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**Robert Vilchez, Secretary**  
David R. Hines  
Scott Kizner  
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**COMMONWEALTH OF VIRGINIA**  
*Board of Juvenile Justice*

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## MEETING MINUTES

June 24, 2020 ☞ Virtual Meeting

Pursuant to amendments to the Budget Bill approved on April 24, 2020 and set forth in Item 4.0-0.1 and in light of the Governor's declaration of a state emergency to curb the spread of COVID-19, the Board of Juvenile Justice met by virtual videoconference at its June 24, 2020 meeting. The Board considered a virtual video meeting necessary due to concerns that the nature and continuing spread of the virus throughout the Commonwealth rendered meeting at a single location unsafe for Board members, Department of Juvenile Justice personnel, and members of the public.

**Board Members Present:** Tyren Frazier, Robyn McDougle, Dana Schrad, Gregory Underwood, Robert (Tito) Vilchez, and Jennifer Woolard

**Board Members Absent:** David Hines, Scott Kizner, and Quwanisha Roman

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

### CALL TO ORDER

Board Chair Jennifer Woolard called the meeting to order at 9:34 a.m.

### INTRODUCTIONS

Chairperson Woolard welcomed all who were present and asked for Board member introductions. Director Valerie Boykin, along with Department staff and the Attorney General's Office representative, made their introductions. Due to the media platform used for the meeting, guests were not able to make introductions.

## **PUBLIC COMMENT PERIOD**

There was no public comment. The public had an opportunity to sign up for public comment through the Department's website.

## **DIRECTOR'S CERTIFICATION ACTIONS**

Ken Bailey, Certifications Manager, Department

Mr. Bailey directed the Board to the Board packet, which contained the individual audit reports and a summary of the Director's certification actions completed for April 15, 2020. Mr. Bailey announced the results of this round of audits were the best in many years.

The audit for the Northwestern Regional Juvenile Detention Center and Post-dispositional Program found one area of non-compliance involving a tuberculosis screening form not correctly signed by medical staff. The monitoring visit indicated the deficiency was corrected and the program was in compliance.

Sheltercare of Northern Virginia and Rappahannock Juvenile Detention Center and Post-dispositional Program received a letter of congratulations for 100% compliance and were certified until April 2023. This was an impressive accomplishment due to the influx in population in the Rappahannock Program.

The audit for the 1<sup>st</sup> District Court Service Unit found one area of non-compliance related to commitment information not included in some cover letters. The monitoring visit indicated the deficiency was corrected and the unit was certified until April 2023.

The 2<sup>nd</sup> District Court Service Unit received a letter of congratulations for 100% compliance and was certified until March 2023.

The audit for the 8<sup>th</sup> District Court Service Unit found three areas of non-compliance related to missing components in the social history supervision plans, missing supervisory reviews, and contacts during commitment. The Certification Team requested that the findings regarding contacts during commitment be referred to the Regional Program Manager for further monitoring. The unit was certified until March 2023.

The audit for the 13<sup>th</sup> District Court Service Unit found two areas of non-compliance related to the lack of documentation in several supervision plans and commitment cases. The monitoring visit indicated the deficiencies were fully corrected and the unit was certified until March 2023.

The 28<sup>th</sup> District Court Service Unit received a letter of congratulations for 100% compliance and was certified until March 2023.

Board Member Greg Underwood asked how long it takes to perform an audit, how many staff are on the audit team, and whether the Department provides notice before inspections.

Mr. Bailey answered that the number of team members and time vary according to the size of the facility. Audit teams range from six to ten staff. The Certification Team provides a six-month notification of the scheduled audit and reviews documentation covering a three-year period. Monitoring visits may take place with little notice to review a few regulatory requirements. In theory, the Department expects these programs to be in 100% compliance all the time.

### **APPROVAL OF March 11, 2020, MINUTES**

The minutes of the March 11, 2020, Board meeting were provided for approval. On motion duly made by Robyn McDougle and seconded by Tito Vilchez, the Board approved the minutes as presented.

Mr. Frazier – Yea; Ms. McDougle – Yea; Ms. Schrad – Yea; Mr. Underwood – Yea; Mr. Vilchez – Yea; and Ms. Woolard abstained from voting due to her absence from the March meeting.

### **OTHER BUSINESS**

#### **Virginia Juvenile Community Crime Control Act (VJCCCA) Plan Approvals**

Beth Stinnett, Statewide Program Manager, Department

Beth Stinnett provided information on the VJCCCA plans for the Board's approval.

#### *VJCCCA History – Background*

The VJCCCA was enacted in 1995 to restructure funding for juvenile justice programming and provide localities with funding to impact juvenile crime. Areas of focus included diversion, early intervention, and detention alternatives. VJCCCA funding came in the 1990s, when capital construction campaigns were underway and localities were looking to either build juvenile detention centers or expand capacities due to overcrowding. An initial area of emphasis was to ensure localities had access to funding for secure detention alternatives, which continue to be the heaviest category utilized. VJCCCA provides localities the flexibility and autonomy to build out services and programming that meet their unique needs.

#### *Organization and Operations*

VJCCCA is a voluntary program with all 133 cities and counties throughout the Commonwealth participating this year, which traditionally has been true. VJCCCA establishes a formula grant that provides funds to each locality in Virginia along with a state allocation. Some localities require a maintenance of effort (MOE), and other localities elect to contribute additional funds to the budget.

The state allocation is \$10.3 million, and inclusive of the MOE and additional local contributions, \$20.6 million will be invested in juvenile programming at the local level this year. The Department provides technical assistance, administrative oversight, and monitoring of approved plans.

Each locality submits a grant application or proposed plan for the biennium. The current biennium ends on June 30, 2020. The new two-year biennium will conclude on June 30, 2022.

This has been a planning year for localities who use data for their decisions. The Department publishes its Data Resource Guide online that has great research information. The locality utilizes data during the planning process from sources such as the detention assessment instrument, override data, intake data, and types of crimes committed.

#### *Governance*

The planning process is collaborative, and localities can work with key stakeholders such as the Community and Policy Management Team chairs, the local court service unit directors, and the local judges of the Juvenile and Domestic Relations court.

#### *Program Operations*

Each locality determines the management of their plan and, with the funding received, could either hire local government staff to essentially serve as a publically funded provider (direct service provider) or contract out to purchase services through a private provider. This gives the locality flexibility.

The Department received applications from every city and county in the Commonwealth as individual plans or as combined plans with adjacent localities.

The Department continues to see heavy utilization of crime control funds to support detention alternatives. More than 60 different localities submitted plans that included either outreach detention or electronic monitoring detention. More than 30 localities also included purchase of shelter care beds as a detention alternative.

This year, due to the impact of the virus, localities developed creative ways to serve young people and their families. Some restructured their funding to adapt services to be delivered remotely, similar to telemedicine. Localities purchased new equipment to allow for safety needs and still provide high quality services to young people.

This year, the Department assisted localities in removing the case management category from their plan. The Board received a presentation on the Department's standardized dispositional matrix (SDM) that has restructured how young people are served in the juvenile justice system. Case management is now the responsibility of the court service unit. Localities used local government staff to provide case

management services to young people alongside the court service unit. The Department needed to help eliminate this redundancy as court service units have assumed responsibility for case management by using the SDM. This allowed the locality to maximize their funding and redistribute to different services.

In 2019, the General Assembly passed House Bill 1771 that allows VJCCCA funding to be spent on non-DJJ use as a category called preventive services. Last year, no localities elected to add preventive services to their plan because it was a new category and it was in the middle of the two-year biennium. A number of localities indicated an interest in adding preventive services to their plan this year. This is the beginning of a new plan year, and the localities took advantage of last year to restructure their plans in order to do more early intervention and prevention work.

The Department employs VJCCCA specialists who review applications and either approve or make recommendations to the plan. Ms. Stinnett and her team come before the Board prepared to share results of those reviews and make recommendations for the Board to adopt plans.

The following are the Board's options:

- Approve the plan as submitted for the full year biennium through June 30, 2022.
- Approve the plan for only the first year of the biennium through June 30, 2021.
- Approve the previously approved plan, which will allow the locality to carry the plan forward for a short period. The locality will be able to continue to improve upon the plan.
- Not approve the plan as submitted.

Page 53 of the Board packet contains the full budget for \$10.3 million and \$20.6 million and explains how funding is allocated across localities. The second spreadsheet shows the raw data of more than 300 programs and services funded by VJCCCA this year. The raw data is broken down by funding streams, type of programming, and the amount of money allocated for each program category.

Ms. Stinnett reviewed the Board motions:

- First Motion: There are 133 cities and counties in the Commonwealth organized as either a combined plan or an individual plan with one single fiscal agent. The Department recommends adopting the plan for the full two-year biennium for 119 localities through June 30, 2022.
- Second Motion: The Department recommends the adoption of thirteen locality plans for year one of the two-year biennium through June 30, 2021. Adopting for one year does not mean not adopting it in an incremental way. The listed localities have elected to add the new category of preventive services to their plan. The Department believes this takes deliberate and guided implementation. It includes the adoption of a new evidence-based tool, new practices on how

to capture and track non-DJJ cases that maintain confidentiality, and not mixing the population data. The Department favored adopting the plan for one year in order to provide guidance on the implementation and adopting year two of the plan next year. The Frederick Combined Plan is the first in the state to implement an achievement center (Washington, D.C.), and this will require guided implementation. It has great promise, and may become a model for other parts of the state. The Martinsville Combined Plan is adding a category of shelter care, which will be a regional approach and provide a detention alternative, which is needed in the western part of the state.

- Third Motion: The City of Lynchburg is requesting not to take action on their new plan and instead to carry forward the previously approved plan adopted two years ago for one additional quarter. This locality has not met all the requirements for planning, including meeting as a group, and the Department has not received letters of support from the locality’s juvenile judge or court service unit director. The locality has a meeting scheduled for later this week. The City of Lynchburg may have been impacted by the pandemic, but needs to come together as a locality for planning purposes in order to seek out the requirement for court service unit and judicial support. The Department is asking the Board to allow the City of Lynchburg more time and to carry forward their current plan until the next Board meeting.

The following localities (119) have submitted VJCCCA Plans for FY 2021 and FY 2022 with balanced budgets for both years. Localities participating in combined plans are grouped by fiscal agent. These plans have been reviewed by staff and are recommended for approval by the Board for fiscal years 2021 and 2022 of the 2021-2022 biennium:

- |   |  |                              |
|---|--|------------------------------|
| • Accomack, Northampton   | • Fluvanna   | • Mecklenburg                |
| • Alexandria  | • Franklin County  | • Montgomery                 |
| • Amelia  | • Fredericksburg   | • Nelson                     |
| • Amherst   | • Giles  | • Newport News               |
| • Arlington, Falls Church   | • Goochland  | • Norfolk                    |
| • Bath  | • Grayson, Carroll, Galax  | • Nottoway                   |
| • Bedford County  | • Greene   | • Orange                     |
| • Campbell  | • Halifax  | • Page                       |
| • Caroline  | • Hanover  | • Petersburg                 |
| • Charlotte, Appomattox,<br>Buckingham, Cumberland,<br>Lunenburg, Prince Edward | • Highland   | • Pittsylvania               |
| • Chesterfield  | • Hopewell   | • Powhatan                   |
| • Colonial Heights  | • King George, King William,<br>Charles City, King and Queen,<br>Middlesex, New Kent | • Prince George              |
| • Craig, Culpeper   | • Lexington, Buena Vista,<br>Rockbridge, Alleghany,<br>Covington, Botetourt          | • Prince William             |
| • Dinwiddie   | • Loudoun  | • Pulaski                    |
| • Emporia, Brunswick,<br>Greensville, Sussex                                    | • Louisa   | • Radford                    |
| • Fairfax County/Cit  | • Madison  | • Rappahannock               |
| • Fauquier  | • Manassas Park  | • Richmond                   |
| • Floyd   |  | • Roanoke City               |
|   |  | • Roanoke County, Salem City |
|   |  | • Rockingham, Harrisonburg   |

- Shenandoah
- Spotsylvania
- Stafford
- Warren
- Washington, Bristol, Smyth, Russell, Buchanan, Dickenson,
- Lee, Norton, Scott, Tazewell, Wise
- Waynesboro, Augusta, Staunton
- Westmoreland, Essex, Lancaster, Northumberland, Richmond County
- Wythe, Bland
- York, James City, Gloucester, Williamsburg, Mathews, Poquoson
- TYSC: Isle of Wight, Southampton, Chesapeake, Franklin City, Portsmouth, Suffolk, Virginia Beach

On motion duly made by Dana Schrad and seconded by Robyn McDougale, the Board of Juvenile Justice approved the above listed VJCCCA plans for the 2021 and 2022 fiscal years. Mr. Frazier – Yea; Ms. McDougale – Yea; Ms. Schrad – Yea; Mr. Underwood – Yea; Mr. Vilchez – Yea; and Ms. Woolard - Yea.

The following localities (13) have submitted VJCCCA Plans with a balanced budget for FY 2021. These plans have been reviewed by staff and are recommended for approval by the Board for the 2021 fiscal year of the 2021-2022 biennium.

- **Charlottesville VJCCCA (combined plan) Includes:** Charlottesville, Albemarle
- **Danville VJCCCA Includes:** Danville
- **Frederick VJCCCA (combined plan) Includes:** Frederick, Clarke, Winchester
- **Hampton VJCCCA Includes:** Hampton
- **Henrico VJCCCA Includes:** Henrico
- **Manassas VJCCCA Includes:** Manassas
- **Martinsville VJCCCA (combined plan) Includes:** Martinsville, Henry, Patrick
- **Surry VJCCCA Includes:** Surry

On motion duly made by Jennifer Woolard and seconded by Tito Vilchez, the Board of Juvenile Justice approved the above listed VJCCCA Plans for the fiscal year 2021. Mr. Frazier – Yea; Ms. McDougale – Yea; Ms. Schrad – Yea; Mr. Underwood – Yea; Mr. Vilchez – Yea; and Ms. Woolard - Yea.

The following locality has not yet met all proposed plan submission requirements and has not completed required planning activities. It is recommended that the locality’s FY 2020 plan be carried forward for one additional quarter, through September 16, 2020, to allow time for the locality to convene its planning members and develop a revised plan. The revised plan will be presented at the September Board of Juvenile Justice meeting.

**Lynchburg - Fiscal Agent:** Lynchburg

On motion duly made by Tyren Frazier and seconded by Dana Shrad, the Board of Juvenile Justice approved the FY 2020 plan for one additional quarter through September 16. Mr. Frazier – Yea; Ms. McDougale – Yea; Ms. Schrad – Yea; Mr. Underwood – Yea; Mr. Vilchez – Yea; and Ms. Woolard - Yea.

# REQUEST AUTHORIZATION TO SUBMIT AMENDMENTS TO THE REGULATION GOVERNING JUVENILE CORRECTIONAL CENTERS TO THE FINAL STAGE OF THE REGULATORY PROCESS

Kristen Peterson, Regulatory and Policy Coordinator, Department

## *Background*

In June 2016, the Board granted the Department permission to initiate the first stage of the regulatory process for a comprehensive review of the juvenile correctional centers regulation. The Department convened a workgroup to review the regulation and develop proposed amendments.

In November 2017 and January 2018, the Board authorized the proposed amendments to advance to the Proposed Stage of the regulatory process. At the proposed stage, the regulation has undergone Executive Branch review and the Attorney General's office has opined that the regulation is consistent with state law and does not conflict with federal law. The Department of Planning and Budget has completed their economic impact analysis and determined that the proposed amendments will not have a significant economic impact on localities, state agencies, or small businesses. The Governor's Office and the Secretary of Public Safety and Homeland Security also completed a review and approved the regulation to move through the process. There was a sixty-day public comment period, in which the Department received one set of comments from the disAbility Law Center of Virginia. Taking into consideration all that information and considering how the Department has evolved, the workgroup reconvened to develop additional proposed amendments. The Department requests the Board approve the proposed amendments and advance the regulations to the Final Stage of the regulatory process.

## *Five Critical Areas*

The presentation focuses on five critical areas: (1) room confinement, (2) scope of the regulatory chapter and the facilities that are subject to these regulatory requirements, (3) grievances, (4) mechanical restraints, and (5) the Juvenile Justice Delinquency Prevention Act and pregnant residents.

## *Background of Proposed Changes*

Ms. Peterson reminded the Board of the change to the regulatory provisions developed by the Virginia Code Commission in 2016. When developing regulations, state agencies may not incorporate reference documents that were developed by the agency. The regulation contains many statements that require compliance "in accordance with written procedure." Because the Department developed these written procedures, such provisions violate the incorporation by reference rule. Many changes proposed are to address the incorporation by reference rule. Ms. Peterson will not focus on those changes.



## Expanded Definition of Room Confinement

Current Requirement	Change at Proposed Stage	Change at Final Stage
<p>-No existing definition for room confinement.</p>	<p>Room confinement = involuntary placement of resident in his room or other designated room.</p> <p>-Exclusions:</p> <ul style="list-style-type: none"> <li>• Confinement while sleeping.</li> <li>• Timeout periods</li> <li>• Confinement during lockdowns.</li> </ul> <p>-Identifies permitted purposes of room confinement.</p>	<p>(Pg. 79-80) - Expands room confinement exclusions to include confinement in order to:</p> <ul style="list-style-type: none"> <li>• Allow residents to shower safely;</li> <li>• Conduct facility counts;</li> <li>• Execute shift changes.</li> </ul> <p>-Permitted purposes moved to Room Confinement section (1140).</p>

The existing regulation does not define room confinement. The workgroup originally sought to exclude those types of confinement that look like room confinement but should not be subject to the same restrictions and limitations. For example, the workgroup originally recommended exclusions from room confinement for sleeping and during a timeout period. A timeout period is a program restriction that allows staff to move residents away from a source of reinforcement until the problematic behavior has been addressed. The timeout period tends to last no longer than 60 minutes. The timeout period can be served outside the resident's room; therefore, the workgroup thought that this particular type of confinement should not be subject to the confinement provisions.

Similarly, confinement for lockdown is handled with separate provisions that impose specific requirements. Lockdown means that groups of residents or all residents are restricted to an area within the facility or an area within their housing unit or their rooms for purposes of addressing certain emergencies or issues that the facility may experience such as tensions, riot activity, or if staff need to search the facility for missing tools. Those specific instances also are excluded from the proposed definition of room confinement.

The workgroup has now identified additional types of confinement that should be subject to the exclusion. The first type is confinement for purposes of allowing residents to shower. Under the existing written procedure, residents must shower individually. There is one staff member on the unit responsible for escorting the resident to the shower and supervising him while showering, and one direct care employee on the unit responsible for overseeing the remaining youth on the unit. However, if the resident in the shower experiences a crisis, the other staff member is called to provide assistance, and the remaining residents are not confined for that temporary period, the staff member would not be able to assist the resident in the shower. The workgroup believes it is necessary to secure the

residents in their rooms while each individual resident showers in order to ensure safety and security and to make sure that the facility complies with the Prison Rape Elimination Act.

The second proposed exclusion is confinement for purposes of allowing or conducting facility counts. Bon Air currently conducts four counts per day to determine and ensure residents are all accounted for in the facility. The easiest and most efficient means of obtaining an accurate count is to ensure that the residents are stationary. The best way to make sure residents are stationary is to secure them in their rooms for a temporary period. The recommendation of the workgroup is to exclude confinement for purposes of conducting facility counts from the definition of room confinement.

Finally, there are certain tasks that need to be accomplished as part of shift change. For example, keys must be exchanged, and equipment must be tested and updated before the outgoing staff can leave the facility for the day. Communications may need to occur between incoming and outgoing staff to convey that day’s unit activities outside the hearing of the residents. The workgroup recommended excluding confinement for the purposes of executing shift changes from the definition of room confinement.

*Permitted Justification for Room Confinement*

Current Requirement	Change at Proposed Stage	Change at Final Stage
<p>-Written procedures govern how and when residents may be placed in room confinement.</p>	<p>-Allowed room confinement only :</p> <ul style="list-style-type: none"> <li>• If a resident’s actions threaten facility security or the safety and security of residents, staff or others in the facility.</li> <li>• To prevent property damage with intent to fashion object that threatens facility safety or security.</li> </ul>	<p>(Pg. 120) - Expands property damage justification.</p> <ul style="list-style-type: none"> <li>• No longer requires intent to fashion item threatening facility safety/security.</li> <li>• Allows room confinement to prevent property damage to real or personal property that would threaten facility security or safety.</li> </ul>

The current regulation states that written procedure shall govern how and when residents can be placed in room confinement. At the Proposed Stage, the workgroup wanted to limit the use of room confinement and impose it only as long as necessary to address whatever threat necessitated the room confinement. The workgroup added language at the Proposed Stage to abolish the use of room confinement as a disciplinary sanction. If a resident commits an infraction that cannot be addressed through the informal process, the resident may be entitled to a hearing, and if the resident is determined guilty of the offense, the resident can be sanctioned with room confinement. At the Proposed Stage, the workgroup abolished the use of room confinement and allowed room confinement only in two specific scenarios: (i) if the actions of the resident threaten facility security or the safety and

security of residents, staff, or others, and (ii) to prevent property damage, but only if the resident intended to fashion an object that threatens facility safety and security.

The Department is concerned that the provision was too narrowly written and may cause unintended consequences. If a resident is engaged in property damage, they are likely to be upset and out of control. The example used in workgroup discussions was a resident smashing a television; however, the resident may not be doing this with the requisite intent of fashioning a weapon, and in that particular scenario, the facility would not be able to utilize room confinement as a tool to stop that behavior and to separate the resident from the situation because the regulatory provision is too narrowly written. The workgroup's recommendation for the Final Stage is that the provision no longer require an intent to fashion an item threatening facility safety and security, but rather that room confinement be permitted in order to prevent property damage to real or personal property that would threaten facility security or safety.

Chairperson Woolard remembered the Board spent a great deal of time discussing room confinement, and the Board made it clear that room confinement for disciplinary purposes is not allowed. It is understood that under certain circumstances, like immediate safety concerns, room confinement might be justified. Although Ms. Peterson asserts that the provision was too narrowly drawn, Chairperson Woolard worried that damaging property could be considered as a threat to safety and security under any circumstance. Chairperson Woolard asked what concern drove this proposed change, and asked Ms. Peterson to elaborate on the discussion around expanding the property damage justification.

Ms. Peterson responded that the Proposed Stage provision allowing room confinement only if a resident had the intent of fashioning an object to be used as a weapon was too narrow. There could be instances where residents are engaging in property damage and the behavior itself is threatening to facility safety and security and the damage is supplemental to the threatening behavior.

Chairperson Woolard asked for more information. If a resident is engaging in property damage, and that property damage threatens the security and safety of others, then that scenario falls under the first element of the Proposed Stage provision allowing room confinement if a resident's actions threaten facility security or the safety and security of residents, staff, or others in the facility. The second part of the Proposed Stage provision requiring intent to fashion an object is essentially covering behavior that has not yet occurred, where the resident is engaged in property damage in order to do harm, for example, breaking a television in order to take a shard of glass to threaten safety. Breaking the television is not in itself a threat to safety, but it is clear the resident is trying to threaten safety. Chairperson Woolard expressed confusion with the request to expand the property damage justification since if the property damage in itself is threatening, that is already covered in the existing provision.

Ms. Peterson answered that the workgroup had another concern with the narrow property damage language. The workgroup tried to construe the regulation similarly to how the General Assembly construes statutes. If the legislation speaks to a specific issue in a statute, then anything else that might evolve from that specific issue is interpreted as the General Assembly not intending to address that issue. The change in the provision is saying that if there is property damage that is incidental to the resident's threatening behavior, then that property damage in itself would prevent facility staff from using room confinement.

Chairperson Woolard remained concerned and believed it is not necessary to expand the property damage justification and that doing so may open the door to property damage becoming a broader justification for room confinement. The Board spent a large amount of time focused on intentionally narrowing room confinement for disciplinary purposes.

Deputy Director of Residential Services Joyce Holmon said the Department could revert to the language in the Proposed Stage without great difficulty.

Chairperson Woolard believed the language in the Proposed Stage covers the kinds of issues raised in the subsequent discussion and is confident that the language in the Proposed Stage can cover the emergency safety circumstance Ms. Peterson described.

Board Member Tyren Frazier said that he was okay with the neutral language.

Chairperson Woolard wanted verification that shower, count, and shift change, are included within the exclusions. Ms. Peterson confirmed, explaining the workgroup's intent to ensure that those three additional types of confinement are excluded from the definition of room confinement. Chairperson Woolard asked Ms. Peterson to remind the Board of the parameters placed on room confinement.

Ms. Peterson responded that under the Board-approved proposed amendments in Section 1140, mental health staff are required to visit the resident daily in room confinement. A staff member needs to visit with the resident within the first three hours of them being placed in room confinement. If the resident is in confinement for at least six hours, an additional staff member must visit and engage with the resident. If the resident is confined for more than six hours, then the resident must have two additional visits from staff members. Residents must be checked once every 15 minutes while they are in room confinement, but that provision applies anytime a resident is behind locked doors. The Superintendent or his designee must make personal contact with the resident every day the resident is confined.

Ms. Peterson concluded that because the use of room confinement has been narrowed, if these terms are not excluded in the definition of room confinement, then the facility would not be permitted to place residents in their rooms for these purposes even for a temporary period of time. Even if excluded

from the room confinement definition, residents are still required to be checked every 15 minutes and must be able to communicate verbally while confined. The regulation in the Proposed Stage states that a direct care staff actively supervise residents wherever present in the facility. The definition of “active supervision” contained in Section 10 is that direct care staff will check on the resident at least once every 15 minutes. The workgroup thinks that covers the check-in mandate.

*Opportunities During Room Confinement*

Current Requirement	Change at Proposed Stage	Change at Final Stage
<p>-Confined residents shall be afforded opportunity for at least one hour of exercise outside room every calendar day with some exceptions.</p> <p>-Segregation units shall receive conditions approximating general population.</p>	<p>-Staff must provide confined residents with the same opportunities as other residents on the unit.</p> <ul style="list-style-type: none"> <li>• Includes “as much time out of their room as security considerations allow.”</li> </ul> <p>-Also must provide at least one hour of large muscle activity daily, with some exceptions.</p>	<p>(Pg. 120) - Strikes requirement for same opportunities as other residents.</p> <p>-Requires staff to provide residents with services while confined:</p> <ul style="list-style-type: none"> <li>• Medical and mental health treatment;</li> <li>• Education</li> <li>• Daily opportunities for bathing</li> <li>• Daily nutrition</li> <li>• Daily opportunity for one hour of large muscle activity with some exceptions (retained in subdivision B(4)).</li> </ul>

In the existing regulation, confined residents shall be afforded at least one hour of exercise outside of their room every calendar day with certain exceptions.

Existing regulatory provisions speak to providing opportunities for residents while confined. Section 1160 of the regulation requires residents in administrative segregation units to receive conditions approximating those of the general population. There are no comparable provisions for residents placed in room confinement. The workgroup wanted to ensure at the Proposed Stage that staff was not depriving residents of their rights during confinement. The way the workgroup sought to accomplish that was to mirror the language regarding residents in segregation. At the Proposed Stage, the workgroup drafted that staff had to provide confined residents with the same opportunities as other residents in the unit. The workgroup took it a bit further and said that this needs to include as much time out of their room as security considerations allow. Also at the Proposed Stage, the workgroup clarified that the hour of physical activity outside of the residents’ rooms needed to be large muscle activity.

The workgroup was concerned with the requirement that confined residents receive the same opportunities as other residents on the unit. The workgroup believed that staff would not be able to

comply because when residents are placed in room confinement there are certain opportunities that simply cannot be provided to residents, for instance, the opportunity to engage and interact with other residents on their unit.

The workgroup also was concerned with the requirement that the facility give the resident as much time out of his room as security considerations allow. The Department's goal is to reduce the use of room confinement, using it only for as long as the threat that necessitated the room confinement is present. Once that threat disappears, the resident should be released from room confinement. By having language requiring residents to receive as much time out of their rooms as security considerations allow, and if the security considerations allow the resident to receive a significant amount of time out of their rooms, then arguably the resident should be released from room confinement. The workgroup believed this language is somewhat inconsistent with the overall objective that they were trying to reach with respect to room confinement.

At the final stage, the workgroup thought a better solution was to identify the rights that residents remain entitled to, regardless of whether or not they are confined, including, to the extent necessary, medical and mental health treatment, education, daily opportunities for bathing, three nutritionally balanced meals a day and an evening snack, and one hour of large muscle activity (with the exceptions that are currently in place).

Chairperson Woolard appreciated the driving force of consistency with the overall regulatory objective, but asked Ms. Peterson to explain the logic behind enumerating specific areas that residents should be provided and not others. For example, communication with family is not explicitly listed, but it is a philosophy the Department promotes and improves upon as much as possible. If the opportunities available during confinement are not specifically enumerated, then there is a potential that the opportunity will not be provided. What is gained by explicitly enumerating some opportunities rather than requiring the same opportunities as other residents in the housing unit? Chairperson Woolard also asked for additional clarification about removing language requiring the resident to be given as much time out of his room as security considerations allow and worried that the recommended amendments might provide a loophole to get around the goal of allowing residents opportunities to be outside their rooms.

Ms. Peterson responded that the workgroup was trying to convey that if there are significant opportunities for the resident to be out of room confinement, there is an argument to be made that the threat necessitating room confinement has been removed. Therefore, steps should be taken to release the resident from room confinement. The language currently in place says "as much time out of their rooms as security considerations allow." The objective should be de-escalation of the resident and removing them from the situation as soon as the threat that necessitated room confinement has abated.

Ms. Peterson said that she does understand the concern. With respect to the Chairperson's first question about enumerating the individual requirements, Ms. Peterson thinks the language is too broad. The agency could be deemed noncompliant in instances where staff are not providing the resident with the same opportunities as other residents in the general population. The facility simply cannot provide some opportunities to residents in room confinement. The workgroup tried to move away from imposing provisions that were impossible for staff to comply with and instead to address specifically the residents' most fundamental rights and ensure they are protected..

Ms. Peterson continued that in terms of regulatory construction, the Virginia Code Commission indicates that the language, "including," means "including but not limited to," and recommended an amendment to subsection E of the regulation on page 120 of the Board packet to provide, "if a resident is placed in room confinement, the resident shall be provided opportunities including, but not limited to..." and indicate those opportunities. This would prevent the interpretation that staff need not provide residents with opportunities not highlighted in the regulation.

Chairperson Woolard understood the concern that this language could be interpreted to say that everything should be the same for youth in room confinement as for youth not in room confinement, but did not think this was the intent of the language originally. Chairperson Woolard asked for a slight modification to the original language so staff would not feel compelled to make everything the same in order to meet the regulation. The phrase "as security considerations allow" perhaps could apply to the entire phrase as opposed to just the time out of their room. It might be reasonable to say security considerations would not allow youth to come out of their room and mingle with other residents while in room confinement. Chairperson Woolard said she does not want the Department to feel trapped, but believed room confinement will be used in a legitimate and narrow way.

Deputy Director Holmon said that she was struggling with the Chairperson Woolard's suggestion to retain the "same" terminology. The committee did not intend to provide the "same" opportunities because what facilitated the need for confinement was a security risk.

Chairperson Woolard responded that the residents are in room confinement for safety and security concerns and that any deprivation that the confined youth are experiencing compared to youth not in confinement would be related to safety and security concerns. The confined youth would have all these opportunities except for the fact that they are in confinement because of an immediate safety or security piece.

Board Member Frazier agreed and said if the requirements for confinement are met and the confined youth is no longer a security risk, the resident should be removed from confinement and returned to everyday movement within the unit.

Chairperson Woolard reiterated her concern that there might be things youth can experience while in room confinement and could still be presenting a security and safety risk that would prevent their release from room confinement. If the confined youth are not presenting safety and security risks, by definition they can exit room confinement and if not, policy is not being followed. Chairperson Woolard did not see this as an either/or situation.

Board Member Frazier agreed that he does not want the regulation to be confusing or misinterpreted so that the agency becomes liable for not allowing movement as stated in the regulation.

Chairperson Woolard marked this proposed change and in the interest of time asked Ms. Peterson to continue.

*Confinement Exceeding Five Days*

Current Requirement	Change at Proposed Stage	Change at Final Stage
<p>-Room confinement during isolation shall not exceed five consecutive days.                      -No time limit for other forms of room confinement.</p>	<p>-Case management review for confinement in excess of 5 days.</p> <ul style="list-style-type: none"> <li>• Facility-level committee review at next scheduled meeting immediately after 5 day-period.</li> <li>• Referral to division-level review committee upon determination to continue confinement.</li> <li>• Repeat process until one committee recommends review.</li> <li>• Deputy Director may reduce frequency/waive division review.</li> </ul>	<p>-Declines to adopt dLCV amendments.                      (Pg. 121) - Establishes time frame for division-level review.</p> <ul style="list-style-type: none"> <li>• Division-level review must occur within seven business days following referral.</li> <li>• Deputy Director must justify and document reason(s) for waiving division review.</li> </ul>

The existing regulatory provision prohibits room confinement during isolation beyond five consecutive days. By the Department’s definition, isolation means disciplinary room confinement. The amendments at the proposed stage abolish disciplinary room restriction. Currently, there is no time limit on other forms of room confinement. The workgroup at the Proposed Stage acknowledged that residents could serve room confinement for extended periods of time if the threat continues to persist and wanted to ensure that a case management review process is in place to address the continued room confinement after that five-day period. At the Proposed Stage, the workgroup recommends a case management review process involving an initial facility-level review, which is the institutional review



conducted by the Institutional Classification Review Committee (ICRC). The ICRC conducts their review at the next scheduled meeting immediately following the expiration of the five-day period under the amendment at the Proposed Stage. If ICRC determines that the confinement should continue, then the case would be referred to the division-level review, which is the Central Classification Review Committee (CCRC). The CCRC conducts a similar analysis and makes a determination. At the Proposed Stage, these reviews recur until such time as the resident is ready to be released from room confinement.

The Department received public comment from the disAbility Law Center of Virginia regarding this provision recommending that both committee reviews be completed within two business days. From a logistical standpoint, the Department thinks that this recommendation is not feasible and recommends that the division-level review (CCRC) be completed no later than seven business days following the referral from the institutional-level review (ICRC). This is necessary because the division-level committee (CCRC) includes key Department staff and is not limited to institutional staff. The committees meet once a week given their schedules. Therefore, the referral potentially could occur on the day the CCRC meets, and they would not be able to address the case review on that day: it would take another week for the group to address the case. The recommendation of the workgroup was to acknowledge the process and to impose a seven-business-day deadline for the division-level review (CCRC). Additionally, at the Proposed Stage, the Deputy Director is authorized to reduce the frequency of the division-level review or to waive the division-level review. The workgroup wanted to add language at the Final Stage requiring the Deputy Director to justify and document any reason for waiving or reducing the frequency of the division-level review.

Board Member Schrad said she could not see any other workaround. The Department has done a good job on the availability of administrative staff.

Chairperson Woolard asked for clarification as to whether the case review must be accomplished in five business day or seven business days.

Ms. Peterson and Deputy Director Holmon could not recall how the workgroup came up with seven calendar days.<sup>1</sup> Chairperson Woolard supported five business days, deducing that if the group is meeting weekly, this would be a reasonable timeframe, and the group would not need to assemble an additional meeting.

Chairperson Woolard and Board Member Schrad asked about an emergency provision for an urgent situation. Ms. Peterson said that the scheduled meeting dates are not concrete, but acknowledged that it can be difficult to gather staff for a meeting on other days. Chairperson Woolard asked whether anything precludes the group from meeting before the five days due to exigent circumstances. This might be an area the Board will need to reconsider if something goes awry and the meeting must be

held sooner. Board Member Schrad suggested that there must be a regulation in place somewhere that addresses all exigent circumstances. If a situation develops, Board Member Schrad believes the Department can handle it expeditiously, but if it concerns regulatory issues, the Board may need to address.

*Juvenile Correctional Center Definition and Boot Camps*

Current Requirement	Change at Proposed Stage	Change at Final Stage
<p>JCC means:</p> <ul style="list-style-type: none"> <li>• Public/private facility</li> <li>• Operated by/under contract with DJJ</li> <li>• Provides 24-hour per day care to residents under direct care of DJJ.</li> </ul>	<p>-Excluded facilities operating “alternative direct care programs” from JCC definition.</p>	<p>(Pg. 78) - Removes alternative direct care program exclusion from definition.            (Pg. 80) - Adds Applicability section (§15).</p> <ul style="list-style-type: none"> <li>• Chapter applies exclusively to state-and privately operated JCCs.</li> <li>• Chapter does not apply to: (i) facilities operating alternative direct care programs; (ii) boot camps.</li> </ul> <p>(Pgs. 129-131) - Boot camp provisions (§§ 1230-1270) repealed and moved to new Chapter 73.</p>

The second area of discussion was the scope of the regulatory chapter. This chapter applies specifically to juvenile correctional centers. The current regulation defines “juvenile correctional center” as a public or private facility operated by or under contract with the Department to provide 24-hour care to residents under the direct care of the Department. At the Proposed Stage, the Department wanted to ensure its alternative direct care programs are not under the jurisdiction of these regulations. The Department contracts with a number of juvenile detention centers and residential treatment centers to house residents committed to the Department. This allows the Department to place residents closer to their home communities and often in smaller settings. Alternative direct care programs are operated by juvenile detention centers and residential treatment centers and have a different physical plant and personnel structure from juvenile correctional centers. These types of facilities should not be subject to the juvenile correctional center regulations, and at the Proposed Stage, the Department excluded them from the juvenile correctional centers definition. However, the workgroup has identified a potential unintended consequence of that language. The Department’s authority to place residents in these facilities stems from a broad interpretation of the term juvenile correctional center. The workgroup was concerned that excluding alternative direct care programs from the “juvenile correctional center” definition might undermine the Department’s authority to continue to place residents in these programs. The workgroup is proposing at the Final Stage to remove language that excludes alternative direct care programs from the definition of juvenile correctional center and to add a new applicability

section, which specifically sets out the types of entities to which this chapter applies. Page 80 of the Board packet adds an applicability section and indicates that the chapter applies exclusively to state and privately operated juvenile correctional centers. There are no privately operated juvenile correctional centers currently, and none are expected in the future. Under the proposed amendments, the chapter does not apply to facilities that operate alternative direct care programs.

Five separate sections in this chapter address juvenile boot camps. Since 2003, the Department has had the authority to place residents in juvenile boot camp programs. No juvenile boot camp programs currently operate in the Commonwealth; however, there is a statutory requirement that the Board continue to have regulations in place to address juvenile boot camps. The Department’s Community Treatment Model differs philosophically from the juvenile boot camp model, which is based on military training and provides sanctions of physical activity. The workgroup recommended removing the boot camps provision and placing them in a separate chapter.

*Grievances*

Current Requirement	Change at Proposed Stage	Change at Final Stage
<p>-Superintendent/designee shall ensure compliance with DJJs grievance procedure.</p> <p>-Grievance procedure shall provide for</p> <ul style="list-style-type: none"> <li>• Immediate review of emergency grievances;</li> <li>• Resolution of emergency grievance no later than 8 hours after initial review.</li> </ul> <p>-No definition for “emergency grievance.”</p>	<p>No substantive changes</p>	<p>(Pg. 83) - Replaces “emergency grievance” with “grievances that pose an immediate risk of harm to a resident.”</p> <p>-Sets deadline for addressing, correcting, or referring non-emergency grievances to external organizations at 30 business days after receipt of grievance.</p>

The existing regulation directs the Superintendent of the juvenile correctional center or his designee to ensure that the facility complies with the grievance procedure. Under the regulation, the grievance procedure shall require immediate review of emergency grievances and a resolution within eight hours of such review. The regulation does not define the term emergency grievance, but it is commonly understood to mean grievances that pose an immediate risk of harm to a resident, such as a medical emergency or an allegation of abuse or assault. The workgroup did not recommend changes at the Proposed Stage, but the disAbility Law Center of Virginia recommended the Department set a time frame for addressing grievances that do not rise to the level of an emergency. Based on data from FY 2019, the workgroup concluded that non-emergency grievances likely may take 30 business days to

address. There are instances when the grievance must be referred outside the facility to external agency units. Once the grievance leaves the juvenile correctional center, the staff does not have any control over how quickly the grievance is addressed. The recommendation of the workgroup is to add language providing that once the grievance is referred outside the facility, it is considered resolved for purposes of this regulatory requirement.

### Monitoring Mechanical Restraints

Current Requirement	Board-approved JDC changes	Change at Final Stage
<p>-Written procedure shall provide that when a resident is mechanically restrained, staff shall:</p> <ul style="list-style-type: none"> <li>• Provide for his reasonable comfort and ensure access to water, meals, and toilet;</li> <li>• Make direct, personal checks on the resident at least every 15 minutes.</li> </ul>	<p>-Clarifies that the 15-minute checks must be face-to-face.</p> <p>-Requires staff to also attempt to engage verbally with the resident during each check.</p> <p>-Requires a health-trained staff to monitor the resident for signs of circulation and injuries during each periodic check.</p> <p>-Requires staff to allow residents restrained for two or more hours to exercise limbs for at least 10 minutes every two hours.</p>	<p>(Pg. 124-25) - Allows any staff to monitor the resident for signs of circulation and injuries during each periodic check.</p> <ul style="list-style-type: none"> <li>• Medical staff must conduct a formal medical check at least every two hours.</li> </ul> <p>-Exempts staff from requirements when transporting mechanically restrained residents off premises.</p>

In May 2019, the Board heard proposed amendments to the Regulation Governing Juvenile Detention Centers (JDCs) regarding mechanical restraints. Because the JDC regulation was moving through the regulatory process, the Board agreed that the Department would incorporate whatever changes the Board adopted into the juvenile correctional center (JCC) regulation once the regulation completed the process. Most of the proposed amendments to the JDC regulation are being retained; therefore, it is not necessary to discuss all of the changes the Board already approved. Ms. Peterson explained that there were some areas of distinction from the JDC regulations that prompted the workgroup to recommend a few additional changes.

Specifically, the current regulatory provision provides that if a resident is mechanically restrained, staff shall provide for his reasonable comfort and ensure he has the opportunity for meals, water, and toilet. Staff also must make direct personal checks on the resident at least once every 15 minutes. The Board approved several changes to that language during the JDC regulation presentation, such as requiring the 15-minute checks be face to face and requiring staff, while conducting such checks, to attempt to engage verbally with the resident. The committee understood that mechanically-restrained residents could experience trauma, and staff should engage the resident to ensure that he is okay.

*Mechanical Restraint Chair*

Current Requirement	Board-approved JDC changes	Change at Final Stage
<p>-Written procedures shall govern the use of mechanical restraints and shall specify:</p> <ul style="list-style-type: none"> <li>• The conditions in which mechanical restraints, including the restraint chair, shall be used.</li> </ul>	<p>-Require direct care staff to notify the health authority immediately after placing a resident in the chair to: (i) assess resident’s health condition; (ii) check for contraindications; and (iii) advise whether resident should be moved to a unit for emergency involuntary treatment.</p>	<p>(Pg. 125) - Requires the health authority or designee to ensure that the medical and mental health assessment occurs before placement in chair.</p> <ul style="list-style-type: none"> <li>• Must notify the health authority or designee immediately upon placement.</li> <li>• Health authority must ensure that mental health clinician conducts a subsequent assessment to determine whether to transfer resident.</li> </ul>

The approved amendments required health-trained staff to monitor the resident for signs of circulation and injury during each periodic check. This provision was problematic because the Department does not have health-trained staff. Therefore, rather than requiring health-trained staff to conduct these period checks, the proposal amends this provision to allow any staff including, direct care staff, to conduct the checks, and have the Department’s actual medical staff conduct a more formalized check at least once every two hours. This is consistent with best practices.

In addition, the approved JDC amendments direct staff to allow residents restrained for two or more hours to exercise their limbs for at least ten minutes every two hours. This could be problematic if the resident is being transported by vehicle. If the resident needs to exercise his limbs while in the vehicle, the vehicle would need to stop, and the resident would be unrestrained, which could be concerning. The workgroup recommended adding an exclusion to address transportation.

Chairperson Woolard asked if staff are trained to understand the signs of circulation and injury. Ms. Peterson responded that the existing regulation requires any staff member who is authorized to use mechanical restraints be trained in that area. This requirement would continue.

Chairperson Woolard expressed concern about extending this monitoring authorization to any staff and was hopeful that the training for mechanical restraints would include what circulation and signs of injury problems might look like.

Board Member Schrad asked if the regulation requires basic medical training. Ms. Peterson responded that Section 160 requires direct care staff to receive first aid and CPR training unless they are currently certified.

Chairperson Woolard stated that checking the resident for signs of circulation and injuries that might develop while restrained seems more specific than first aid and commented that she would feel more comfortable with requiring such staff receive training beyond first aid.

Ms. Peterson replied that in Section 1190, Subsection A, #2, the language could be amended to require that during each check, a trained staff member shall monitor the resident for signs of circulation and injury.

Chairperson Woolard recommended that the board use the language referring to mechanical restraint training and suggested that, in the future, the Board determine what mechanical restraint training includes and whether it includes checking for signs of injury and circulation problems. Chairperson Woolard noted her concerns with situations in which the resident is transported for longer than two hours and asked how other agencies or medical care facilities deal with this issue. She indicated that if it is best practice to exercise the limbs at least ten minutes every two hours, Chairperson Woolard worries about the transport issue, but acknowledges there is no easy response.

Board Member Schrad said that law enforcement does not have the resources to do anything that would rise to this level and was not sure whether the ADA had regulations regarding civil commitment transportation.

Chairperson Woolard asked for a possible inquiry as a point of information in the future. Other jurisdictions that transport youth for long periods must deal with these types of issues. Ms. Peterson agreed to conduct additional research.

Currently, the regulation points to written procedure as governing the conditions under which mechanical restraints may be used. The workgroup wanted to ensure that the JDC regulation included a process for ensuring that if a resident is placed in the restraint chair, there are no contraindications for placement. Therefore, the workgroup recommended including a requirement for direct care staff to notify the health authority immediately after placing the resident in the restraint chair to assess the resident's health condition, check for contraindications, and advise whether the resident should be moved to a unit for emergency voluntary treatment. After the proposed JDC amendments began moving through the process, the workgroup discovered that the Department's health authority is not equipped to conduct that kind of assessment. The workgroup recommended instead requiring the health authority be responsible for ensuring that this assessment take place with a medical or mental health provider.

Language was also added regarding the timing for placing the resident in the restraint chair. The recommendation of the workgroup for the JDC proposal was that the resident would have to undergo a mental health or medical assessment immediately upon being placed in the restraint chair. The workgroup recommended changing the language to make the initial mental health and medical assessment occur before the resident is placed in the restraint chair. Once the resident is placed in the chair, the health authority must ensure a subsequent assessment is conducted to determine whether the resident should be moved to a unit for emergency treatment.

Ms. Peterson stated that these provisions are more restrictive than what the Department initially proposed for the JDCs.

Chairperson Woolard wanted clarification that Bon Air’s health authority is not a medical professional. Ms. Peterson answered based on conversations with the Department’s health service unit, Bon Air’s health authority is not appropriately equipped to conduct these types of assessments.

*Restraint Use on Pregnant Juveniles*

Current Requirement	Change at proposed stage	Change at Final Stage
-Not addressed	-Not addressed.	<p>(Pg. 128) - Bans the use of physical and mechanical restraints, protective devices, or the restraint chair on known pregnant residents during labor, delivery or post-partum recovery.</p> <ul style="list-style-type: none"> <li>• <u>Exception</u>: Resident presents immediate threat of hurting self, staff, or others.</li> </ul> <p>-Bans the use of abdominal, leg and ankle, behind-the-back wrist, and four-point restraints on known pregnant residents.</p> <ul style="list-style-type: none"> <li>• <u>Exception</u>: Resident presents immediate threat of hurting self, staff, or others or presents risk of escape that cannot be reasonably minimized.</li> </ul>

To ensure the Department is in compliance with the Juvenile Justice Delinquency Prevention Act, specifically with the 2018 reauthorization, the workgroup added language that bans the use of certain mechanical and physical restraints and the use of protective equipment on certain pregnant woman. The prohibition on the use of physical and mechanical restraints, protective devices, or the restraint chair on known pregnant women applies only when they are in labor, in delivery, or in post-partum recovery. Because pregnant residents might still be assaultive, there is an exception in the federal

legislation and the proposal that allows restraints to be used if the resident presents an immediate threat of hurting herself, staff, or others. In addition, the proposal places a prohibition on the use of abdominal, leg, ankle, behind the back, and four point restraint on known pregnant residents, but allows for an exception if the resident presents an immediate threat of hurting herself, staff, or others or presents a risk of escape that cannot be reasonably minimized. This language closely tracks the federal language, and the workgroup wanted to ensure that the JCC is complying with the provisions of federal legislation.

Chairperson Woolard asked Ms. Peterson if there are any comments she wanted to make on the moderate or minor changes.

Ms. Peterson reminded the Board that the workgroup had recommended delaying implementation of the room confinement provisions at the Proposed Stage such that the provisions would take effect on the January 1 that falls at least nine months after the regulation takes effect. Although the language in the text at the proposed stage does not clearly establish that timeframe, the disAbility Law Center of Virginia suggested that the room confinement provision be implemented without delay. Ms. Peterson indicated that the Department has accomplished a great deal with reducing room confinement and believes that a delayed implementation date is no longer needed. Therefore, the workgroup recommends removing the delayed implementation date so that the confinement provisions will take effect on the same date as the regulation.

Chairperson Woolard wanted clarification on the section regarding telephone calls to families and asked why the department does not need a written procedure permitting phone calls based on security needs and scheduled activities. Chairperson Woolard believes a written procedure provides clarity to youth and families about how things should happen.

Ms. Peterson replied that the workgroup removed that language due to the incorporation by reference issue. The Department may not require compliance with the written procedure. Section 570 instructs staff to allow residents to call their immediate family members and natural supports, and the facility wants staff to have some flexibility due to security needs.

Chairperson Woolard asked if there was a policy or document that youth or families can access to learn more about phone calls or family engagement. Ms. Peterson responded that there is a provision in the current regulation that requires the visitation procedures be provided to the parent or legal guardian after the resident is admitted to the facility.

Chairperson Woolard was concerned and asked if the family and youth would continue to have a means of understanding the expectations about the nature of the contact, frequency of the contact, etc. Would there still be a regularity that youth and family can depend on in terms of the policy, and



obviously an understanding of the exceptions in the event of a security issue. Chairperson Woolard explained that she preferred language in the regulation noting that there are policies about communication with family, even if they cannot be referenced specifically.

Ms. Peterson replied that specific language is not in the regulation. In order to address the written procedures issue, Ms. Peterson suggested adding a Subsection C, directing the Department to have written procedures in place that establish the requirements for telephone calls.

Chairperson Woolard agreed, noting her support of language that specifies that the Department will ensure family engagement, including calls or contact for family and youth.

Ms. Peterson reiterated that the Department provides copies of the visitation procedure to parents or legal guardians in the current regulations, and asked Deputy Director Holmon to comment on whether contacts other than visitation are addressed in the visitation procedure. Deputy Director Holmon responded that this issue is addressed in the Resident Handbook for the Community Treatment Model, and the parent and family receive a copy along with the visitation procedure. The visitation procedure is also posted online and made available to parents and natural supports.

Chairperson Woolard asked about using similar language for family engagement. Ms. Peterson noted that actual text regarding family engagement is located in Section 765, on page 107 of the Board packet.

Chairperson Woolard noted the summary on page 73 referring to Section 765, which indicates that the proposal relaxes the duties of facility staff to plan events and activities that include family members, and asked what relaxing the requirement means.

Ms. Peterson answered that the language as proposed ensures the periodic arrangement of events and activities, but that some were concerned that even with this fairly broad language, the Department would be obligated to arrange events at specified times or to arrange a specified number of events. The workgroup was trying to make the language more broad, and was concerned that the use of the term "periodic" could suggest frequency. The workgroup did not want to obligate facility staff to those types of events in the regulation.

Chairperson Woolard expressed her belief that periodic events and activities with family members are essential to the health of the youth. She believed that the term "periodic" is pretty broad and does suggest more than one event, but having something in the regulation on family engagement elevates it a bit more than procedure in terms of indicating the Department's philosophy.

Board Member Schrad stated her concern with creating an obligation that the Department may not have adequate funding to support. This particular regulation addresses flexibility in terms of being

able to accommodate family engagement. The primary purpose of this regulation is to ensure the Department plans a certain number of activities a year.

Chairperson Woolard acknowledged Board Member Schrad's concern and indicated that she was comfortable with the proposal, noting that the Department puts an effort into family engagement, and she is encouraged, supportive, and appreciative of the work.

Chairperson Woolard asked whether the Board's suggested edits would affect the motion provided. Ms. Peterson replied that the proposed motion before the Board is broad enough to encompass any additional changes the Board recommended.

On motion duly made by Jennifer Woolard and seconded by Dana Schrad, the Board of Juvenile Justice approved the proposed amendments to the Regulation Governing Juvenile Correctional Centers (6VAC35-71), the proposed addition of a new chapter, Regulation Governing Juvenile Boot Camps (6VAC35-73), and any additional amendments presented and adopted at the June 24, 2020 meeting for advancement to the Final Stage of the Standard Regulatory Process. Mr. Frazier – Yea; Ms. Schrad – Yea; Mr. Underwood – Yea; Mr. Vilchez – Yea; and Ms. Woolard - Yea.

## **DJJ RESPONSE TO COVID-19**

Valerie Boykin, Director, Department

Director Boykin thanked the Board for attending the virtual meeting during this challenging time and informed that the Board of her attempts to provide updates periodically on the agency's response to COVID-19. The Director thanked the Board for its interest and support.

Director Boykin provided a brief update on COVID-19. Before the pandemic hit Virginia, the Department began to develop agency-wide plans. Each of the operational divisions had a phased approach using the Department's old pandemic flu plan as a template. The Department periodically addressed plans as the pandemic moved fast and guidance changed. The CDC and the Virginia Department of Health (VDH) were frequently providing updates that changed the Department's protocols regularly.

The first case of COVID-19 was identified in Virginia on March 7, and the Governor declared a state of emergency on March 12. Department staff quickly moved to keep up with pandemic activities.

- ◆ Deputy Director for Community Programs Linda McWilliams arranged for court service units to continue operations.
- ◆ Deputy Director for Residential Services Joyce Holmon and her team ensured the safety of staff and residents in direct care.

- ◆ Deputy Director for Administration and Finance Jamie Patten moved into fast mode with major purchases. The Human Resources (HR) Office adjusted to the state offering paid emergency leave and other major personnel issues.
- ◆ Interim Superintendent Dr. Melinda Boone and the Education team worked on an education plan when schools closed. The Education team moved schools onto the units. The Department's IT team worked to set up computers and get them online so the youth could continue their education.

Bon Air suspended visitation on March 13, one-day after the declaration of emergency. Bon Air began screening staff in the facility daily and screening youth at least every 72 hours.

Director Boykin convened a COVID-19 Response Team that met daily at 8:30 a.m. This included the deputy directors, HR director, risk manager, and public information officer. The team met every day as long as the Governor had daily press conferences. Since that time, the team has met twice per week to provide divisional updates and adjust plans as needed.

Bon Air reported two positive non-direct care (non-security based) staff the first week of April. That same week, the VDH notified the Department that Bon Air's first youth tested positive. The decision was made to set up a medical quarantine at Bon Air based on VDH guidance. The Bon Air leadership team thought it best to isolate youth in their rooms on the unit. This was not an easy decision, but the team needed time to determine next steps. The VDH recommended taking youth's temperatures twice a day. Reports indicated many individuals in the community were asymptomatic. While the CDC assigned a fever at 104 degrees, VDH suggested Bon Air test every youth with an elevated temperature of at least 99 degrees. It was through those aggressive efforts that Bon Air determined in a two-week period that 26 youth tested positive.

This was a scary and challenging time. To this date, we have not been able to trace how the virus entered the facility. Bon Air was able to isolate the outbreak to only four units and during the course of the next two or three weeks, Bon Air only had three additional youth test positive. The local health department indicated only four youth in Bon Air actually showed any symptoms. Bon Air's Dr. Moon best described it as either a bad cold or flu-like symptoms.

The Department is fortunate to have caught this early, and grateful to the local health department for the additional guidance. Youth are very resilient. Bon Air was able to open a second medical unit, and each time a youth was identified they were moved to medical isolation for a period of time or until they did not display symptoms for a certain number of days. Typically, most youth were considered recovered in seven to eight days. Youth in quarantine would stay about fourteen days, unless they became ill, which was not the case for the majority of the Bon Air population.

The Community Programs team worked with the courts to manage the population. The Supreme Court of Virginia issued about six orders delaying or changing court operations. Department staff was flexible and worked in those environments to ensure Department mandates to the court were met. The Community Programs team continued seeing young people and addressing their needs. In addition, they worked with service providers to ensure the needs of the families and youth were met. The team also developed creative ways to serve the 3,500 youth on probation or other types of supervision in the community.

Communication became a critical component for operations. Director Boykin tried to provide timely updates to the Board and to the public. The Department issued press releases when staff and youth were first diagnosed. The Department delayed releasing press updates for a period of time to determine who to inform and what information to provide. The Department always knew its first priority was to the youth, employees, and family of the youth. Department issued a press release that Bon Air had 25 positives, and unfortunately was quoted in many newspapers as the worst outbreak site in the country; however, there were only four states reporting any data at that time. The Department thought it was overreaching and overextending by sharing critical youth information.

The Department provided information to parents and began a COVID-19 page on its website posting pertinent information. The Director's first letter to parents went out on March 16, and she has issued six or seven letters to parents since the pandemic hit. Additional information has been shared across the Department to keep staff updated as protocols changed. Information is critical during this time. The Department issued additional press releases, but the media has not shared that Bon Air has been COVID-19 free for seven weeks. No new youth tested positive since the first part of May. The VDH cautions that the virus is not gone and is still widely spreading in the community. The Department is cautiously optimistic about its efforts. Deputy Director Holmon's staff showed up daily and worked through unusual circumstances.

During this time, the Community Programs staff worked with court stakeholders, and over 200 youth were released from secure detention centers over a two-week period. As of May 31, the Department released 90 youth from direct care supervision; 39 of those youth were from Bon Air and 51 from alternative placements. The Department has continued in June to release young people as appropriate. Deputy Director Holmon, the Residential Services team, and Community Programs staff reviewed the case of every indeterminately committed youth and determined if it was appropriate to release them to the community. The team looked at many factors, including the length of stay, completion of treatment, whether treatment could be finished in the community, the availability of wrap-around services for youth and their families upon release, the youth's health and that of his family, and other programs to which the youth could be sent. The Department made decisions based on the best interest of the child and family.

The current numbers at Bon Air are the lowest population the Department has had, at 159 youth with a total of 257 youth across alternative placements. Some of this data are based on the courts not being operational for three months, and we anticipate that the numbers will increase when the courts open and catch up. Director Boykin is tremendously proud of the hard work of staff across the agency who continue to deliver quality services to young people under unusual circumstances.

Chairperson Woolard said that this is an unprecedented time that challenged the agency, the youth, and their families. The conversations at the meeting are just an inkling of the pressures, and the dedication of staff doing their best under challenging circumstances is admirable. Leaving aside the court closure, the numbers at Bon Air are amazing and tremendous. The team went above and beyond to release a large number of youth back to the community. In case this pandemic reoccurs, the diligence of the Department will result in lessons learned and best practices that can be shared with other states.

Director Boykin said the team looked at every indeterminately committed youth and a number of serious offenders committed by the court and worked closely with attorneys and prosecutors. Although the Department may not have control over their release dates, the Department may make recommendations as appropriate on hearing dates. Not all courts are operational, so it may not be possible in some situations. Director Boykin thanked Legislative and Policy Manager Mike Favale and his team for their help in this effort.

Director Boykin thanked Chief Deputy Director Angela Valentine for helping with communications and answering inquiries. The Department received many questions from well-intentioned advocacy organizations, who demanded many answers that took a long time to coordinate.

Board Member Schrad said she is impressed with how things were handled and was curious to hear if the Department will make any long-term changes in protocol based on new best practices learned from this experience. This will probably be true for law enforcement agencies.

Board Member Frazier concurred, and stated his appreciation for the Department's communication, the way youth were handled, and the allowances made for staff. He thanked the Department for keeping everyone as safe as possible.

## **DIRECTOR'S COMMENTS AND BOARD COMMENTS**

The current social justice movements allowed the Department to revisit issues around equity and social justice. The Director's Message on the website is asking us to come together and think about what can be done to renew conversations. These will be difficult and courageous conversations that can impact Department issues around equity and fairness in the system.

In the midst of a pandemic, the Yvonne B. Miller High School will celebrate a summer graduation. Dr. Boone, the Department's Interim Superintendent, has reported six graduates. Yvonne B. Miller held a winter graduation earlier this year. Some young people needed to finish course work over the summer to graduate later this year. Dr. Boone and Deputy Director Holmon are allowing a small number of parents to participate in the graduation ceremony. This is the first time the facility will open to a small number of visitors. Deputy Director Holmon and her team are working on a plan to reopen the facility for visitation, but it must be done safely. Bon Air has allowed additional phone calls for young people. The team has tried to keep the communication open with some staff using their iPhones to help with video visitation. The Department values family engagement and continues to work on keeping the youth as connected as possible.

The state is in a hiring freeze, and the Department is working with the Secretary's Office to fill critical positions.

Chairperson Woolard announced this would be her last Board meeting, although her term is not completed. Chairperson Woolard is a psychology professor and researcher in the juvenile justice area. To prevent conflicts of interest when she joined the Board, all research had to stop in Virginia connected to juvenile justice and the Department. During the pandemic, she felt the call to get back into family engagement research given the circumstances that many families experienced and decided to step down and move towards a role of promoting research on family engagement. She hopes the research will benefit the Department, the families, and the youth. Chairperson Woolard thanked Board Member Frazier for stepping in as chair, and is confident the Board will continue its tremendous work. Chairperson Woolard thanked Director Boykin and her staff for their hard work and for supporting the Board as it strives to serve youth and families.

Director Boykin read a resolution prepared for Chairperson Woolard.

#### **NEXT MEETING DATE**

September 16, 2020, at 9:30 a.m.

#### **ADJOURNMENT**

The meeting was adjourned at 12:53 p.m.

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<sup>i</sup> After the June 24 Board meeting, Ms. Peterson received clarification that the workgroup's proposal to require the case level review no later than seven business days after the referral was intentional. On those occasions where an emergency facility level review must be held earlier than the scheduled date, there may not be sufficient time to cover the issue at a subsequent, agency-level review meeting if it occurs that same day or the next day. In those very rare instances, the issue would need to be addressed at the following division-level meeting. Seven business days allows for sufficient time in those scenarios.