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COMMONWEALTH OF VIRGINIA

Board of Juvenile Justice

MEETING MINUTES

May 6, 2019

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

Board Members Present: Tyren Frazier, Michael Herring, David Hines, Dana Schrad, Robert “Tito” Vilchez, and Jennifer Woolard

Board Members Absent: Scott Kizner, Robyn McDougale, and Quwanisha Roman

Department of Juvenile Justice (Department) Staff Present: Ken Bailey, Eli Bowles, Valerie Boykin, Ken Davis, Russell Jennings, Art Mayer, Margaret O’Shea (Attorney General’s Office), Jamie Patten, Kristen Peterson, James Towey, Angela Valentine, Robin Binford Weaver, and Kristina McGuire

Guests Present: Kerry Chilton (disAbility Law Center of Virginia), Carlos Hooker (Westhaven Boys Home), Jason Houtz (Fairfax County Juvenile Detention Center), Erin Madden (Office of the Lieutenant Governor), Gina Mingee (Merrimac Center), Thomasine Norfleet (Crisis Intervention Home), Casey Powell, Cathy Roessler (Blue Ridge Juvenile Detention Center), Ivy Tillman (Fairfax County Court Service Unit), and Amy Woolard (Legal Aid Justice Center)

CALL TO ORDER

Chairperson Jennifer Woolard called the meeting to order at 9:40 a.m.

INTRODUCTIONS

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

Chairperson Woolard congratulated Valerie Boykin on her appointment as the new Director of the Department.

APPROVAL of January 8, 2019, MINUTES

The minutes of the January 8, 2019, Board meeting were provided for approval. On motion duly made by Michael Herring and seconded by Tyren Frazier, the Board approved the minutes as presented.

PUBLIC COMMENT PERIOD

Kerry Chilton, disAbility Law Center of Virginia (dLCV), thanked the Board for their consideration and efforts to understand the use of mechanical restraints and to hear from subject matter experts. Due to the inherent physical and psychological dangers associated with the emergency restraint chair, the dLCV believes this device should be prohibited at Department facilities. Several of the juvenile detention centers currently do not use this device, so it is not necessary to ensure safety at these facilities.

Over the years, dLCV worked with many individuals who have suffered injury or trauma due to restraint. Even in mental health facilities, where the use of the emergency restraint chair is highly regulated, dLCV has seen instances of injury due to its use or its misuse. Ms. Chilton provided an example of a young man admitted to a mental health facility whose wrist was fractured during transfer to the restraint chair. Despite this resident telling staff his wrist hurt and that he heard a popping sound during the restraint, the resident was kept in the chair for almost an hour before being transferred to the emergency room and diagnosed with a fractured wrist. dLCV also worked on an incident of a youth who was restrained and transferred to the chair and stopped breathing. CPR was administered but was not successful, and the individual died.

In addition to the dangers associated with transfer to a restraint chair, it also places individuals in an extremely vulnerable position in which they are unable to defend themselves. dLCV has heard of at least one instance where an individual was assaulted by a peer during his time in the restraint chair. For these reasons, among others, dLCV recommends regulations prohibiting the use of the emergency restraint chair. dLCV believes, with guidance from the Department as well as those juvenile detention centers who have already eliminated its use, that the juvenile detention centers currently using the chair can successfully transition to alternatives that are safer and more trauma informed both for the youth and staff.

Amy Woolard, Legal Aid Justice Center, thanked the Board for bringing in experts on mechanical restraints and considering the issue from all angles. The Legal Aid Justice Center recognizes how complex the conversation and decision is on the restraint chair. Ultimately, the presentations by Michael Umpierre from Georgetown and Kelly Dedel from One in 37 were the most compelling to the Legal Aid Justice Center in helping them reach their position.

The chair is so rarely used in Virginia's juvenile detention centers and the juvenile correctional center that the Legal Aid Justice Center believes elimination of its use is certainly feasible and, from their perspective, suggests a prohibition on the restraint chair. Kelly Dedel noted that even when staff had the best intentions or when regulations require a stringent oversight, concerns arose and procedures sometimes were not followed. Youth placed in the chair too long did not benefit from

possible less restrictive measures, staff did not engage with youth, and at times it appeared the chair was used more punitively than protectively. Additionally, eliminating the chair would further signal, especially to child-focused disability advocates, the Department's commitment to a trauma-informed practice that centers on the need to address and reduce the situations that might lead to consideration of the chair in the first place.

Ms. Woolard concluded that the Board will consider several options. If a decision is made to continue the use of the restraint chair, Ms. Woolard hopes the Board would strongly consider (i) intense reporting on its use, (ii) placing the restraint chair on the Board's agenda annually to see how the tighter protections are working, and (iii) continuing conversations with advocates in order to monitor the effects of the chair's use.

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 January 28, 2019.

The Blue Ridge Juvenile Detention Center and Post-dispositional Detention Program received 100% compliance on their recent audit and were certified for three years with a letter of congratulations.

The audit for the Norfolk Juvenile Detention Home and Post-dispositional Detention Program found eight deficiencies; six were critical, three were repeats from the previous audit, and five were in medical services. The Department Director was concerned with the audit findings and certified the facility for only one year with monitoring visits every two months. The Certification Unit conducted the monitoring visits in February and April, and the facility was in 100% compliance on the eight deficiencies. Norfolk Juvenile Detention Home and Post-dispositional Detention Program hired a full-time registered nurse who is attentive to the regulations and knows how to operate a good medical program. The Certification Unit will continue bi-monthly visits.

The audit for the Roanoke Valley Juvenile Detention Center found two deficiencies. The Certification Unit completed their monitoring visits, and the facility was in 100% compliance.

The audit for the Tidewater Youth Services Apartment Living Program found one area of non-compliance. The Certification Unit completed their monitoring visits, and the facility was in 100% compliance and certified for three years.

REQUEST AUTHORIZATION TO PROCEED WITH RECOMMENDATIONS TO AMEND SEVERAL REGULATORY CHAPTERS PURSUANT TO THE PERIODIC REVIEW PROCESS

Kristen Peterson, Regulatory and Policy Coordinator, Department

Ms. Peterson reported at the January Board meeting that the Department has embarked on an effort to become compliant with the statutory provision requiring state agencies to conduct periodic

reviews of their regulations every four years and to complete a report recommending either to amend, retain, or repeal those provisions. To begin the periodic review process, the Department has published notice of three regulatory chapters in the *Virginia Regulatory Town Hall* and the *Virginia Register of Regulations*. When a state agency wants to conduct a periodic review of their regulations, the agency must publish notice in the Virginia Register, which triggers a 30-day public comment period, after which time the agency has 120 days to complete the report and make the recommendations. That public comment gives the public an opportunity to review the existing provision and comment if they feel the regulation should be amended or repealed. The report is due on three regulatory chapters before the next Board meeting.

Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20): These regulations govern the monitoring and approval of juvenile residential facilities, court service units, and the Virginia Juvenile Community Crime Control Act (VJCCCA) programs. These are the only regulations not currently statutorily mandated; however, the regulation is an essential tool by which the Department can measure compliance to determine whether facilities, programs, and court service units are complying with the regulation. In addition, the regulation provides a process for appeals if entities are not in agreement with certification decisions and an opportunity to request variances. The Department recommends neither repealing nor retaining the regulations as they currently exist because some provisions in the regulation reference other regulatory chapters currently under review. Once those chapters are updated and amended, the Department will revisit the certification regulations. The recommendation is to amend this regulation.

Regulation Governing Juvenile Work and Educational Release Programs (6VAC35-190): This regulation was last reviewed in 2015, at which time the Department was undergoing implementation of the Community Treatment Model and updating the Length of Stay Guidelines. At that time, the recommendation was to retain but revisit after the programs were fully implemented. Now that those programs have been fully implemented, the Department is recommending amending these provisions.

For each of these chapters, the Department is asking the Board to endorse the recommendation to amend. If the Board agrees, the Department would include this recommendation in the report, and convene a workgroup at a later date to begin a comprehensive review of each regulation chapter.

Public Participation Guidelines (6VAC35-11): By statute, every state agency must have Public Participation Guidelines to ensure the public can be involved in the development, repeal, and amendment of regulations. The Department's Public Participation Guidelines, generally comply with the model guidelines created by the Department of Planning and Budget. However, there is one provision omitted from the Department's Guidelines. Legislation enacted in 2012 requires state agencies with interested parties involved in the public comment process to afford those interested parties the opportunity to be represented by counsel. The Department is asking the Board to approve the incorporation of that specific language into the Public Participation Guidelines for advancement

through the fast-track process. The department will not need to convene a separate workgroup to review this regulation.

On motion duly made by Dana Schrad and seconded by Michael Herring, the Board of Juvenile Justice granted the Department of Juvenile Justice permission to recommend in the report required as part of the periodic review process mandated by § 2.2-4007.1 of the *Code of Virginia* that the following regulatory chapters be amended: (i) Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20); (ii) Regulations Governing Juvenile Work and Educational Release Programs (6VAC35-190); and the Public Participation Guidelines (6VAC35-11). Motion carried.

On motion duly made by Jennifer Woolard and seconded by Dana Schrad, the Board of Juvenile Justice approved the proposed amendment to 6VAC35-11-50, which amendment requires the Department, when considering nonemergency, nonexempt regulatory actions, to afford interested persons an opportunity to be accompanied by and represented by counsel or other representatives. The Board granted the Department of Juvenile Justice permission to proceed with the filing of the proposed amendment through the fast-track regulatory process pursuant to *Code of Virginia* 2.2-4012.1. Motion carried.

REQUEST EXTENSION OF VARIANCE APPLICABLE TO JUVENILE CORRECTIONAL CENTERS RE: ACTIVE SUPERVISION (6VAC35-71-810)

Kristen Peterson, Regulatory and Policy Coordinator, Department

In 2014, the Board issued a variance to the juvenile correctional centers for the regulatory requirement set out in 6VAC35-71-820 in subsection E. The subsection requires at least one direct care staff member on duty and responsible for actively supervising residents in all areas of the facility. Direct care staff are primarily responsible for maintaining the safety and well-being of residents, implementing the behavior management program, and maintaining the security of the facility. If staff members in the facility do not meet the required definition, under the existing regulation, they are not permitted to be alone with residents outside of the active supervision of direct care staff. The Department has operationalized active supervision for those purposes to mean direct care staff members actively supervising residents and checking on them at least once every 15 minutes. The Department learned this significantly impeded the implementation of the Community Treatment Model. In some instances, direct supervision staff, such as teachers and rehabilitation counselors, wanted to meet with residents alone, outside of the active supervision of direct care staff, and if no direct care staff were available, then that impeded their ability to provide therapy. To address these impediments, in 2014, the Board approved a variance essentially allowing the direct supervision staff to stand in the shoes of direct care staff for purposes of these supervision requirements.

Stipulations are in place regarding direct supervision staff and their ability to act as direct care staff for these purposes. The current variance is applicable if such direct supervision employees comply with the following additional requirements:

- Staff receive the initial 40 hours of training before working with residents and the remaining 80 hours of training before the end of the year.
- Staff receive 120 hours of training and complete additional training dedicated specifically to non-security staff, to include such topics as crisis intervention and verbal de-escalation.
- Staff have a means of immediately communicating with other direct care staff members by either two-way radio or another form of immediate communication.
- Staff notify a direct care employee immediately before and immediately after meeting alone with a resident.

The current variance noting all of the above was issued in 2014 for a five-year period or until such time as the regulations were updated. In November 2017, the Board reviewed the proposed amendments to the juvenile correctional center regulation and endorsed the concepts embedded in the variance. The Department requests the Board extend the variance for an additional five years or until such time as the proposed amendments to the Regulation Governing Juvenile Correctional Centers go through the regulatory process.

On motion duly made by Dana Schrad and seconded by David Hines, pursuant to 6VAC35-20-92 of the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities, the Board of Juvenile Justice approved an extension of the variance to the regulatory requirement provided in subsection E of 6VAC35-71-820 that requires at least one trained direct care staff to be actively supervising residents at all times that one or more residents are present. This variance shall continue to authorize staff responsible for the direct supervision of residents who satisfy the preconditions, as approved by the Board at the May 6, 2019, meeting, to actively supervise residents outside the presence of direct care staff. This variance shall remain in effect until 6VAC35-71 is amended or for five years, whichever occurs first.

UPDATE ON ESTABLISHMENT OF TRAINING STANDARDS

James Towey, Legislative and Regulatory Affairs Manager

In the *Code of Virginia*, juvenile correctional officers, now referred to as resident specialists, must be trained according to certain standards. Until 2012, those training standards were developed and approved by the Board. In 2012, that responsibility was moved to the Department of Criminal Justice Services (DCJS) to follow the same training standards used for jail and correctional officers. The reasoning behind that decision was that juvenile correctional officers fit better in the correctional category. In 2014, changes took place at the Department with the transformation plan and the Community Treatment Model. In addition to the security functions the DCJS training standards covered, additional training topics were needed to ready the Department for a therapeutic environment.

The Department believed it made sense to request that the General Assembly place the training regulations back with the Board due to the continued transformation work. The Department's training academy is currently instructing resident specialists on these additional duties. The

legislation was a Department bill that was incorporated into the Governor's legislative platform this year. The bill was successful, and the training standards have been added to the Powers and duties of Board under § 66-10 of the *Code of Virginia*.

Board Member Schrad asked if Mr. Towey saw an increase in the minimum mandatory hours for resident specialists based on requirements for correctional officers.

Mr. Towey responded that resident specialists are taught the security aspect and transformation topics, but some areas were not necessary, such as firearms training, which does not apply to Department resident specialists. Director Boykin added that the Department will take a closer look at the training curriculum and does not envision many additional hours. The Department found that resident specialists needed more therapeutic training.

REVIEW OF THE REGULATION GOVERNING JUVENILE GROUP HOMES AND HALFWAY HOUSES (6VAC35-41)

Kristen Peterson, Regulatory and Policy Coordinator, Department

Ms. Peterson began by introducing three representatives from various group homes, who served on the workgroup that reviewed the regulations and were attending the meeting to provide a brief introductory overview: Carlos Hooker, Program Director for Westhaven Boys Group Home; Thomasine Norfleet, Director of the Virginia Beach Crisis Intervention Home; and Ivy Tillman, Deputy Director of Residential Services for Fairfax County Juvenile and Domestic Relations Court. Ms. Tillman provided the overview.

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 that encourages positive development. Through evidence-based services, youth learn the tools needed for successful integration into the community and their families.

There are different ways youth enter group homes: (1) emergency placement, such as the Department of Social Services (DSS) placing in a group home a youth who is disruptive and removed from their own home, (2) shelter care orders that come through the court system for youth who are status offenders, for example, youth who run away from home or do not go to school, (3) regular court orders where a judge orders a youth into the group home's program, (4) formal placement for residential facilities. Youth might be interviewed and determined to be appropriate for the program, and after a completed placement agreement, the youth is accepted.

There are male and female group homes, co-ed facilities, and independent living programs. Some group homes are attached to a juvenile detention center and use their services, such as medical; however, there are stand-alone programs responsible for obtaining their own medical services.

Virginia does not currently have family-oriented group homes, wilderness programs, or experiential 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 performing community service, attending school, bowling or engaging in other recreational activities in the community. Group home youth have home passes where they are permitted to leave the facility and return home for a period.

The population at group homes includes a variety of males and females from eight to 18 years of age. Youth are at-risk, meaning there has been family disruption, health issues, substance abuse issues, or youth struggling and acting out. The apartment living youth are at-risk youth between the ages of 17 and 21.

Group home residential 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 each individual. If an individual has committed any of the exclusionary offenses such as a sexual offense or violent crime, he or she may not be welcomed into the program. To ensure the safety of the youth, group home facilities are Prison Rape Elimination Act (PREA) compliant.

Group homes differ from juvenile detention centers and juvenile correctional centers. One main difference is that group homes have a smaller staff. There might be an assistant director, a director, an administrative assistant, a food service manager, possibly two to four evening counselors, and one to two overnight counselors.

Group homes offer individual, group, and family counseling; crisis management; educational services on site or the opportunity for youth to attend school off site; recreational services; and nutritional services. Group homes also must meet required 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.

Ms. Peterson reviewed the most significant proposed amendments to the group home regulation for advancement to the proposed stage of the regulatory process.

Section 210 – Required retraining

The existing regulation requires group homes to receive 40 hours of annual training in six specified topics (suicide prevention, resident rights, behavior intervention procedure, child abuse and neglect, mandatory reporting, and standard precautions). The workgroup had concerns about the existing requirement, particularly with completion of the 40 hours of annual refresher training. This is inconsistent with similarly situated group homes regulated by the Department of Social Services (DSS) and the Department of Behavioral Health and Developmental Services (DBHDS). Under those regulations, the direct care staff receive specified training in the topics noted above but do not

receive 40 hours. Rather, they receive the training in the specified topics and an additional 15 hours of training in whatever additional topics they deem necessary. This allows the group home flexibility to tailor their training to better meet the needs of their residents and programs. The recommendation of the workgroup is to remove the required 40 hours of annual refresher training and instead align with the DSS and DBHDS group home regulations, which require an additional 15 hours of training and training on those specified topics noted above.

Previously, the Board heard a variance request from the juvenile detention centers regarding a similar issue. The detention centers withdrew their variance request before the Board had time to make a determination. The workgroup was not sure of the Board's ultimate position on the issue but decided to move forward and hear the Board's determination of this issue.

Section 510 - Searches of residents

Group homes differ from juvenile detention centers and juvenile correctional centers regarding the use of pat down and frisk searches. There are few restrictions on pat down and frisk searches; however, the regulations do require the person conducting the search to be the same sex as the resident being searched. There are, however, a number of restrictions on strip searches and the more invasive body cavity searches. Under the existing provisions, if a group home wants to conduct a strip search or a visual body cavity search, either they need to receive approval by the Board, obtain a court order, or have it conducted by a law enforcement officer in their official capacity. According to the workgroup, parts of the provision seem impracticable, such as trying to secure a court order for a search when typically these types of searches are urgent, or trying to assemble the Board to get approval. The committee recommends removing the authorization to conduct these invasive searches. This would be consistent with DSS and DBHDS regulations prohibiting these types of invasive searches in group homes. Group homes are not secure settings, so these types of searches typically are unnecessary.

Section 550 - Transportation

The workgroup also wanted to incorporate language to honor the spirit of the failed transportation legislation introduced by Delegate Hayes in 2018. The legislation sought to ensure that when individuals other than staff assume custody of residents for the purpose of transportation, they will be given important information needed to safely transport the resident. The workgroup recommended language requiring that for those residents who have been flagged for additional monitoring due to: (i) recent suicide attempts; (ii) suicidal ideation; or (iii) other special medical needs, to the extent the information is known by the facility, the information be shared on a department-approved form with the individual transporting the resident. The purpose of this amendment is to help protect the resident as they are being transported.

An exception was added which exempts the facility from having to meet this requirement in emergency situations, such as a resident being rushed to the hospital so as not to delay the process of addressing the emergency because the forms have not been completed.

Section 900 – Resident visitation at the homes of staff

Currently, residents may visit the homes of staff, but only if they receive written permission from the facility administrator, applicable placing agency, and parent or legal guardian. The workgroup had concerns with this provision because it could open the facility up to liability and possibly encourage improper behavior. The recommendation is to completely remove the provision and prohibit the resident from visiting the homes of staff. This is to protect both the staff and resident.

Section 920 – Staff supervision of residents

Under Section 920, there must be a direct care staff member on duty and responsible for supervising residents wherever residents are present. This posed issues, especially with the apartment living program. The apartment living program is designed for residents to establish independence. Residents are placed in an apartment setting and are taught skills such as meal preparation, purchase of necessities, and job skills. Most residents have jobs in the community. The apartment-style group homes found residents were sometimes away from the facility, sometimes working at restaurants, and carried late hours. Residents might encounter an emergency off campus. At the apartment living program, the overnight staff might include only one direct care staff member on duty and this provision prevented them from leaving the facility to address the emergency situation.

In 2016, the Board issued the Tidewater Youth Services Commission a variance to allow direct care staff in such apartment-style living programs to leave the facility for a period not longer than one hour in order to attend to a resident's emergency situation. That variance is in place until January 2020. The workgroup thought it important to incorporate the provisions of that variance into these proposed amendments. The following stipulations were placed on the variance and are being proposed as part of these amendments: staff members must provide an emergency telephone number or other means of immediate communication with another staff member to the residents who remain at the facility and the facility must have written procedures in place to implement this exception.

The Board also approved a variance for Tidewater Youth Services Commission regarding the nutrition provisions found in Section 650. There are two provisions at issue for apartment-style living. One was subsection C, which required the facility to have and retain menus of actual meals served for six months. The second was subsection E, which prohibits staff from allowing more than 15 hours to pass between dinner and breakfast the next morning. It is difficult for independent living programs to monitor residents who are away from the facility, working in the community and being independent. As part of that variance, the Board approved an exception to those two requirements. The workgroup also wanted to incorporate these variance provisions into the proposed amendments.

Section 930 - Staffing patterns

Current regulation requires one direct care staff member for every 10 residents (1:10) in most group homes. The recommendation is to change the staff-to-resident ratio to 1:8 to comply with the PREA. Another provision in the existing regulation requires staffing ratios of 1:15 for independent living programs. Independent living programs encourage residents to establish independence; therefore, the same level of supervision arguably is not necessary. The workgroup recommended amending the staffing ratio requirement for independent living programs from 1:15 to 1:16 because the 15 number

is arbitrary. The current relaxed standard is 1:16 as there must be one staff member supervising every 16 residents who are sleeping. In addition, the existing regulation imposes a requirement that group homes have one direct care staff member for every 30 residents on each floor where residents are sleeping. The workgroup could not determine the origin or purpose of this requirement, given that most group homes are not structured compositionally in that manner. The workgroup recommended striking this language.

Section 935 - Periodic monitoring of residents

Juvenile detention centers and juvenile correctional centers allow for room confinement and room restriction of their residents. Under Section 560 of the group homes regulation, group homes are not permitted to place their residents behind a locked door or in an area where they are restricted from leaving. It is likely because there is no room confinement in group homes that the group home regulations lack a requirement that staff conduct periodic checks on the residents. The workgroup recommended adding language, imposing a requirement for staff to check on residents in the facility at least once every 30 minutes. The proposal allows for an exception for apartment-style living and independent living programs.

Section 1220 – Medical examination and treatment

Under the existing regulation, residents admitted to a group home must undergo a physical within seven days of admission to a group home, must have received a physical within the previous 90 days, or must have been transferred from another state-licensed facility where they received a physical within the previous 12 months. For emergency admissions that are unplanned and unexpected, the requirement is for the resident to receive a physical within 30 days of admission. The workgroup recommended adding language that makes the deadline for obtaining a physical contingent upon whether the resident is a planned or an emergency admission. If the resident is an emergency admission, generally, there is not sufficient time to acquire the information needed to conduct a physical. The workgroup recommended extending the requirement to obtain a physical from within 30 days to 90 days of admission for such emergency admissions. For routine and planned admissions, the existing seven-day requirement will stand.

Section 1270 – Hospitalization and other outside medical treatment of residents

The existing regulation requires that, when a resident must be transferred for medical treatment, one of three parties needs to accompany the resident: a law enforcement officer, a parent or legal guardian, or a group home staff member. On some rare occasions, a staff member is called upon to accompany the resident to the hospital or outside medical setting, which would result in inadequate coverage at the facility. The workgroup recommended adding an exception that would allow the facility to send a staff member as soon as reasonably practicable if leaving the facility to accompany the resident would result in inadequate coverage.

Ms. Peterson concluded her briefing on substantive proposed amendments to the group home regulations. The Board proceeded to discuss the recommendations presented.

Board Member Herring offered a scenario in response to the proposed amendments set out in Section 510 (searches) in which a counselor has reliable information on a resident who has concealed heroin in an undergarment, when discretion or intervention is eliminated for strip search. Mr. Herring asked whether in that scenario the counselor would do his or her best to maintain the status quo and call the police.

Ms. Peterson responded that based on the recommendations made by the workgroup, yes that is how the counselor would address the issue. Ms. Peterson pointed out that the existing regulation gives the facility the discretion not to impose searches of any kind if they indicate this in a written procedure. Ms. Peterson reminded the Board that even under the existing regulation, there are instances in which some group homes would never conduct searches.

Ms. Thomasine Norfleet added that if her facility encountered the scenario offered by Board Member Herring, law enforcement would be called, and facility staff would ask the youth to sit with a staff member and would interact with the youth until law enforcement arrives.

In response to the proposed amendments to Section 1270, Board Member Hines asked if these children are mandated to be at the group home.

Ms. Norfleet responded that children come to a group home for a variety of reasons, through social workers or the court. The residents of group homes are under court order. If they leave, the facility would take some type of court action. In an urgent situation where a youth leaves in an ambulance, the parent or social worker is called and asked to meet them at the hospital or medical facility. Facility staff cannot always go with the resident in the ambulance, but staff would certainly try to get to the hospital or medical facility as soon as possible.

Responding to a question from Board Member Hines about what the facility currently does if a resident is transported to the hospital, Ms. Tillman said that a staff member would go to the hospital. Ms. Tillman described a situation when a staff member gathered all the residents in a van and followed the ambulance to the hospital. It was disruptive to the other residents. If the situation happens at midnight, personnel will figure out a solution that has the least amount of impact to the program.

Board Member Schrad asked when a law enforcement officer would facilitate a transport and whether such transport would require an order.

Ms. Tillman answered that judges could order law enforcement or the Sheriff's Department to transport a youth from one placement to another. Ms. Tillman said that Fairfax County has the Sheriff's Department transport residents to and from the facility and to court. If the resident is detained due to a violation, the Sheriff's Department or the local police will transport the resident to the intake facility.

Board Member Schrad asked who makes the determination to use law enforcement.

Ms. Tillman answered, the court service unit. If the resident violated, the probation officer would file termination of services, and then the local police would usually transport the youth to intake. The facility does not make that decision.

Board Member Schrad asked if transportation by law enforcement is a frequent occurrence. Board Member Hines noted that his Department has not done a transport to a group home but has picked up residents from a group home on charges.

Director Boykin said that in her experience law enforcement that effected the arrest may transport the youth, as is done with youth in detention centers. Beyond that, it usually requires a transportation order, which is a court order signed by the clerk's office for law enforcement to transport group home residents for routine medical treatment or testing.

Board Member Hines expressed concern that the group home would not be maintaining custody of their youth in those instances in which a resident needs to go to the hospital and the facility sends a staff representative when it is no longer a hardship on the facility.

Ms. Norfleet clarified that the goal is to ensure that allowing the staff to leave the facility does not pose a safety issue for the facility.

Board Member Hines asked whether that means the facility has to call personnel to go to the hospital or facility.

Ms. Norfleet answered that when staff is called out due to an urgent situation, this means residents will be left unsupervised. The staff member is either going with the youth to the hospital, which leaves other residents alone at the facility waiting until another staff member can arrive, or the youth in the ambulance/hospital is left alone until a staff member can arrive. Either way there will be a gap.

Board Member Hines noted that the Board might need to address the gap since there is no time requirement for a staff member to arrive at the hospital.

Chairperson Woolard asked if there should be parameters on the time when a youth is transported to the hospital and there is no supervision.

Board Member Hines stated his concern that if a resident is transported to a hospital setting, there is no longer supervision.

Ms. Norfleet noted that the facility would be urgent about providing supervision and would likely be able to have staff meet the resident at the hospital.

Board Member Hines acknowledged that the group homes are not trying to avoid their supervision obligations, but he also understands that regulations are in place to mandate how often staff should check on residents throughout the day. Board Member Hines believes there should be a hard, fast timeframe. Although it may be inconvenient to call staff from home to ensure supervision, this may be necessary because the resident in question is still within the group home's custody.

Chairperson Woolard read the new language proposed in subdivision (A)(1) of 6VAC35-41-1270 (page 138), which provides, "if sending a staff member would result in inadequate coverage at the juvenile residential facility, the provider shall deploy a staff member to the hospital or outside medical facility as soon as reasonably possible." Chairperson Woolard said that she has no doubt the group homes would get to the hospital as soon as possible but asked the Board whether they wanted to set a specific timeframe for the regulation.

Board Member Hines noted his belief that a specific timeframe should be added.

Board Member Frazier agreed, noting his support of a 60-minute timeframe to allow for adequate time for a call-out to be made.

Board Member Herring indicated that while he agrees with the Board's concerns, logistically, the 60-minute timeframe might not be feasible because of transportation location issues of staff. The 60-minute window might impose a requirement that is impossible to meet. Board Member Herring said he understands why, for legal purposes, the term, "reasonably possible" is used because reasonableness is a legal standard often used when prescribing precise windows, and it becomes difficult to establish a standard that cannot contemplate unforeseen circumstances.

Board Member Frazier asked if group homes always send a staff member when a resident is in a hospital or other medical setting.

Ms. Tillman affirmed, explaining that on rare occasions, this occurs in the middle of the night, and an administrator, along with a parent or legal guardian, meets the resident at the hospital. During the day, more staff are present and a staff member follows behind the ambulance.

Board Member Frazier stated that while he agrees with Board Member Herring's comments regarding the "as reasonably possible" standard, he does not want to create an opportunity for the regulation to be relaxed or misinterpreted.

Chairperson Woolard asked whether the facility documents the length of time a youth is left unsupervised in these situations.

Mr. Hooker said with these situations an incident report would be completed documenting everything being done from the time the resident leaves the facility for the hospital to the time they return.

Board Member Schrad said she would be comfortable leaving the language as proposed and to review over the next year whether there were outliers where facilities took too long to meet the resident at the hospital and whether other issues arise.

Ms. Norfleet said the group homes would be looking at that information also.

With respect to the proposed amendments to Section 210 (required retraining), pg. 102, Chairperson Woolard indicated that she understands the interest in aligning with DSS and DBHDS regarding training and asked whether there would be no specific training hours requirement under the proposal.

Ms. Peterson responded that there would not be a mandated volume of hours associated with the specified required topics; however, according to subsection B, employees would need to receive at least 15 hours of training in additional topics. Ms. Peterson noted that the workgroup's original recommendation was to completely eliminate the required volume of annual training hours and that such a proposal was not without precedent. In 2011, court service unit staff had to receive 40 hours of required training, but, at the department's recommendation, the board approved removing the specified 40-hours of training and allowed the court service units to determine their own training hours. The proposal before the board is consistent with other agencies' requirements in relation to group homes. It would give the group homes additional flexibility and allow them to tailor their training to facility needs.

Most of the Board members were concerned about the potential for abuse if there were no specified volume of required training hours. An individual could conceivably cover all the topics in two hours.

Board Member Schrad asked about the training recordkeeping and if there is a current reporting requirement.

Ms. Norfleet responded that group homes keep training records with the employee's name and the number of training hours completed.

Ms. Peterson said the only regulatory requirement regarding training documentation is that whatever training is obtained be documented in the staff's personnel record.

Board Member Frazier asked if group homes have certification requirements regarding training.

Mr. Bailey said that was correct and explained the recordkeeping. There is a combination of recordkeeping; some facilities keep computerized records listing the employee, the number of hours, and the course name or topic. Other facilities keep a staff roster, the date of the course, the course name, and the number of hours, which goes into the training record.

Board Member Schrad asked if the Certification Unit is looking for deficiencies in training or whether they simply establish the existence of training records.

Mr. Bailey responded that the Certification Unit reviews the training records and tallies the hours to ensure staff are receiving the mandated hours.

Director Boykin added that during transformation, the Department has mandated specific training for court service units. It is the responsibility of the court service unit director or supervisor to determine the training required since the 40 hours was eliminated. In the last few years, court service units have been specific about their training, such as the youth risk assessment instrument and mandated EPICS training.

Board Member Hines said that currently, law enforcement is dealing with training that is more enhanced and more mandatory, that in his industry they have struggled with electives. He noted that while he is not seeking to place additional mandatory training requirements on the group homes, he believes there must be a standard of meeting a specified number of training hours.

Chairperson Woolard said her preference would be to not remove the specified volume of training hours.

Board Member Herring summarized that there is 40 hours of initial training and 40 hours of annual retraining. He explained that his industry requires 12 hours annual training, which can be onerous and is essentially two work days. Thinking about the typical provider, completing the training requirement in a week can virtually shut down an operation. Board Member Herring said he was not minimizing the importance of training but was not sure of the right balance and was more sympathetic to the rationale of the proposal.

Board Member Schrad said the flip side is that training mandates possibly drive budgets. Training may not have a dedicated budget commitment. Board Member Schrad was concerned there might not be funding for employees to receive necessary training and there may be an impact if the number of hours is not specified. Board Member Schrad suggested including required training objectives in the regulations.

Chairperson Woolard noted that there is a list of specific training topics and indicated that she would be hesitant to drop down to the objective level in these regulations.

On motion duly made by Jennifer Woolard and seconded by Michael Herring, the Board of Juvenile Justice approved the proposed amendments to the Regulations Governing Juvenile Group Homes and Halfway Houses (6VAC35-41) as agreed upon at the May 6, 2019, Board meeting and granted the Department of Juvenile Justice permission to proceed with the filing of the regulatory package to the Proposed stage of the standard regulatory process.

Chairperson Woolard read the motion for the Board's discussion.

Board Member Herring asked if moving to the Proposed stage deprives the Board of the opportunity to continue discussions, including best practices around annual training.

Ms. Peterson answered that the regulation will advance to the Proposed stage of the regulatory process, at which point it will undergo executive level review and then a public comment period. Once that is completed, the regulation will return to the Department for additional changes based on the public comment. The regulation will then come back to the Board for approval. There is additional time to make changes.

The Board carried the motion.

REVISIT PROPOSED AMENDMENTS OF MECHANICAL RESTRAINT AND RESTRAINT CHAIR PROVISIONS (6VAC35-101)

Kristen Peterson, Regulatory and Policy Coordinator, Department

At the November 2018 Board meeting, the Board asked the Department to return at the next meeting with various options to address the use of mechanical restraints and the restraint chair in juvenile detention centers and the juvenile correctional center. A workgroup was convened of representatives from the Virginia Juvenile Detention Association, the juvenile correctional center, and other internal staff to review the regulation as approved by the Board in June 2018. The workgroup also took into consideration the information obtained from the panelists at the November Board meeting. The workgroup developed four options to address the use of mechanical restraints and the restraint chair, which were presented to the Board in January. At that meeting, the Board was unable to advance a formal proposal. The Department is asking the Board to reconsider the options provided at the January meeting. While four options were presented in January, the Department has removed one option, which is the default option. If all other proposals fail to advance at today's meeting, the Board would default to that option.

Summary of the Options

The first option is the "catch all," in that it permits the use of mechanical restraints, the restraint chair, and protective equipment, including spit guards. The second option allows for the use of mechanical restraints and protective equipment including spit guards, but prohibits the use of the restraint chair. Under the second option, juvenile detention centers would be prohibited from using the restraint chair. The third option includes all the provisions contained in Option One but prohibits the use of spit guards and other protective equipment. Protective helmets are still permissible under Option Three, but spit guards are prohibited.

Option One

There are three separate purposes for which the mechanical restraint chair may be used under option one: (1) for controlled movement, (2) as a self-regulation tool, and (3) if the resident's actions directly threaten himself or others.

Option One permits the use of the chair for controlled movement provided that the resident's refusal to move from one area of the facility to another directly and immediately threatens the resident or others or interferes with required facility operations. The use of the chair has to be the least restrictive intervention that is available to ensure the resident's safe movement.

Under Option One, the restraint chair also can be used as a self-regulation tool. This is uncommon, but on occasion, a resident has voluntarily asked or requested to be placed in the restraint chair as a means of regulating their own behavior. This practice is used fairly frequently in the Commonwealth Center. Those residents at the Commonwealth Center might be transferred to the juvenile detention center, so residents have grown accustomed to this process. In order to utilize the restraint chair as a self-regulation tool, the resident would need to request it, and the use would need to accord with an approved plan of care by a qualified mental health professional.

In addition, the restraint chair can be used (1) if the resident's actions directly threaten himself or others, (2) other less restrictive alternatives were attempted but failed to abate the threat or control the resident, and (3) the resident is removed from the chair immediately upon the threat being abated or the resident gaining self-control. In all of these instances, the facility administrator must provide approval before the resident may be placed in the restraint chair. Staff would need to immediately notify the facility's designated health authority, who would determine whether the resident needs to be transferred to a medical or mental health unit for emergency treatment. When a resident is placed in the restraint chair under Option One, staff must employ constant one-on-one supervision and must verbally engage with the resident to ensure de-escalation. A health trained staff member must come around once every 15 minutes to check on the resident and to check for signs of circulation.

The use of the mechanical restraint chair under Option One also requires the completion of a serious incident report every time a resident is placed in it. It would also trigger a mandated monitoring visit from the Department's Certification Unit regardless of the purpose or duration of its use.

A requirement would be imposed under Option One that the restraint chair use be captured on video. If the resident is mechanically restrained for purposes of controlled movement and is transferred from one area of the facility to another, the only part of the restraint that must be captured on video is the actual placement of the resident in the chair. If the resident is restrained for any other purpose, the entire restraint, from the time the resident is placed in the chair to the time they are removed, should be captured on video. The video documentation would need to be retained in accordance with the Department's current regulation, which is for three years.

As for mechanical restraints in general, once the purpose of the restraint has been accomplished, the staff member has to immediately remove the mechanical restraints from the resident.

When a resident is mechanically restrained, staff must conduct periodic checks. There are no requirements under Option One for constant one-on-one supervision with the regular mechanical

restraints. Staff will need to conduct checks every 15 minutes and engage with the resident. Health-trained personnel must check the resident at 15 minute intervals for signs of circulation.

Protective devices are those items placed on a resident's body in order to protect either the resident or staff members from injury. Under Option One, protective devices include spit guards. Protective devices may be used only in connection with a restraint. When the restraint has been completed, the protective device must be removed.

The Department imposed additional restrictions on the use of spit guards under Option One. Spit guards can be utilized only on residents who have previously bitten or spat on a staff member or are currently threatening to bite or spit on a staff member. Spit guards may not be used in a manner that inhibits the resident's breathing or ability to speak. Additionally, when the spit guard is placed on a resident, staff must employ constant one-on-one supervision to ensure residents are not exhibiting signs of respiratory distress. If such signs are exhibited, the spit guard must be removed. Staff is prohibited from using spit guards on residents who are vomiting or unconscious.

Option Two prohibits the use of the restraint chair. The only difference between Options One and Two is the prohibition of the restraint chair under Option Two. Option Three is the same as Option One, except spit guards are prohibited.

If the Board approves any of these options, the proposed amendments would be incorporated in the package that was approved in June 2018 and would move forward to the next stage of the regulatory process. With respect to the juvenile correctional center regulations, those regulations are currently moving through the process and are in the proposed stage. When the regulations are returned from the Governor's Office, there will be an opportunity to edit and incorporate any changes the Board decides to make at today's meeting.

Chairperson Woolard summarized the options for consideration, which include allowing the use of mechanical restraints, restraint chairs, spit guards, and other protective devices; prohibiting the use of the restraint chair; prohibiting the use of spit guards; or maintaining the status quo and not making any changes regarding the use of restraints. She noted that the Board has had sufficient time to discuss this difficult decision and heard from the experts, and should make a decision at this meeting.

Board Member Herring asked Ms. Peterson to elaborate regarding the status quo.

Ms. Peterson responded that the existing regulation does not address the mechanical restraint chair beyond including it in the definition of mechanical restraints. The provisions related to mechanical restraint also applies to the restraint chair. Currently, there are not many restrictions on the use of mechanical restraints or the restraint chair. One of the requirements under the existing regulation is that these types of devices cannot be used for purposes of punishment. There is another provision that says if a resident is mechanically restrained for more than two hours a qualified mental health representative has to be consulted. The restrictions are fairly limited under the existing regulation.

Chairperson Woolard said given the fact that a number of detention centers do not use the restraint chair and are able to manage, and given the concerns nationally from the experts at the Board's earlier meeting, she believes that Virginia should not use the restraint chair. Chairperson Woolard does not think it is best practice, although she is aware and sympathetic to the concerns of managing difficult children.

Board Member Frazier does not want to limit the available tools for juvenile detention centers or the juvenile correctional center. Board Member Frazier added that if Option One moves forward, there should be heavy reporting back to the Board in a 12-month timeframe to readdress and potentially abolish the use of the mechanical restraint chair. Board Member Frazier would like to heavily regulate the facilities if the mechanical restraint chair continues to be used. The status quo is unacceptable and each occurrence should be studied. Board Member Frazier's recommendation is Option One with the addition of a 12-month review by the Board.

Board Member Schrad struggled with her decision and could not think of any topic that has come before the Board that has troubled her more. With Mr. Frazier's additional comments about reporting back to the Board in order to monitor the occurrences, Board Member Schrad supported Option One. Board Member Schrad was impacted by the testimony when the restraint chair was used successfully, not only for the protection of the resident but also the staff. Option One allows for a gradual approach to possible elimination and allows the Board to monitor the limited use of the chair. If the Board sees anything that causes concern, there is an opportunity to revise the Board's position on the use of the chair.

Board Member Herring agreed with the perspective of Board Members Frazier and Schrad. Board Member Herring reviewed cases of in-custody deaths or serious injury, and he observed that the hypothetical that was posed of restraining a child in a chair does not capture the image of a good-sized teen detainee who is strong ;the efforts it would take to restrain and move that person could result in injury or death, not as a result of recklessness or gross negligence. Against that backdrop, Board Member Herring was a proponent of Option One. Board Member Herring indicated that he does not think eliminating the use of spit guards is unreasonable. While he would not want to be spat on, he commented that the spit guard conjures up images of Hannibal Lecter and asserted that the probability of aspiration and asphyxiation outweighs the risk posed by spitting. Board Member Herring is not in favor of the use of spit guards.

Board Member Schrad noted her agreement with Board Member Herring's position regarding spit guards.

Board Member Vilchez concurred with Chairperson Woolard and was firm on his decision from the last meeting. Board Member Vilchez believed an alternative to the chair can be found and implemented within the juvenile detention centers and the juvenile correctional center. Board Member Vilchez was in favor of Option Two.

On motion duly made by Jennifer Woolard and seconded by Michael Herring, the Board of Juvenile Justice approved the proposed amendments to the Regulations Governing Juvenile Secure Detention Centers (6VAC35-101) related to the use of mechanical restraints in juvenile detention centers, as established under “Option 3” in the Board packet and as further amended at the May 6, 2019, Board meeting. The Board granted the Department of Juvenile Justice permission to incorporate these amendments into the comprehensive regulatory package approved by the Board on June 13, 2018, for advancement to the Proposed stage of the standard regulatory process. Motion carried.

The Board then considered a second motion, Jennifer Woolard moved and Michael Herring seconded a motion to approve the proposed amendments to the Regulations Governing Juvenile Secure Detention Centers (6VAC35-101) related to the use of mechanical restraints in Juvenile detention centers, as established under “Option 2” in the Board packet, and as further amended at the May 6, 2019, Board meeting and to grant the Department of Juvenile Justice permission to incorporate these amendments into the comprehensive regulatory package approved by the Board on June 13, 2018, for advancement to the Proposed stage of the standard regulatory process. Jennifer Woolard and Robert Vilchez voted in favor of the motion and Tyren Frazier, Dana Schrad, and Michael Herring voted to reject the motion. The motion failed.

DIRECTOR’S COMMENTS

Valerie P. Boykin, Director, Department

Director Boykin offered comments regarding her new role as Director of the Department of Juvenile Justice. Ms. Boykin stated that she is humbled by the opportunity and thankful to the Governor and Secretary Moran for their confidence in appointing her the agency director. The Department has an exceptional team committed to transformation, and has done a lot of work in the past five years to move Virginia forward. The Department is now being looked at by other states in what they have done and continue to do in transformation.

This is Public Service Recognition Week, and the Department has a series of events to celebrate.

The Department celebrated its fourth Leadership Summit in Charlottesville on April 18-19. This event has grown through the years, focusing on leadership and targeting supervisors and directors who need to move the work forward. This year was the Department’s first joint activity with Residential Services. Assuming the Department’s budget remains solvent, the conferences will continue in the years to come.

The Department completed a pilot in five court service units on the standardized dispositional matrix (SDM). This matrix will soon be implemented statewide to help probation officers assess the risk and needs of young people and to make recommendations based on those areas to the court on the disposition. The Department has tested the matrix in five localities: Warrenton, Chatham, Culpeper, Chesterfield, and Newport News. It is built historically on Juvenile and Domestic Relations dispositions and will be re-evaluated on its effectiveness on dispositions and the outcomes for young people who experience them. Young people received dispositions by location, the resources

available, and past practices. Probation has often become the default disposition, sometimes without a social history or risk assessment. Over the summer, the Department will establish the SDM in each jurisdiction across the Commonwealth and train stakeholders and staff. Implementation will be in the fall, with an effective date of January 1, 2020.

Dr. Robin Binford Weaver from the Behavioral Services Unit, Art Mayer from Operations, and Superintendent Russell Jennings continue to work on reforms in the juvenile correctional center. Bon Air hosted its first dance since the 1990s. Superintendent Russell said the event was a success and good practice for the young people to participate in normal behavior. This was a chance for Bon Air to recognize good behavior. There also will be cookouts later in the month and a 5k planned for May 18 with the residents.

The Department, along with the Department of General Services (DGS), was in communication and negotiation with the County of Isle of Wight for over a year to site a new, state-of-the-art, small juvenile correctional center. On April 18, the final vote to transfer the land to the Commonwealth failed, which was a surprise to the Department. The Department is committed to finding the best places for its young people and will continue to work with DGS siting new facilities as opportunities present.

BOARD COMMENTS

There were no Board comments.

NEXT MEETING

The next Board meeting is scheduled for June 19, 2019, at Main Street Centre, 600 East Main Street, Richmond.

ADJOURNMENT

Chairperson Woolard adjourned the meeting at 11:48 a.m.