types of searches at the JCC facility. Instead, residents would need to be transported to a local hospital or medical facility that performs these types of searches, given the level of liability. Additionally, the workgroup recommended adding language consistent with a PREA provision that prohibits correctional centers from searching a resident solely for the purpose of determining the resident's gender status. Finally, the workgroup recommended including language to prohibit body cavity searches without a search warrant.

Board Member Michael Herring asked the Board to consider the scenario if a resident smuggles a packet of heroin into the facility and word spreads that a facility search is imminent, prompting the package holder to hide the contraband in a body cavity. While the Department is obtaining a search warrant, the package could rupture and the resident is likely to die. There is an argument to be made, therefore, that in this exigent circumstance, the proposed language would hinder the Department's ability to address this issue if a determination is made that the resident might be at risk. Board Member Herring questioned whether adding language that appears to constitute an absolute prohibition on cavity searches effectively deprives the Department of the ability to respond to exigencies.

Board Member David Hines suggested general language indicating that the JCC would comply with the law.

The Director agreed to have staff look into this issue and possibly have the workgroup review this proposal to allow exceptions for exigent circumstances.

◆SECTION 630 - NUTRITION◆

Currently, the regulation requires that the Department provide the resident at least three nutritionally balanced meals a day, as well as an evening snack. The Department's Food Service Unit is permitted to provide special diets or alternative dietary schedules in certain specified circumstances, including when the resident is exhibiting maladaptive behavior. Currently, there can be no more than 15 hours between the evening meal (dinner) and the morning meal (breakfast). The other requirement is that the JCC must retain documentation of all menus served in the past six months.

The workgroup recommended several proposed changes, including narrowing the exception for special diets or alternative dietary schedules to apply only when food or culinary equipment has been used inappropriately resulting in a threat to facility security and replacing the six-month menu retention requirement with a requirement that menus be retained in accordance with the applicable federal requirement. This would mean that if the federal requirement changes, the Department would not have to update the regulation. Additionally, the workgroup recommended decreasing the time permitted between dinner and breakfast from 15 hours to 14 hours to be consistent with the American Correctional Association (ACA) standards. Also, under the existing regulatory requirement, the superintendent has the authority to extend the maximum time permitted between dinner and breakfast to 17 hours during weekends and holidays. The workgroup recommended that this authorization be removed due to inconsistency with best practices.

◆SECTION 805 - SUICIDE PREVENTION◆

JCCs are required to develop suicide prevention and intervention programs. Currently, the direct care staff are the only positions that must be trained on these programs. This is inconsistent with both the existing and proposed regulatory requirements for required initial training. It is recommended that language be added to expand the requirement for training to include medical service staff, direct supervision staff, and security staff.

◆SECTION 820 AND 830 – STAFF SUPERVISION OF RESIDENTS; STAFFING PATTERN◆

These sections address the supervision of residents and the staffing pattern in the JCCs. Currently, the regulation prohibits a direct care staff member from working more than six consecutive days without a rest day (day off). The definition of rest day under the existing regulation requires the employee to have at least 24 hours during which he has no duties regarding the operation of the facility. The workgroup was concerned that the language could be interpreted such that attending a training session or other work-related event that may not involve facility operation might be permissible on a rest day. The workgroup recommended changing the language to ensure that all activities associated with Department employment would not be permitted on an employee's rest day.

In Section 830, under the existing regulatory requirement, for every ten residents, there must be at least one direct care staff actively supervising (walking around the facility, patrolling areas, and performing checks at 15-minute intervals). PREA requires a staffing ratio of 1:8 during resident waking hours and 1:16 during sleeping hours. The workgroup's recommendation is to comply with the PREA mandate of 1:8 and 1:16.

In June 2014, the Board approved a variance request seeking to allow direct supervision staff to be alone with residents without the active supervision (active patrol and visual checks every 15 minutes) of security staff. The requirement under Section 820, subsection E, is that at least one trained direct care staff is on duty actively supervising residents at all times when one or more residents are present. This has posed a problem in the past, particularly, with direct supervision staff who are seeking to provide services to residents. The best example is a counselor needing to conduct a one-on-one session with a resident in an area across campus. Under the existing regulatory requirement, that counselor would not be permitted to escort the resident across campus if he is outside the active supervision of direct care staff.

As a result, in 2014 the Department sought a variance to allow direct supervision staff to work directly and alone with residents outside of the active supervision of direct care staff. The Board granted the variance with stipulations incorporated into the variance as follows:

- Staff who wish to actively supervise residents must complete the required initial training and retraining in Section 160 and Section 170.
- Staff must complete agency approved training for non-security staff on safety and security that includes training on personal defense, the supervision of residents, verbal de-escalation techniques, restraint techniques, and emergency intervention.
- Staff must pass an assessment that demonstrates the ability to perform all physical requirements, such that if they are alone with the residents for an extended period of time, they not only have the required training, but have the physical capability to respond should an incident occur.
- During the period in which staff are alone with the resident, they must have a means of directly communicating with the direct care staff, via two-way radio or by some other means. The direct supervision employee must notify a direct care employee before meeting with the resident and immediately after the meeting concludes.

The workgroup recommended that the requirements approved in the variance be incorporated into the regulation.

Chairperson Woolard clarified that the intent is to incorporate what is being done already under the variance into the regulation. Ms. Peterson agreed.

◆SECTION 1110 – DISCIPLINARY PROCESS◆

The workgroup recommended several minor changes regarding the disciplinary process.

- Add language to ensure that the Department's mission aligns with the disciplinary process. To the extent practical, residential behavioral issues would be addressed in the context of the therapeutic community or community treatment model environment. In addition, the behavioral issues would be addressed in a manner consistent with the Department's behavior management program, and that all discipline be applied with consideration of the safety and security of the resident, staff, and others in the facility.
- There is a requirement under the existing regulation that if a resident is charged with an infraction that requires a formal disciplinary process, the staff member must complete a disciplinary report within 24 hours of the incident and must provide a copy of that written

report to the resident. The proposed change gives staff the discretion to provide a written copy of the report or give the resident access to the report. On some occasions, residents may display maladaptive behavior, such as using the written report to cover their room doors, or flushing it down the toilet and flooding the room. The workgroup sought to provide staff with the discretion to determine how best to disseminate the report.

Chairperson Woolard stated that this is not a major issue, but she is concerned about residents not receiving a copy of the report and having to either ask for it or mediate through staff in order to see it. Chairperson Woolard is not casting aspersions, but thinks it is important for the resident to be able to look at the report at any point or even multiple times and to not have to rely on staff for access. Chairperson Woolard understands the safety concerns of a resident having paper, but asked that language be added that allows discretion on the part of staff only in limited circumstances.

Ms. Peterson said that language can be drafted that would give staff the discretion to provide residents who are non-compliant or who are displaying maladaptive behavior, opportunities to view the written report in lieu of being provided with a written copy.

Board Member Herring asked if the provision about the report is a best practice. If the staff knows that this report will be shared with the resident, who could possibly share it with others, this could have either a chilling effect or impact the way the staff write the report. He questioned why the resident gets the report as opposed to a counselor discussing the infraction and the response with the resident?

Ms. Peterson answered that providing a resident an opportunity to review the report is a best practice set out in the ACA standards. The idea is that the disciplinary report triggers the hearing process, and gives the resident the chance to admit or deny the charge. The workgroup wanted to ensure the resident is fully aware of the charges, and if they choose to deny the charge and proceed with the hearing process, that the resident has the information needed to defend against the charge.

◆SECTION 1120 - TIMEOUT◆

The language in the JCC regulation is different than the earlier discussion on timeouts within the JDCs. Under the existing regulation, staff is authorized to remove a resident from a situation or a source of re-enforcement and place them in timeout. The existing language is very broad; it does not specify a cap on the timeout period. The workgroup would like to make the language more equitable to ensure the Department is imposing the same requirements for JDCs that are imposed on JCCs. The recommendation is to add a 60 minute cap to the timeout period and to require written procedures that specify the duration of the timeout, the location of the timeout, and the manner in which the timeout will be served. In addition, the workgroup recommends allowing staff the discretion to determine where a timeout period should be served, based upon the unique circumstances of the situation. The resident should be released from timeout when he demonstrates that he is able to comply with the expectations that are in place at the time. Therefore, the timeout period would be capped at 60 minutes or when the resident demonstrates that he is able to return to the activities.

Chairperson Woolard asked whether this means that a resident could be in timeout longer than 60 minutes if he is unable to comply, or whether 60 minutes is the maximum.

Ms. Peterson answered that 60 minutes is the maximum period for timeout.

Board Member Kizner asked if the resident could serve a 60-minute timeout period, then be released for five minutes, then returned for another 60-minute timeout.

The Department's Deputy Director of Residential Services, Joyce Holmon, answered that generally, if a young person is displaying behavior that necessitates additional confinement, the situation probably has escalated to an unsafe environment. Therefore, staff would be employing other mechanisms to handle the situation. Timeout usually addresses nuisance behavior that is disruptive to the activity, such as rocking the chair, tapping the table, or not paying attention. If the situation is escalating to a point at which additional interventions are necessary, then a timeout may not be appropriate.

Board Member Quwanisha Hines asked if the staff have the ability to determine on a case-by-case basis where the timeout will be served.

Deputy Director Holmon replied that the area in which the timeout is served will be determined based on the location of the activity. The activity could be on a tennis court, and in order to move the resident away from the activity, the Department would need the discretion to decide on the location of the timeout. If the resident is playing tennis, staff should not have to escort them into a building to serve the timeout.

◆SECTION 1130 - PHYSICAL RESTRAINTS◆

The Department currently allows for the use of physical restraints in order to control residents. The regulation requires the Department's written procedure governing physical restraints to identify which control techniques are appropriate for which risk levels. The workgroup recommended striking this language, as this would be more appropriately addressed in training.

Board Member Herring remarked that force escalation is another recognized best practice and that staff must use force deemed reasonably necessary to respond to behavior. He indicated that "reasonably necessary," while seemingly objective, can be subjective in the moment. Board Member Herring does not think the intent is that once staff have undergone training, that in the moment when they are determining whether force should be applied, staff may decide to suspend force escalation. Board Member Herring thinks the goal should be to encourage observation of force escalation in accordance with training.

Ms. Peterson agreed.

Board Member Herring suggested that it may be helpful for the regulation to require that a staff member who immediately applies physical restraints without observing training protocols be disciplined.

Ms. Peterson said the other alternative is to retain the language in the regulation. The Department would then continue to require that the techniques appropriate for responding to various behaviors be outlined in the written procedure. Ms. Peterson reiterated that the idea behind the removal of the language is that the issue would be covered during training.

Board Member Herring remarked that he did not disagree with the reasoning, but thought if the Department was going to defer to training, then the regulation ought to reflect that it is incumbent upon the staff to observe the training when they exercise discretion.

◆SECTION 1180 - MECHANICAL RESTRAINTS◆

Currently in the Department's facility, staff are authorized to use certain mechanical restraints. The existing regulation defines mechanical restraints, but does not specify the individual types of mechanical restraints authorized. The workgroup recommended expanding the definition to enumerate the specific types of mechanical restraints authorized. Page 110-111 of the Board packet identifies all the mechanical restraints currently authorized in the facility. A requirement under the existing regulation is that procedures require the Superintendent or designee be notified immediately when restraints are used in emergencies. There is a definition of emergency that encompasses situations that are unexpected such as fire, natural disasters, etc. As the workgroup reviewed the regulation, they had a hard time coming up with a rationale for why the Superintendent would need to be notified of the use of mechanical restraints in an emergency situation. The Department has its requirements in terms of serious incident reports, as well as daily log requirements and other ways the Department would document information. Given these documentation requirements, the workgroup agreed that it is unnecessary to retain this notification requirement. Therefore, the workgroup recommended removing the requirement that the Superintendent be notified when mechanical restraints are used in emergencies.

The workgroup also understood that there were questions about whether residents are being restrained mechanically when traveling from one area of the campus to another. The workgroup recommends clarification in the regulation that, generally, residents may not be restrained mechanically while being escorted across campus. Mechanical restraints would be authorized only for situations that require a heightened level of security or if the resident becomes non-compliant and needs to be restrained mechanically.

Concerns surrounding the use of restraint chairs in juvenile facilities has garnered national attention. A number of states have reduced the use or eliminated the practice in their facilities. The Department has acknowledged that concern and begun efforts to reduce the use of mobile restraint chairs; however, there are incidents where it is still necessary to use mobile restraint chairs. The workgroup recommended that the Department reduce the use of mobile restraint chairs by allowing their use only for the specific purpose of transporting residents across campus. Once the resident reaches the intended destination, the staff would be required to release them from the chair.

Board Member David Hines asked whether, if a resident was harming himself in his room, the Department would use a restraint chair to restrict his movement.

Deputy Director Holmon answered that no, staff would use other restraints, such as waist chains, leg irons, handcuffs, or helmets.

Director Block indicated that to respond to a resident exhibiting self-injurious behavior, staff would use suicide smocks.

Board Member Kizner asked whether, if the recommendation is not to notify the Superintendent when the incident occurs, there are practices in place that require staff, within a certain amount of time, to review all incident reports. He asked whether the Superintendent would be notified eventually of the incident, or whether the report is just written and filed away.

Deputy Director Holmon responded that all incident reports are reviewed by the shift commander. There are multiple reviews of every incident report. If it is a serious incident report, the Superintendent is notified and then it goes up the chain of command to the Director.

Board Member David Hines asked whether the use of a mechanical restraint would require an incident report.

Deputy Director Holmon responded yes, unless the mechanical restraint is used for routine transportation, which does not rise to the level of requiring an incident report.

◆Section 1190 - Monitoring residents placed in mechanical restraints◆

If a resident is placed in mechanical restraints for an extended period of time (two hours over the course of a 24-hour period), staff must contact a mental health professional for consultation. The workgroup recommended decreasing that time period to one hour. Therefore, if the resident is restrained for an hour or more, staff would be required to contact a qualified mental health professional.

If a resident is restrained and starts to display self-injurious behavior, under the existing requirement, a mental health professional must be consulted immediately. However, this language does not allow staff the flexibility to take whatever actions are necessary to stabilize the situation before contacting the mental health professional. The workgroup recommended adding language requiring staff to take appropriate action to stabilize the event before contacting the mental health professional.

Chairperson Woolard expressed concern that the proposed revision does not contain an explicit requirement that the staff consult with the mental health professional as soon as possible once the behavior is addressed. Chairperson Woolard said she would hate to leave that unaddressed and find a circumstance where there is a delay between taking the action to respond to the behavior and contacting the mental health professional.

Ms. Peterson agreed to add language to indicate that staff must first take appropriate action in response to the resident's behavior and then immediately consult with the mental health professional.

Summary of Substantive Recommendations – Moderate Impact

Ms. Peterson then reviewed a portion of the substantive recommendations anticipated to have a moderate impact on facility operations.

◆SECTION 90 - RESIDENT ADVISORY COMMITTEE◆

The Student Government Association (SGA) was created and worked closely with the Governor's Office, Governor McAuliffe, and First Lady to draft a constitution. The workgroup recommended the following changes to the regulation:

- The residents must establish a constitution and bylaws, and be guided and governed by those bylaws and constitution.
- The Department must ensure that opportunities are available for the SGA to meet. Under the existing regulation, there is a required monthly meeting with the Superintendent, but the Department would like to provide additional opportunities for the SGA to meet.
- The Department must ensure that copies of the constitution and bylaws are posted in the housing units so the residents can orient themselves.

◆SECTION 110 - ORGANIZATION COMMUNICATIONS◆

Under the existing regulations, certain specified positions must visit the housing units on a weekly basis. These positions include the Superintendent, Assistant Superintendent, Chief of Security, Treatment Program Supervisor, and Counseling Supervisor. Some of these positions are obsolete; the Department no longer has the Chief of Security, Treatment Program Supervisor, or Counseling Supervisor. The workgroup recommended the removal of these positions and the addition of the Community Managers. The workgroup also recommended that Assistant Superintendents and Community Managers should visit the housing unit according to the duration specified in the written procedures.

◆SECTION 150 - REQUIRED INITIAL ORIENTATION◆

Under the existing regulation, all employees will receive a basic orientation on general topics. The workgroup recommended the following changes to the regulation:

- Clarify that the orientation required for all employees must cover the tenets of the behavior management program.
- Remove the existing, duplicative regulatory requirement that direct care staff receive orientation on a specified number of topics, which topics are covered under required initial training.
- With respect to contractors under Section 160, the current requirement is for contractors to receive initial training to serve in a correctional environment. The workgroup recommended that contractors receive an orientation regarding expectations of working in a correctional, secure environment instead of the existing training requirement.

◆SECTION 220, 230, 240 - VOLUNTEERS AND INTERNS◆

There is existing language in the regulation that seems to suggest that volunteers and interns are authorized to be alone with residents. The Department does not believe residents should be alone with volunteers and interns. The workgroup recommended removing all references to residents being alone with volunteers and interns.

◆SECTION 280 - BUILDINGS AND INSPECTIONS◆

Under the existing regulation, the JCC facility has an annual fire prevention inspection. Annual is defined as generally within 13 months of the previous occurrence. The existing language gives the Fire Marshal's Office the authority to determine what is annual, for purposes of this requirement. The workgroup recommends removing the Fire Marshal's authority to determine what is annual, thereby retaining the definition of annual contained in Section 10 of the regulation.

◆SECTION 360 - SLEEPING AREAS◆

Under the existing regulation, male and female residents have separate sleeping areas. The workgroup recommended striking this language in order to give staff the ability and flexibility to determine how to house transgender residents. This is consistent with the PREA provision that agencies consider on a case-by-case basis whether placement of a transgender resident to a male or female facility would ensure the resident's health and safety. If the Board is concerned with striking the language, the language could be retained and amended to add language that provides that with respect to transgender residents, the Department would have the authority on a case-by-case basis to make the determination.

Board Member Quwanisha Hines stated that she thinks the Board should add language to clarify the rationale behind striking or to include an exception.

Chairperson Woolard wondered about the pros and cons of specifically mentioning transgender youth on a case-by-case basis. Chairperson Woolard, while understanding the advantages of incorporating the PREA language explicitly, indicated that she could see the advantages of not making this an explicit requirement in the regulation. She asked whether, with regard to PREA, there is a best practice or recommendation enabling a case-by-case consideration for transgender residents.

Ms. Peterson was not aware of a PREA provision that specifically required this language be added to a state's regulations; however, she indicated that the PREA Resource Center provides guidance on other transgender issues. Ms. Peterson agreed to look into that question and provide the Board with a more definitive answer.

Chairperson Woolard asked the other Board members whether they had concerns with not explicitly addressing separate male/female areas in the regulation. Board Member Frazier stated that if the guidance was not there, it could be confusing and subject to misinterpretation.

Director Block noted that the Bon Air facility is co-ed and he is not that concerned because at some point, you need to trust human judgement.

Board Member Frazier asked if the Department currently has transgender residents that are housed with their natural sex in the sleeping area.

Deputy Director Holmon answered that yes, Bon Air has transgender youth and they typically are housed with the same biological sex. The Department tried to integrate them into the unit with the sex they identified with as well, but prohibited them from sleeping in that unit due to safety and security issues. However, the Department is open to moving in that direction one day. A few units at Bon Air are dormitory style and the rest of the 18 units are individual rooms.

Chairperson Woolard would like to see if PREA has a recommendation, specifically considering a case-by-case basis for protection, regarding transgender residents.

Director Block agreed to look at how the JDCs are handling their transgender youth. The Department will clarify this change to the regulation and get back to the Board.

◆SECTION 400 - SMOKING PROHIBITION◆

All residents are prohibited from using, possessing, or purchasing tobacco products. The Department also has a prohibition against staff and visitors using tobacco products in any area of the premises where the residents can see or smell the product. The workgroup recommended that the provision be expanded to include electronic vaping products and individuals prohibited from using tobacco related products would expand to include contractors, volunteers, and interns.

The Department staff had a discussion on the definition of perimeter, and agreed that the language in the proposed revisions would encompass only the secure perimeter.

◆SECTION 460 - EMERGENCY AND EVACUATION PROCEDURES◆

All facilities are required to conduct emergency evacuation drills once a month and provide documentation. The workgroup recommended expanding the required information documented in the evacuation drill to include whatever staff tasks were completed during the evacuation, such as head counts if applicable, the practice of notifying emergency authorities, and identifying staff responsible for conducting and documenting the drill. This proposed revision would also align the JCC with the JDCs requirements.

◆SECTION 540 – TRANSPORTATION◆

The workgroup recommended that staff members responsible for transporting residents be required to maintain a valid driver's license and report to the facility administrator or designee any changes to their driver's license status. This is a current practice at the facility.

As part of its transformation process, the Department bifurcated the juvenile correctional officer position into two separate categories, Residential Specialist and Security Officer. The workgroup recommended adding specific language that allows both direct care staff and security staff to supervise the transportation of residents during routine and emergency transportation.

◆SECTION 550 – PROHIBITED ACTIONS◆

This regulatory provision seeks to protect residents by setting out all actions in which staff are prohibited from engaging. One of the prohibited actions under this specific regulatory requirement is that staff may not deny residents contact with certain representatives, their legal counsel, the courts, their probation officer, and the regulatory authority (the Board). The workgroup proposed an expansion of this language to include staff members responsible for overseeing and administering the grievance and disciplinary processes, otherwise referred to as the Department's Human Rights Advocates.

◆SECTION 555 - VULNERABLE POPULATION◆

Facilities are required to conduct an assessment to determine whether a resident might be vulnerable to abuse or physical attack. Staff must utilize an objective classification system that considers various factors, including the resident's height or size, English proficiency, and sexual orientation. There are two PREA provisions that the workgroup recommended be added to this regulatory requirement, including: (1) a provision requiring staff to give the resident's views regarding his safety serious consideration when determining whether or not the resident is a vulnerable population and (2) a provision prohibiting the JCC from assigning LGBT residents to housing solely based on these identifications or considering these statuses indicative of a tendency towards sexual abuse.

◆ **SECTIONS 570 (TELEPHONE CALLS), 580 (VISITATION), 765 (FAMILY ENGAGEMENT)** ◆

Section 570 references telephone calls. Under the existing language, the facility can restrict the resident's ability to make telephone calls based on facility security, the resident's behavior, and program objectives. The workgroup recommended striking this language and proposing language in Section 580 that is clearer.

Section 580 addresses resident visitation. The workgroup sought to ensure that visitation is not restricted for immediate family members (siblings, step-siblings, parents, step-parents, grandparents, child, spouse etc.) and natural supports (identified people who have established a relationship with the resident and are expected to provide post-release support once the resident is released). The workgroup recommended the following amendments to Section 580:

- Prohibit the Department from restricting contacts and visits with immediate family members and natural supports solely for punitive purposes.
- Require the JCC to provide visitors with occasional opportunities to visit the resident's housing unit.
- Expand the regulation to prohibit residents from visiting homes of volunteers, interns, or contractors. The existing prohibition only applies to homes of staff members.

Section 765 is a new section on family engagement. The workgroup proposed that the JCC be required to arrange events periodically and allow residents a specified number of weekly calls to immediate family members or natural supports; ensure a designated visiting area for family visits; and maximize family involvement in the resident's rehabilitation.

Chairperson Woolard stated that a few Board members need to leave the meeting shortly and wanted to ensure there was a quorum for the vote.

The Board members agreed to entertain a motion before reviewing the minor, less controversial changes to the JCC regulations.

On MOTION duly made by David Hines and seconded by Scott Kizner, the Board of Juvenile Justice approved the proposed amendments to 6VAC35-71, *Regulation Governing Juvenile Correctional Centers*, as agreed upon at the November 8, 2017, Board meeting and granted the Department of Juvenile Justice permission to proceed with the submission of the regulatory package to the Proposed Stage in the standard regulatory process with the understanding of the amendments made during this Board meeting.

Ms. Peterson highlighted an error on page 102 of the Board packet. There are certain incidents, such as a serious injury, accident, or illness, of a serious nature that must be reported to the Director, parent or legal guardian, and the Court Service Unit within 24 hours of the incident taking place. One of the recommendations erroneously listed in the Board packet was to expand the information that must be provided to these designated individuals within 24 hours of the incident to include disasters and emergencies. The Department has a separate regulatory requirement in Section 460 addressing emergency evacuation procedures that specifies how soon the Director and others must be notified in emergencies. Therefore, this recommendation should be removed.

Chairperson Woolard asked the Department to review the regulation to harmonize all provisions authorizing the Department to post information or provide it in some other format.

DIRECTOR'S REPORT

Andy Block, Director, Department

The Department experienced two important audits this year. The Department voluntarily invited the ACA to audit its medical functions. The Department had undergone an ACA audit several years ago, which identified some deficiencies. This year, ACA gave the Department a very strong report; especially noting its laundry service. A few years ago the Certification Unit audited Bon Air and there were several corrective action measures. This year, the Certification Unit indicated that Bon Air's audit was the best it has ever had. This was an amazing job by our staff at Bon Air!

The Department established a new Quality Assurance Unit under the Chief Deputy Director's office. As the Department contracts with more providers and its youth are receiving services in different places, it is important that the contractors perform their expected duties. The Quality Assurance Unit will help with these accountabilities.

In certain ways, the Department has modeled its program after the Missouri system. Recently, staff from the Department's facilities visited Missouri to see first-hand the operation of their program. Director Block introduced Barry Holmon and Tom Breedlove, who worked in the Missouri system.

The Department designed a strategic framework in order to sustain the work the Department is doing, and make it accessible and understandable. The document, which will be available next week, includes language about the Department's goals to reduce, reform, and replace. It also includes the Department's guiding principles (safety, connection, purpose, and fairness), which are consistent with trauma practices, building resilience, and positive youth development. This is how the Department treats its staff and young people.

The Department's Division of Education took residents to Carter's Mountain Apple Orchard to learn about "farm to table". Residents from our culinary arts class picked apples, cooked an apple dessert, and distributed what they made to other residents. It was a great experience for the youth to see the value in "farm to table".

On November 3, Charlottesville held a local TEDx event. Director Block was asked to speak on the Department's transformation efforts and found it challenging to try and distill down everything being done in just a few minutes.

Director Block introduced Barry Holman from the Annie E. Casey Foundation who helped the Department through the transformation.

Mr. Holman discussed how unique Virginia was in that it made changes internally without having a Department of Justice consent order to drive the transformation. Instead, transformation was driven by Director Block's leadership and the vision of his leadership team. The progress made has been immense. The staff are working hard leading the units and helping to bring about results. The Casey Foundation tried to create a learning and teaching environment and encouraged staff to be self-critical.

It is refreshing to see community managers and coordinators questioning things. These interactions and discussions are different from three years ago when the Casey Foundation arrived. Staff now see they can be part of the change.

Ms. Peterson provided the Board with copies of Chapter 160 that took effect on September 20 and asked the Board to replace the Chapter 160 document that is currently in their regulatory books.

2018 MEETING DATES

Chairperson Woolard noted the meeting dates of 2018.

ADJOURNMENT

Chairperson Woolard adjourned the meeting at 12:46 p.m.