

Heidi W. Abbott, Chair  
David R. Hines, Vice Chair  
Karen Cooper-Collins, Secretary  
Tyren Frazier  
Helivi L. Holland  
Robyn Diehl McDougle  
Dana G. Schrad  
Jennifer Woolard



Post Office Box 1110  
Richmond, VA 23218-1110  
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**COMMONWEALTH of VIRGINIA**  
*Board of Juvenile Justice*

## **BOARD MEETING**

June 15, 2016

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

# **A G E N D A**

**9:30 a.m. BOARD MEETING**

- 1. CALL TO ORDER**
- 2. INTRODUCTIONS**
- 3. APPROVAL of April 18, 2016, MINUTES (Pages 3-7)**
- 4. PUBLIC COMMENT**
- 5. DIRECTOR'S CERTIFICATION ACTIONS (Pages 8-22)**
- 6. OTHER BUSINESS**
  - A. Department of Education – Department of Juvenile Justice Special Education Audit (John Eisenberg, Assistant Superintendent of Special Education and Student Services, Department of Education)**
  - B. VJCCCA Plan Approvals (Beth Stinnett, Statewide Program Manager)**
  - C. Regulatory Update (Kristin Peterson, Regulatory and Policy Coordinator) (Pages 23-24)**
    - Request for a NOIRA for a comprehensive review of the Board's residential regulations: 6VAC35-41 (group homes); 6VAC35-71 (juvenile correctional centers); and 6VAC35-101 (secure juvenile detention centers) (Pages 25-36)
    - Request to advance to the proposed stage of the Administrative Process Act, the Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System, 6-VAC35-160 (Pages 37-49)
    - Request to advance to the final stage of the Administrative Process Act, the Minimum Standards for Research Involving Human Subjects or Record, 6-VAC-35-170 (Pages 50-60)
  - D. Legislative Update (Janet Van Cuyk, Legislative and Research Manager)**
- 7. DIRECTOR REMARKS AND BOARD COMMENTS**
- 8. NEXT MEETING: September 19, 2016, 9:30 a.m., Main Street Centre, 600 East Main Street, Richmond**
- 9. ADJOURNMENT**

## GUIDELINES FOR PUBLIC COMMENT

1. The Board of Juvenile Justice is pleased to receive public comment at each of its regular meetings. In order to allow the Board sufficient time for its other business, the total time allotted to public comment will be limited to thirty (30) minutes at the beginning of the meeting with additional time allotted at the end of the meeting for individuals who have not had a chance to be heard. Speakers will be limited to 3 minutes each with shorter time frames provided at the Chairman's discretion to accommodate large numbers of speakers.
2. Those wishing to speak to the Board are strongly encouraged to contact Wendy Hoffman at 804-588-3903 or [wendy.hoffman@djj.virginia.gov](mailto:wendy.hoffman@djj.virginia.gov) three or more business days prior to the meeting. Persons not registered prior to the day of the Board meeting will speak after those who have pre-registered. Normally, speakers will be scheduled in the order that their requests are received. Where issues involving a variety of views are presented before the Board, the Board reserves the right to allocate the time available so as to insure that the Board hears from different points of view on any particular issue. Groups wishing to address a single subject are urged to designate a spokesperson. Speakers are urged to confine their comments to topics relevant to the Board's purview.
3. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views. Please provide at least 15 written copies if you are able.

Heidi W. Abbott, Chair  
David R. Hines, Vice Chair  
Karen Cooper-Collins, Secretary  
Tyren Frazier  
Helivi L. Holland  
Mary E. Langer  
Robyn Diehl McDougle  
Dana G. Schrad  
Jennifer Woolard



Post Office Box 1110  
Richmond, VA 23218-1110  
804.588.3903

## COMMONWEALTH *of* VIRGINIA

### *Board of Juvenile Justice*

# DRAFT MEETING MINUTES

April 18, 2016

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

**Board Members Present:** Tyren Frazier, David Hines, Helivi Holland, Mary Langer, Robyn McDougle

**Board Members Absent:** Heidi Abbott, Karen Cooper-Collins, Dana Schrad, Jennifer Woolard

**Department of Juvenile Justice (Department) Staff Present:** Ken Bailey, Jill Becker, Andrew "Andy" K. Block, Jr., Jessica Berdichevsky (Attorney General's Office), Lisa Floyd, Daryl Francis, Wendy Hoffman, Jack Ledden, Mark Murphy, Deron Phipps, Angela Valentine

**Guests Present:** Will Egen (Commission on Youth)

#### **CALL TO ORDER**

Vice Chair David Hines called the meeting to order at 9:41 a.m.

#### **INTRODUCTIONS**

Vice Chair Hines welcomed all that were present and asked for introductions.

#### **APPROVAL of January 11, 2016, MINUTES**

The minutes of the January 11, 2016, Board meeting were provided for approval. On MOTION duly made by Robyn McDougle and seconded by Helivi Holland to approve the minutes as presented. Motion carried.

#### **PUBLIC COMMENT PERIOD**

There was no public comment.

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

Ken Bailey, Certifications Manager, Department

Included in the Board packet are the individual reports and summary of the Director's certification actions completed on January 27, 2016. Mr. Bailey provided an overview of the certification actions.

Tidewater Youth Services Apartment Living Program received a conditional certification until July 2016. The Certification Team conducted the first phase of the audit which included a review of their policies, procedures, staff training, and physical environment. The Certification Team ensured everything was in place for the program to function and will return for a monitoring visit in six months.

The Barry Robinson Center Family Oriented Group Home Program is an assortment of group homes that provide services to one or two residents at a time and are under the supervision of the Family Oriented Group Home system. This program services short-term placements out of the Norfolk court area. This program always has 100% compliance and was certified for three years.

SPARC House is a group home in Lynchburg. The Certification Team found deficiencies in their audit; however, when they returned for a follow up visit, SPARC House corrected the deficiencies and was certified for three years.

Henrico Juvenile Detention Home was granted an extension of their certification due to continued non-compliance with critical regulatory requirements. The Certification Team performed two monitoring visits and found the facility corrected these deficiencies. They were certified for the remainder of their three years ending August 26, 2018.

#### **REGULATORY UPDATE**

Deron Phipps, Policy and Planning Director, Department

The Department has hired a new Regulatory Coordinator, Kristen Peterson, from the Department of Taxation. Kristen comes to the Department with many years of experience with the Administrative Process Act and will prove to be a great asset to the Department.

The Board's workload with regulatory actions is fairly light; however, this summer, the Department will begin a comprehensive overview of all residential regulations which will include the areas of juvenile correctional centers, detention centers, and group homes. The Department and Board are required to review residential regulations every five years. A separate workgroup will be created for each area with appropriate representation from the community and participation by Board members if available. The Department will provide the Board with progress reports.

#### **GENERAL ASSEMBLY UPDATE AND DIRECTOR'S COMMENTS**

Andy Block, Director, Department

Governor McAuliffe has submitted a budget package that includes tools to help the Department in its transformation efforts. The legislature will need to respond to the budget package on Wednesday. The current iteration of the budget has funding returned to the budget, as the Governor originally proposed, for the Department and the City of Chesapeake to construct a new, smaller facility (64 beds) in Chesapeake. There is also money in the second year of the budget for the Department to start planning the building of a second facility or renovation of an existing facility. The budget

language also requires the Secretary of Public Safety and Homeland Security to establish an interagency taskforce to include the Department, Department of Behavioral Health and Developmental Services, and Department of Corrections. Director Block will likely reach out to other stakeholders to participate including members of the Board. There is also an interim reporting requirement and a final reporting requirement associated with the interagency taskforce. Thirty days after the Department presents an interim report from the interagency taskforce, access to planning money will be available to start the Chesapeake construction process. Thirty days after the final interagency taskforce assignment, but no sooner than July 1, 2017, the Department can gain access to planning money for the second facility. Director Block will provide the Board with regular updates.

The Governor's budget package also gave the Department authority to reinvest operational savings in the development of alternative placements to juvenile correctional centers. This will help the Department to invest the savings into community based or diversion programs.

The Director will provide the Board with a final summary once the legislature acts on Wednesday.

The Office of Juvenile Justice and Delinquency Prevention Reentry grant that the Department received last year has provided funding to the Department to enact transportation services across the Commonwealth for the resident's families to visit the Department's facilities. Currently, the transportation services will be focused in urban hubs; however, the Department will build out to make sure wherever families are located they have access to the services.

In an effort to create statewide continuum of services and alternatives to juvenile correctional centers, the Department issued a request for proposal earlier this year for regional care coordinators. These coordinators would have the responsibility to sub-contract with other organizations to set up an array of services available for our youth across the Commonwealth. The Department has received six responses to the request for proposal.

Staff from the Department's tenth Community Treatment Model unit is presently in training. Once they complete training, the Department will have 120 residents enrolled in the Community Treatment Model. Director Block encouraged Board members who have not visited the Bon Air or Beaumont campuses to set up a tour and see the units first hand.

As of April 15, 2016, the Department had twenty female residents in its facilities. The girls that are in the Department's care have complicated needs. The Department has issued a request for proposal to help the girls with alternative therapeutic placements. The Department received a strong response and has begun the evaluation process. The Department is also partnering with Merrimac Juvenile Detention Center in Williamsburg to establish the first female Community Placement Program.

The Director and the Board congratulated Mary Langer who was appointed by the General Assembly during this past session as a sitting Juvenile and Domestic Relations Judge for the City of Richmond. Mary has been a long time senior prosecutor and the lead prosecutor in the juvenile court so this is great news for the city. This is Board Member Langer's last meeting and the group thanked her for her brief and significant service to the Board.

**BOARD COMMENTS**

There were no Board comments.

**NEXT MEETING**

The next meeting is scheduled for June 15, 2016, at the Main Street Centre, 600 East Main Street in Richmond.

**ADJOURNMENT**

Vice Chair Hines adjourned the meeting at 10:00 p.m.

**DEPARTMENT OF JUVENILE JUSTICE  
REGULATORY UPDATE**

April 18, 2016

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**CURRENT ACTIONS:**

**6VAC35-160      Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System**

**Stage:** NOIRA (Standard Regulatory Process).

**Status:** This regulation became effective on August 16, 2004. This action involves a comprehensive review of the regulatory requirements. The NOIRA was published in the Virginia Register on December 14, 2015. The public comment period closed on January 29, 2016. No public comments were received during the comment period.

**Next Step:**

✓ At the next Board meeting, the Department will request the Board to authorize the submission of proposed language for Executive Branch review and public comment.

**6VAC35-170      Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice**

**Stage:** Proposed (Standard Regulatory Process).

**Status:** This regulation became effective on February 1, 2005. This action involves a comprehensive review of the regulatory requirements. At the NOIRA stage, no public comments were submitted. The proposed language was published in the Virginia Register of Regulations on December 28, 2015. The public comment period ended on February 28, 2016. No public comments were received during the comment period.

**Next Step:**

✓ At the next Board meeting, the Department will request the Board to authorize submission of final language for Executive Branch review and public comment.

**FUTURE WORKPLAN:**

The Department will conduct a comprehensive review of the residential regulatory requirements for (1) juvenile correctional centers; (2) secure juvenile detention centers; and (3) group homes regulated by the Board of Juvenile Justice. Workgroups will begin to meet in the Summer of 2016.

**DIRECTOR'S CERTIFICATION ACTIONS**  
**April 28, 2016**

**Blue Ridge Juvenile Detention Center**

Certified Blue Ridge Juvenile Detention Center and Post-Dispositional Detention Program for three years with a letter of congratulations for 100% compliance.

*Pursuant to 6VAC35-20-100C.1, if the certification audit finds the program or facility in 100% compliance with all regulatory requirements, the director or designee shall certify the facility for three years.*

**Prince William County Juvenile Detention Center**

Certified Prince William County Juvenile Detention Center for three years.

*Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.*

**Roanoke Valley Juvenile Detention Home**

Certified Roanoke Valley Juvenile Detention Center and Post-dispositional Detention Program for three years.

*Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.*

**Opportunity House**

Certified Opportunity House through September 7, 2018.

*Pursuant to 6VAC-20-100C4a1, if the status report results find the program or facility in 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years, retroactive to the date upon which the prior certification was scheduled to expire.*



**CERTIFICATION AUDIT REPORT  
TO THE  
DEPARTMENT OF JUVENILE JUSTICE**

**PROGRAM AUDITED:**

Blue Ridge Juvenile Detention Center  
195 Peregrory Lane  
Charlottesville, Virginia 22902  
Phone # (434) 951-9340  
Cathy Roessler, Superintendent  
roesslerca@brjd.org

**AUDIT DATES:**

September 21-22, 2015

**CERTIFICATION ANALYST:**

Shelia L. Palmer

**CURRENT TERM OF CERTIFICATION:**

February 11, 2013-February 10, 2016

**REGULATIONS AUDITED:**

6VAC35-101 Regulation Governing Juvenile Secure Detention Centers

**PREVIOUS AUDIT FINDINGS October 22, 2012:**

97% Compliance Rating  
6VAC35-51 - 810 E. Medication (Mandatory)  
6VAC35-51 - 810 F. Medication Records (Mandatory)  
6VAC35-51 - 810 G. Medication Errors (Mandatory)

**CURRENT AUDIT FINDINGS – September 22, 2015:**

100% Compliance Rating

**DEPARTMENT CERTIFICATION ACTION April 28, 2016:** Certified Blue Ridge Juvenile Detention Center and Post-Dispositional Detention Program for three years with a letter of congratulations for 100% compliance.

*Pursuant to 6VAC35-20-100C.1, if the certification audit finds the program or facility in 100% compliance with all regulatory requirements, the director or designee shall certify the facility for three years.*

**TEAM MEMBERS:**

Shelia L. Palmer, Team Leader  
Clarice Booker, Central Office  
Mark Lewis, Central Office  
Deborah Hayes, Central Office  
Sean Milner, Central Office  
Jack Scott, Crater JDC  
DuShawn Wiggins, Chesterfield JDC  
Kimberly Whitfield, Richmond JDC  
John Adams, Central Office

**POPULATION SERVED:**

Blue Ridge Juvenile Detention Center is a secure custody facility operated by the Blue Ridge Juvenile Detention Commission. The members of the Commission include the City of

Charlottesville and the Counties of Albemarle, Culpeper, Fluvanna and Greene. The facility serves a pre- and post- dispositional population of 40 male and female residents ages 10 through 17 and through age 20 for Community Placement Program residents. There is also a post-dispositional detention program for 10 male and female residents, ages 14 through 17, included in the rated capacity.

**PROGRAMS AND SERVICES PROVIDED:**

In addition to all mandated services, Blue Ridge Juvenile Detention Center interacts with the community in obtaining such services as:

- **Post-Disposition Program:** A 90 or 180-day program which addresses life skills, victim empathy, anger management, character education, substance abuse counseling, reproductive health, and individual and/or family counseling.
  - **Community Placement Program:** A program for males ages 16-20 who are 3-12 months from release from the Department of Juvenile Justice. This program addresses many of the areas listed above with an emphasis on increasing educational competencies, increasing employment readiness, and reducing criminal behavior by helping residents improve their abilities in the areas of self- control, decision making and problem solving.
  - **Community:** There are numerous resources within this community that have existed prior to the advent of the detention facility. Existing programs which have and/or will be utilized by the facility include but are not limited to: Region Ten Community Services Board, Charlottesville, Albemarle, Fluvanna, Culpeper and Greene Department of Social Services, Juvenile Justice Advisory Committee, Community Attention, Music Resource Center, Planned Parenthood, Aids Services Group, Sexual Assault Resource Agency, Habitat for Humanity, University of Virginia, Virginia Commonwealth University, and Virginia Gang Investigators.
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**CERTIFICATION AUDIT REPORT  
TO THE  
DEPARTMENT OF JUVENILE JUSTICE**

**PROGRAM AUDITED:**

Prince William County Juvenile Detention Center  
14873 Dumfries Road  
Manassas, VA 20112  
(703) 792-8301  
John Dowdy, Superintendent  
jdowdy@pwcgov.org

**AUDIT DATES:**

January 19-20, 2016

**CERTIFICATION ANALYST:**

Clarice T. Booker

**CURRENT TERM OF CERTIFICATION:**

April 13, 2015 – April 12, 2016

**REGULATIONS AUDITED:**

6VAC35-101 Regulations Governing Juvenile Secure Detention Centers

**PREVIOUS AUDIT FINDINGS November 4, 2014:**

97.88% Compliance Rating  
6VAC35-101-340 (A) Face sheet  
6VAC35-101-490 (A) Maintenance of the buildings and grounds  
6VAC35-101-870 (B) Written communication between staff; daily log  
6VAC35-101-1020 Suicide prevention CRITICAL  
6VAC35-101-1100(B) Room confinement and isolation  
6VAC35-101-1100 (C) Room confinement and isolation

**CURRENT AUDIT FINDINGS – January 20, 2016:**

99.26% Compliance Rating  
No repeat deficiency from previous audit  
6VAC35-101-655 (A) Vulnerable populations  
6VAC35-101-820 (A) Mental health screening CRITICAL

**DEPARTMENT CERTIFICATION ACTION April 28, 2016:** Certified Prince William County Juvenile Detention Center for three years.

*Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.*

**TEAM MEMBERS:**

Clarice Booker, Team Leader  
John Adams, Central Office  
Tommy Gaskins, Central Office  
Deborah Hayes, Central Office  
Jason Henry, Rappahannock JDC  
Shelia Palmer, Central Office  
Lisa Rioux, Bon Air JCC  
Chris Ward, Northern Virginia JDC

**POPULATION SERVED:**

Prince William County Juvenile Detention Center is a secure custody facility operated by the Prince William Department of Social Services. The facility serves a pre-dispositional population of 72 male and female residents ages ten through 17 from Manassas, Manassas Park and Prince William County.

**PROGRAMS AND SERVICES PROVIDED:**

In addition to all mandated services Prince William County Juvenile Detention Center interacts with the community in obtaining such services as:

- Mental health services
  - Medical services
  - On-site education through the Prince William County Public School System
  - Various volunteer activities and groups, including arts and crafts, Girl Scouts, yoga, life skills and religious activities
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**CORRECTIVE ACTION PLAN  
TO THE  
DEPARTMENT OF JUVENILE JUSTICE**

**FACILITY/PROGRAM:** Prince William Juvenile Detention Home

**SUBMITTED BY:** John Dowdy, Superintendent

**CERTIFICATION AUDIT DATES:** January 19-20, 2016

**CERTIFICATION ANALYST:** Clarice T. Booker

Under Planned Corrective Action indicate; 1) The cause of the identified area of non-compliance. 2) The effect on the program. 3) Action that has been taken/will be taken to correct the standard cited. 4) Action that will be taken to ensure that the problem does not recur.

**6VAC35-101-655 (A). Vulnerable populations**

The facility shall implement a procedure for assessing whether a resident is a member of a vulnerable population.

**Audit Finding:**

There was no documentation of a vulnerability assessment in nine out of 15 applicable case records reviewed.

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**Program Response**

**Cause:**

The facility was completing assessments, but utilized the previous assessment form if there were no changes to answers by a youth.

**Effect on Program:**

The facility lacked proper documentation of the practice of identifying potential vulnerable residents.

**Planned Corrective Action:**

1) The facility immediately began documentation of each assessment, despite whether a resident had recently left and returned. 2) A new vulnerability assessment instrument is being developed. 3) The Nursing Supervisor and Assistant Superintendent will conduct routine (minimum quarterly) internal file audits to monitor compliance.

**Completion Date:**

Documenting assessments for all youth began January 20, 2016 and the revisions of the vulnerability assessment instrument will be implemented NLT March 21, 2016. Internal file reviews began February 1, 2016.

**Person Responsible:**

Nursing Supervisor and Assistant Superintendent of Programs will be responsible, with oversight from the Superintendent.

**Current Status April 4, 2016 Compliant**

A new vulnerability assessment instrument was developed, but implementation was delayed to 4/11/16 as the March staff meeting had to be postponed. Ten applicable case records reviewed and eight of the 10 were compliant. Eight of 10 demonstrates compliance for a noncritical regulation.

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**6VAC35-101-820 (A). Mental health screening. CRITICAL**

Each resident shall undergo a mental health screening, as required by § 16.1-248.2 of the Code of Virginia, administered by trained staff, to ascertain the resident's suicide risk level and need for a mental health assessment. Such screening shall include the following:

1. A preliminary mental health screening, at the time of admission, consisting of a structured interview and observation as provided in facility procedures; and
2. The administration of an objective mental health screening instrument within 48 hours of admission.

**Audit Finding:**

There was no documentation of a completed objective mental health screening instrument within 48 hours of admission in one out of 15 applicable case records reviewed.

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**Program Response**

**Cause:**

The cause of the problem was there was staff error, in which the staff member didn't complete the last three questions of the screening instrument and the facility did not have an administrative internal review process in place.

**Effect on Program:**

The facility could've missed vital information that possibly could've led to the youth not receiving further evaluation/services.

**Planned Corrective Action:**

- 1) MAYSI training is scheduled for March 2 - 3, 2016.
- 2) Staff have been identified to serve as primary intake specialist, as the facility doesn't have a dedicated intake specialist position.
- 3) The mental health therapist will assist in conducting the MAYSI if she is in the building during an intake.
- 3) An internal review process for all intake packets will be conducted by the Shift Supervisor immediately after the intake, daily review by the Mental Health Therapist and weekly review by the Assistant Superintendent for Programs.

**Completion Date:**

March 4, 2016

**Person Responsible:**

The Shift Supervisors and Assistant Superintendents will be responsible, with oversight from the Superintendent.

**Current Status April 4, 2016:**

The corrective action plan was implemented. Ten applicable case records reviewed and all were compliant.

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**CERTIFICATION AUDIT REPORT  
TO THE  
DEPARTMENT OF JUVENILE JUSTICE**

**PROGRAM AUDITED:**

Roanoke Valley Juvenile Detention Home  
498 Coyner Springs Road  
Roanoke, Virginia 24012  
(540) 561-3840  
Alan Hullette, Superintendent  
ahullette@rvjdc.org

**AUDIT DATES:**

October 5-6, 2015

**CERTIFICATION ANALYST:**

Mark Ivey Lewis

**CURRENT TERM OF CERTIFICATION:**

February 1, 2013 – February 10, 2016

**REGULATIONS AUDITED:**

6VAC35-101 Regulation Governing Juvenile Detention Centers

**PREVIOUS AUDIT FINDINGS September 24-25, 2012:**

6VAC35-51-480.F – Sleeping Areas  
6VAC35-51-780.E – Structured Program of Care  
6VAC35-51-930.C – Religion  
6VAC35-140-1030.A – Serious Incident Reports

**CURRENT AUDIT FINDINGS – October 5-6, 2015:**

99.26% Compliance Rating  
6VAC35-101-1060 (F) Medication  
6VAC35-101-1060 (I) Medication CRITICAL

**DEPARTMENT CERTIFICATION ACTION April 28, 2016:** Certified Roanoke Valley Juvenile Detention Center and Post-dispositional Detention Program for three years.

*Pursuant to 6VAC35-20-100C.2, if the certification audit finds the program or facility in less than 100% compliance with all regulatory requirements and a subsequent status report, completed prior to the certification action, finds 100% compliance on all regulatory requirements, the director or designee shall certify the facility for a specific period of time, up to three years.*

**TEAM MEMBERS:**

Mark Ivey Lewis, Team Leader  
Shelia Palmer, Central Office  
Sean Milner, Central Office  
Clarice Booker, Central Office  
Deborah Hayes, Central Office  
Michelle Johnson, WW Moore Juvenile Detention Center  
Victor Lilly, Lynchburg Juvenile Detention Center  
Tammy Kruger, New River Valley Juvenile Detention Center  
Theresa Reed, James River Juvenile Detention Center  
John Adams, Central Office

**POPULATION SERVED:**

## Roanoke Valley Juvenile Detention Home

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Roanoke Valley Juvenile Detention Center is a 50-bed facility (45 pre-dispositional beds, 30 male and 10 female; and 5 Post Dispositional beds) and detains residents between the age of seven and 18. The detainees come from both urban and rural environments and are from varied socioeconomic backgrounds. The detainees are typically behind in their academic studies and many suffer from medical, emotional, psychological and/psychiatric conditions.

The Roanoke Valley Juvenile Detention Center, which is sponsored by the Roanoke Valley Detention Center Commission, serves primarily the counties of Botetourt, Franklin, and Roanoke and the cities of Roanoke and Salem.

### **PROGRAMS AND SERVICES PROVIDED:**

The Center, owned and operated by the City of Roanoke since the early 1920's, has experienced several transition periods that have helped shape its program today. In earlier years, the then called "Detention Home" primarily provided custodial care for children and youth that needed modest supervision and provided little security or public safety for area residents. Children were admitted to the program for minor delinquent acts or admitted due their need of supervision; e.g. truancy, runaways, petit theft, etc. Workers provided supervision and instruction in life skills, hygiene, tutoring, and the like, all without need of locked doors and sophisticated security.

Today, the Center is considered a technologically advanced facility that provides high levels of security in a very sterile appearing environment. The Center's program consists of diverse offerings that are designed to enhance or facilitate rehabilitative efforts of the detainees. The daily schedule is regimented and strict. Childcare staff provides instruction as well as security. Less stable furnishings have been replaced by substantially more sound stainless steel and hard plastic.

"The mission of the Roanoke Valley Juvenile Detention Center is to provide secure custody and care of juveniles in a safe healthy environment, giving supervision, guidance, and counseling while protecting the community and beginning the rehabilitative process by promoting personal responsibility, social accountability, and emotional growth."

Pre-dispositional services are delivered within the scope of a direct care model. Detainees are classified primarily by age and they are housed within essentially self-contained pods. Staff is assigned duty posts by the Youth Care Supervisor prior to each shift. Detainees remain on the pods except to receive medical services, receive visitors, and to participate in large muscle recreation. Meals and snacks are delivered to the pods and educational services are delivered in classrooms adjacent to each pod. Educational services are of a high caliber due to dedicated school principal and committed and qualified teachers.

The daily schedule is highly structured with various activities to allow detainees the opportunity to participate in small and large group activities, large muscle exercises, individual activities, and free time. Detainees are allowed to watch minimal television with emphasis placed on educational TV and age appropriate movies.

While the schedules vary from pod to pod each evening, detainees participate in psycho-educational groups, recreation and outside opportunities, hygiene activities, dinner, letter writing, showers, snacks, cleanup, and an "extra hour" of activities for detainees earning that privilege. On a rotating basis, religious programming is offered once or twice weekly for detainees who desire that activity. Lights out at RVJDC is 10:00 p.m. Sunday through Friday and 10:30pm on Saturdays.



The program is centered on a strength based philosophy that is seen within the five program rules:

1. Be respectful and courteous to staff and other juveniles
2. Follow the directions of staff in a timely manner
3. Treat the building and equipment properly
4. Keep your cell neat, clean and orderly
5. Take part in all required activities

Daily groups are conducted on topics such as: anger management, money management, conflict resolution, positive self-esteem, substance abuse, social and life skills and sexual health. Groups are provided by a combination of staff facilitation and outside organizations.

The Post-Dispositional program at RVJDC was developed in order to address the needs of detainees that may require more intense secure detention services, but do not require a commitment to the Dept. of Juvenile Justice. RVJDC recognizes that some youth require a structured, secure detention setting that is close to their natural family to allow for familial participation including regular visits, participation in family therapy, and the ability to practice new pro-social skills prior to returning home. Additionally, youth need the ability to connect or re-connect with natural mentors, community members and service providers that will be integral to their positive transition back into the community upon completion of the program. This program will provide services to males and females ages 14 to 17 as directed under VA Code §16.1-284.1.

Each Post-D youth will receive an individualized service plan structured to meet the needs for treatment and services identified by the detainee, parents and Probation Officer. In addition, Post-D youth will receive psycho-educational group with pre-dispositional youth five times per week and with other Post-D youth twice per week. Each participant will have a weekly meeting with their case manager to review progress towards goals and objectives. Post-D detainees will have the opportunity to work towards specific educational goals identified at intake such as credit recovery, GED, and strengthening skills in specific subjects. Counseling services will be provided through Blue Ridge Behavioral Healthcare to include individual and family counseling, substance abuse assessments and treatment, anger management and group counseling sessions.

Post-Dispositional youth will be required to obtain and maintain certain levels in the behavior management program that will correlate with their goals and objectives and time in the program. Once a detainee has successfully completed their ISP goals, they will be recommended for discharge from the program.

**SERVICES PROVIDED:**

- Direct:
  - Mediation services provided by certified mediator
  - Education services provided by qualified teaching staff and administrator
  - Psycho-educational groups on independent living skills, substance abuse education, AIDS and sexually transmitted diseases, victim sensitivity, self-esteem, parenting, decision making, anger management, and more
  - Medical services are provided in house through a contracting physician and RVJDC's medical staff
  - Mental health screening is conducted by trained admissions staff and referrals are made based on need

- Crisis intervention and counseling services
  - Video court
  - Violence prevention programs by specially trained staff
  
  - Services accessed in the community:
    - Enrichment activities and programs—Various professional and community groups
    - Religious programs—Various local church groups
    - AIDS and sexually transmitted disease—Planned Parenthood
    - Parenting skills—Planned Parenthood
    - Dental Care—Virginia Department of Health
    - Medical Care—Carilion Healthcare
- 

**CORRECTIVE ACTION PLAN  
TO THE  
DEPARTMENT OF JUVENILE JUSTICE**

**FACILITY/PROGRAM:** Roanoke Valley Juvenile Detention Center

**SUBMITTED BY:** Alan Hullette, Superintendent

**CERTIFICATION AUDIT DATES:** October 5-6, 2015

**CERTIFICATION ANALYST:** Mark Ivey Lewis

Under Planned Corrective Action indicate; 1) The cause of the identified area of non-compliance. 2) The effect on the program. 3) Action that has been taken/will be taken to correct the standard cited. 4) Action that will be taken to ensure that the problem does not recur.

**6VAC35-101-1060 (F). Medication.**

**F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the requirements of § 54.2-2408 of the Code of Virginia and the Virginia Drug Control Act (§ 54.1-3400 et seq.).**

**Audit Finding:**

Medications were not administered as prescribed in five out of 12 applicable medical files reviewed. The medication incidents were as follows:

- Resident 1
  - Guanfacine 2mg was not administered in the a.m. on 10/23/13
  - Abilify 15mg was not administered in the p.m. on 12/4/13 and 2/28/14
- Resident 2
  - Ketotifen Fumarate was not administered in the p.m. on 9/11/14 and 9/16/14
  - Ketotifen Fumarate was not administered in the a.m. on 9/20/14
- Resident 3
  - Sulfacetamide 10% was not administered on 9/23/13, 10/1/13, and 10/4/13

- Resident 4
    - Keflex 500mg was not administered at 2:00 p.m. on 3/8/15
  - Resident 5
    - Large band aid and triple A ointment was not administered on 7/15/15
- 

### Program Response

**Cause:**

Child care staff who serve Medication Agents lacked total focus on the MARs when doing medication pass, treatments, and documentation given increased responsibilities following budget reductions and the elimination of two thirds of RVJDC medical personnel in recent years. In addition, auditing of the medical files by the nurse was not thorough and detailed enough.

**Effect on Program:**

No resident suffered any side effects due to the lack of these medications and treatment. Our lack of detecting these medication errors indicates that we need a better check and balance system for auditing files.

**Planned Corrective Action:** RVJDC is evaluating the need to designate another person besides our nurse to audit medical files. Also, medication agent refresher classes are being taught to all medication agents in January 2016 to emphasize on the MARs and the importance of documentation and passing of the medications.

**Completion Date:**

January 31, 2016

**Person Responsible:**

Kathy Crawford, Deputy Superintendent

**Current Status on January 5, 2016: Compliant**

Five Medication Administration Records reviewed had documentation that medication was administered as prescribed.

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**6VAC35-101-1060 (I). Medication CRITICAL**

I. Written procedures shall provide for (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and making any necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by a health care professional. Documentation of this approval shall be retained.

**Audit Finding:**

Five of five applicable medical files reviewed did not have documentation for the following medication incidents that had occurred during the resident's detainment.

- Resident 1
  - Guanfacine 2mg was not administered in the a.m. on 10/23/13
  - Abilify 15mg was not administered in the p.m. on 12/4/13 and 2/28/14
- Resident 2
  - Ketotifen Fumarate was not administered in the p.m. on 9/11/14 and 9/16/14

- Ketofifen Fumarate was not administered in the a.m. on 9/20/14
  - Resident 3
    - Sulfacetamide 10% was not administered on 9/23/13, 10/1/13, and 10/4/13
  - Resident 4
    - Keflex 500mg was not administered at 2:00 p.m. on 3/8/15
  - Resident 5
    - Large band aid and triple A ointment was not administered on 7/15/15
- 

### Program Response

**Cause:**

The medication errors were not detected by the medication agent giving the medications and treatment. In addition, the errors were not found when the files were audited. Therefore, no medication incident form was completed or reviewed by the physician.

**Effect on Program:**

No resident suffered any side effects due to the lack of their medications and treatment. Our lack of detecting these medication errors indicates that we need more of a check and balance system when auditing the medical files so that medication errors can be detected in a timely fashion and medication incident forms can be completed and reviewed by the physician.

**Planned Corrective Action:**

RVJDC is evaluating the need to designate another person besides our nurse to audit medical files. Also, medication agent refresher classes are being taught to all medication agents in January 2016 to emphasize on the MARs and the importance of documentation and passing of the medications.

**Completion Date:**

January 2016

**Person Responsible:**

Kathy Crawford, Deputy Superintendent

**Current Status on January 5, 2016: Compliant**

One of one applicable medical files reviewed had documentation for one medication incident which had occurred during the resident's detainment.

## CERTIFICATION MONITORING REPORT

**PROGRAM AUDITED:**

Opportunity House  
405 Cabell Street  
Lynchburg, VA. 24504  
(434) 455-4070  
J. T. Smith, Supervisor  
Jt.smith@lynchburgva.gov

**AUDIT DATES:**

April 27-28, 2015

**CERTIFICATION ANALYST:**

Shelia Palmer

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**DEPARTMENT CERTIFICATION ACTION – October 26, 2015:** Extended the current certification of Opportunity House for six months (April 26, 2016) pending status reports every four weeks on corrective action that included continued noncompliance of critical regulatory requirements.

Below are the results of 6VAC35-101-990 (A) (Tuberculosis screening) as noted in the certification audit conducted on April 28, 2015, and the findings of subsequent follow-up reviews on the corrective actions taken by the program, including the every four week review requested on October 26, 2015.

**DEPARTMENT CERTIFICATION ACTION - April 28, 2016:** Certified Opportunity House through September 7, 2018.

*Pursuant to 6VAC-20-100C4a1, if the status report results find the program or facility in 100% compliance on all critical regulatory requirements and 90% or greater compliance on all noncritical regulatory requirements, the program or facility shall be certified for a specified period of time, up to three years, retroactive to the date upon which the prior certification was scheduled to expire.*

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**6VAC35-41-1210 (A) CRITICAL**

**A. Within seven days of placement each resident shall have had a screening assessment for tuberculosis. The screening assessment can be no older than 30 days.**

**Audit Finding April 28, 2015: Non-Compliant**

One resident was admitted to the facility on 7/24/14 but his PPD result was dated 6/1/14 which made the screening assessment older than 30 days.

**Current Status on July 21, 2015: Non-Compliant**

Two of four residents who were admitted to the facility on 5/26/15 and 6/18/15 did not have a screening assessment for tuberculosis completed within seven days of placement.

**Current Status on October 19, 2015: Non-Compliant**

Four of 10 residents who were admitted to the facility on 9/16/2015, 10/7/2015, 10/8/2015, did not have a screening assessment for tuberculosis completed within seven days of placement.

**Current Status on November 25, 2015: Compliant**

Nine of nine residents who were admitted to the facility on 10/22/2015, 10/23/2015, 10/26/2015, 10/28/2015, 10/29/2015, 10/30/2015, had a screening assessment for tuberculosis completed within seven days of placement.

**Current Status on January 4, 2016: Compliant**

Ten of 10 residents who were admitted to the facility on 11/17/2015, 11/20/2015, 12/1/2015, 12/5/2015, 12/8/2015, 12/16/2015, 12/17/2015, 12/22/2015, 12/28/2015, had a screening assessment for tuberculosis completed within seven days of placement.

**Current Status on January 14, 2016: Compliant**

Six of six residents who were admitted to the facility on 1/11/2016, 1/12/2016, and 1/13/2016, had a screening assessment for tuberculosis completed within seven days of placement.

**Current Status on February 8, 2016: Compliant**

Nine of nine residents who were admitted to the facility on 1/14/2016, 1/15/2016, 1/20/2016, 1/21/2016, 1/25/2016, 2/2/2016, 2/3/2016, and 2/5/2016 had a screening assessment for tuberculosis completed within seven days of placement.

**Current Status on March 4, 2016: Compliant**

Six of six residents who were admitted to the facility on 2/10/2016, 2/16/2016, 2/18/2016, 2/22/2016, 2/26/2016, and 3/1/2016 had a screening assessment for tuberculosis completed within seven days of placement.

**Current Status on April 6, 2016: Compliant**

Thirteen of 13 residents who were admitted to the facility on 3/3/2016, 3/10/2015, 3/11/2016, 3/14/2016, 3/18/2016, 3/21/2016, 3/23/2016, and 3/25/2016 had a screening assessment for tuberculosis completed within seven days of placement.

**DEPARTMENT OF JUVENILE JUSTICE  
REGULATORY UPDATE**

June 15, 2016

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**CURRENT ACTIONS:**

**6VAC35-160      Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System**

Stage: NOIRA (Standard Regulatory Process); Request for Proposed Stage.

Status: This regulation became effective on August 16, 2004. This action involves a comprehensive review of the regulatory requirements. The NOIRA was published in the *Virginia Register* on December 14, 2015. The public comment period closed on January 29, 2016. No public comments were received during the comment period.

Next step:

The Department respectfully requests the Board to approve the submission of the draft amendments to the Proposed Stage of the Regulatory Process for Executive Branch review.

**6VAC35-170      Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice**

Stage: Proposed (Standard Regulatory Process); Request for Final Stage.

Status: This regulation became effective on February 1, 2005. This action involves a comprehensive review of the regulatory requirements. At the NOIRA stage, no public comments were submitted. The proposed language was published in the *Virginia Register* on December 28, 2015. The public comment period ended on February 28, 2016. No public comments were received during the comment period.

Next step:

The Department respectfully requests the Board to approve the submission of the proposed regulation, as amended, to the Final Stage of the Regulatory Process for Executive Branch Review.

**CURRENT REQUESTS**

**6VAC35-41      Regulation Governing Juvenile Group Homes and Halfway Houses**

Stage: Request for NOIRA (Standard Regulatory Process).

Status: This regulation became effective on January 1, 2014 as a result of the Department's comprehensive review of each regulatory provision governing juvenile residential facilities. On June 15, 2016, the Department submitted a memorandum noting its intent to conduct a comprehensive overhaul of this regulation and requesting that the Board approve the submission of a NOIRA.

Next Step:

Pending the Board's approval, the NOIRA will undergo Executive Branch Review; and, concurrently, workgroups will convene in the summer of 2016 to review the current regulation.

6VAC35-71

**Regulation Governing Juvenile Correctional Centers**

Stage: Request for NOIRA (Standard Regulatory Process).

Status: This regulation became effective on January 1, 2014 as a result of the Department's comprehensive review of each regulatory provision governing juvenile residential facilities. On June 15, 2016, the Department submitted a memorandum noting its intent to conduct a comprehensive overhaul of this regulation and requesting that the Board approve the submission of a NOIRA regulatory package.

Next Step:

Pending the Board's approval, the NOIRA will undergo Executive Branch Review; and, concurrently, workgroups will convene in the summer of 2016 to review the current regulation.

6VAC35-101

**Regulation Governing Juvenile Secure Detention Centers**

Stage: Request for NOIRA (Standard Regulatory Process).

Status: This regulation became effective on January 1, 2014 as a result of the Department's comprehensive review of each regulatory provision governing juvenile residential facilities. On June 15, 2016, the Department submitted a memorandum to the Board, noting its intent to conduct a comprehensive overhaul of this regulation, and requesting that the Board approve the submission of a NOIRA.

Next Step:

Pending the Board's approval, the NOIRA will undergo Executive Branch Review; and, concurrently, workgroups will convene in the summer of 2016 to review the current regulation.





Andy K. Block, Jr.  
Director

## COMMONWEALTH OF VIRGINIA

### Department of Juvenile Justice

#### MEMORANDUM

**TO:** State Board of Juvenile Justice

**FROM:** Virginia Department of Juvenile Justice

**DATE:** June 15, 2016

**SUBJECT:** Request to Begin a Comprehensive Overhaul of Residential Regulations

- 6VAC35-41 (Regulations Governing Juvenile Group Homes and Halfway Houses)
- 6VAC35-71 (Regulations Governing Juvenile Correctional Facilities)
- 6VAC35-101 (Regulations Governing Juvenile Secure Detention Centers)

#### I. Summary of Action Requested

As discussed at the April 18, 2016, Board meeting, the Department of Juvenile Justice ("the Department") intends to conduct a comprehensive overhaul of the following three residential regulations: Regulations Governing Juvenile Group Homes and Halfway Houses, 6VAC35-41; Regulations Governing Juvenile Correctional Facilities, 6VAC35-71; and Regulations Governing Juvenile Secure Detention Centers, 6VAC35-101. The overhaul is anticipated to impact all regulatory requirements affecting the two juvenile correctional facilities, 24 juvenile secure detention centers, and 18 juvenile group homes located in the Commonwealth, certified by the Department, and regulated by the Board of Juvenile Justice ("the Board").

The Department respectfully requests the Board to approve the submission of a Notice of Intended Regulatory Action ("NOIRA") to initiate a comprehensive regulatory review for the above-named residential regulations.

#### II. Background

The Board regulates three distinct types of facilities: 1) juvenile correctional centers; 2) juvenile secure detention centers; and 3) juvenile group homes. At present, these facilities are governed by three separate regulations: Regulations Governing Juvenile Group Homes and Halfway Houses, 6VAC35-41; Regulations Governing Juvenile Correctional Facilities, 6VAC35-71, and Regulations Governing Juvenile Secure Detention Centers, 6VAC 35-101. Previously, these facilities were governed by two separate regulations: 1) the Standards for Juvenile Residential Facilities (6VAC35-140) and 2) the

Standards for the Interim Regulation of Children's Residential Facilities (6VAC 35-51). In November, 2012, the Department conducted a comprehensive review of all regulatory provisions governing juvenile residential facilities and determined that the regulations needed to be revamped in order to reduce confusion by separating the regulations into the three distinct facilities regulated by the Board. Accordingly, the Department consolidated the two regulatory requirements and separated them into distinct regulations governing the three separate types of facilities. The final stage for each regulatory action was completed and took effect on January 1, 2014.

The current regulations include sections that address: 1) administration and personnel; 2) physical environment; 3) safety and security; 4) residents' rights; 5) program operation; 6) work programs; 7) health care services; and 8) behavior management.

### **III. Rationale for This Request**

**Regulations Governing Juvenile Correctional Centers:** Since adoption of the separate residential regulations in 2014, the Department has undergone a change in its approach to the operation of facilities housing juvenile offenders. The regulations governing juvenile correctional centers require updating to reflect this shift to a more therapeutic approach and to align with best practices in those facilities.

**Regulations Governing Juvenile Secure Detention Centers:** The Department received the enclosed letter from the Virginia Juvenile Detention Association requesting that it review the regulations governing juvenile secure detention centers, with a particular focus on the following issues:

- Mandated amount of training for all direct care staff, including part-time staff;
- Information contained on a juvenile's face sheet;
- Requirements related to toilet facilities;
- Requirements related to smoking;
- Requirements related to mental health screening;
- Order of regulation placement;
- Work and employment issues for residents;
- Room confinement and isolation procedures, particularly involving the use of mechanical restraints; and
- Individual Service Plans.

The Department proposes to conduct a comprehensive review of the residential regulations in order to address the concerns outlined in this section, and others as they may arise during the review, to ensure that the regulations most effectively and efficiently support their statutory purposes.

**Regulations Governing Juvenile Group Homes and Halfway Houses:** The Department has received communications from the Virginia Community and Residential Care Association that there are provisions in the group home residential regulation that would benefit from revision. This organization is supportive of a comprehensive review.

Furthermore, the Department utilized halfway houses to serve committed juveniles that were released from juvenile correctional centers; however, at present, these facilities are no longer operating. As the Department explores the continuum of services available for court-involved youth, a review of the governing regulations is advisable.



Established 1968

VIRGINIA JUVENILE DETENTION ASSOCIATION

[www.vcjd.org](http://www.vcjd.org)

April 24, 2015

Ms. Janet Van Cuyk  
Legislative and Research Manager  
Virginia Department of Juvenile Justice  
PO Box 1110  
Richmond, VA 23219

Dear Ms. Van Cuyk:

On behalf of the Virginia Juvenile Detention Association (VJDA), representing the twenty-four local and regional juvenile detention centers throughout the Commonwealth, I am respectfully requesting that the Department of Juvenile Justice review and consider amendments to Chapter 6VAC35-101 "Regulations Governing Juvenile Secure Detention Centers", as promulgated by the Board of Juvenile Justice and enforced by the Virginia Department of Juvenile Justice in accordance with the Code of Virginia Sections 16.1-322.7 and 66.10. Our Association established a subcommittee, chaired by Carey Patterson, to review each of the regulations and propose amendments/revisions that were approved by the VJDA at our meeting in December. In accordance with the Virginia Regulatory Town Hall, we are requesting review as governed by Code of Virginia 2.2-4007, petitioning for new or amended regulations. It is our understanding that DJJ is planning to review these regulations, and we respectfully request participation in that process.

Please find included with this letter an overview of those regulations for which we are proposing amendments. We thank you for your consideration, and we look forward to working collaboratively with you again on this matter.

Sincerely,

Tim Smith, President  
Virginia Juvenile Detention Association

**VJDA Regulations Subcommittee  
Regulations Review and Recommendations for Revisions  
6VAC35-101 Regulation Governing Juvenile Secure Detention Centers**

**1. 6VAC35-101-200 C. Retraining**

*All direct care staff shall receive at least 40 hours of training annually that shall include training on the following:*

1. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);
2. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases);
3. Maintaining appropriate professional relationships;
4. Interaction among staff and residents;
5. Residents' rights, including, but not limited to, the prohibited actions provided for in 6VAC35-101-650 (prohibited actions);
6. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and
7. Behavior intervention procedures.

**Issue/Discussion**

At no time in years past were part-time staff required to have a specified number of annual training hours. The requirement for all direct care staff, to include part-time staff, to receive 40 hours is now an additional logistical and financial burden to local juvenile detention facilities.

Facilities utilize part-time staff on an as-needed basis, and the number of hours that they may work can vary greatly. Most facilities have “built-in” training days, as part of the shift rotations, for full-time staff to ensure they receive their 40 hours. Those days are part of the full-time staff’s scheduled work week. Coordinating the opportunity for part-time staff would be unrealistic as many part-time staff work full-time jobs elsewhere which prevents many of them from attending facility scheduled trainings. Scheduling them for training days (to fulfill the somewhat arbitrary requirement of 40 hours) is difficult to coordinate and manage given their schedules.

VJDA recognizes the importance of the training topics that are required annually of all staff, as enumerated in 6VAC35-101-200 (C) (i.e., suicide prevention, maintaining appropriate relationships), and we are not asking for a variance regarding that portion of the regulation. We recognize and value the need for annual refresher training of all staff in these critical areas. In addition, it is important to note that regulations always required and continue to require that newly hired part-time staff receive 40 hours of initial training, providing an in-depth overview of what is required as a direct care staff in a secure juvenile detention facility. We support the need for initial and ongoing training for part-

time staff, but we feel the 40 hour requirement for part-time staff is an additional, new burden for our facilities.

We have been corresponding with staff from the Department of Juvenile Justice in regards to this request, and in response to the questions they posed, we want to assure you that we are looking for the variance to be applicable to part time staff who are also direct care staff and the exception is only applicable to the 40 hours and not the seven subject areas on which there must be annual retraining (as specified in items 1-7 of 6VAC35-101-200 (C), which includes the annual retraining on emergency response). Training to cover the mandatory topics can vary from facility to facility as curricula vary and delivery systems vary (i.e., self-paced, classroom instructor-led, computerized) and does not equate to forty hours. The remaining hours to meet the forty hour requirement usually include self-identified development and elective topics, team-building activities, or locally-offered training classes. All part-time direct care staff would be required to receive annual training on the use of physical and mechanical restraints as specified in 6VAC35-101-200 (D) and (E).

Reference: VJDA Variance Request Letter to BJJ Chair – August, 2014

### **Recommendation**

Adopt the language that was used previously in the Board of Juvenile Justice Standards (2005) but include the provision that part-time direct care staff receive annual training on the specified topics:

*All full-time direct care staff shall receive at least 40 hours of training annually. All direct care staff shall receive training annually that shall include training on the following:*

1. Suicide prevention as provided for in 6VAC35-101-1020 (suicide prevention);
2. Standard precautions as provided for in 6VAC35-101-1010 (infectious or communicable diseases);
3. Maintaining appropriate professional relationships;
4. Interaction among staff and residents;
5. Residents' rights, including, but not limited to, the prohibited actions provided for in 6VAC35-101-650 (prohibited actions);
6. Child abuse and neglect and mandatory reporting as provided for in 6VAC35-101-80 (serious incident reports) and 6VAC35-101-90 (suspected child abuse or neglect); and
7. Behavior intervention procedures.

### **2. 6VAC35-101-340 (A). Face sheet.**

A. At the time of admission each resident's record shall include, at a minimum, a completed face sheet that contains the following:

1. The resident's full name, last known residence, birth date, birthplace, gender, race, unique numerical identifier, religious preference, and admission date; and
2. Names, *addresses*, and telephone numbers of the *applicable court service unit*, emergency contacts, and parents or legal guardians, as appropriate and applicable.

### **Issue/Discussion**

We do not feel it is necessary to list the physical address of the court services unit. We feel that listing the applicable court services unit (i.e., 12<sup>th</sup> District CSU), the probation officer's name and telephone number is sufficient.

Reference: E-mail to Ken Bailey requesting clarification – January, 2015

### **Recommendation**

A. At the time of admission each resident's record shall include, at a minimum, a completed face sheet that contains the following:

1. The resident's full name, last known residence, birth date, birthplace, gender, race, unique numerical identifier, religious preference, and admission date; and
2. *Names, addresses, and telephone numbers of emergency contacts, and parents or legal guardians, as appropriate and applicable. Name and telephone number of the applicable court services unit.*

### **3. 6VAC35-101-420 (B). Toilet facilities.**

B. There shall be at least one toilet, one hand basin, and one shower or bathtub for every eight residents for detention centers constructed before July 1, 1981. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981.

### **Issue/Discussion**

We believe this was in error since most facilities do not have showers to accommodate the one to four residents requirement. This regulation was adopted from the old Interdepartmental Standards and the language read: There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, *except secure custody facilities.*

### **Recommendation**

*B. There shall be at least one toilet, one hand basin, and one shower or bathtub for every eight residents for detention centers.*

**4. 6VAC35-101-460. Smoking prohibition.**

Tobacco products, including cigarettes, cigars, pipes, and smokeless tobacco, such as chewing tobacco or snuff, shall not be used by staff or visitors in any areas of the facility or its premises where residents may see or smell the tobacco product.

**Issue/Discussion**

We believe that the prohibition should include electronic cigarettes, personal vaporizers, and electronic nicotine delivery systems.

**Recommendation**

*Tobacco products, including cigarettes, cigars, pipes, electronic cigarettes, personal vaporizers, electronic nicotine delivery systems, and smokeless tobacco, such as chewing tobacco or snuff, shall not be used by staff or visitors in any areas of the facility or its premises where residents may see or smell the tobacco product.*

**5. 6VAC35-101-820 (A). Mental health screening.**

A. Each resident shall undergo a mental health screening, as required by § 16.1-248.2 of the Code of Virginia, administered by trained staff, to ascertain the resident's suicide risk level and need for a mental health assessment. Such screening shall include the following:

1. A preliminary mental health screening, at the time of admission, consisting of a structured interview and observation as provided in facility procedures; and
2. The administration of an objective mental health screening instrument within 48 hours of admission.

**Issue/Discussion**

Facilities have differing practices regarding the administration of the MAYSI-2, which is the objective mental health screening instrument. Referrals to mental health staff are often made as a result of the preliminary mental health screening done at the time of intake to ensure proper precautions to prevent suicide and self-harm attempts are initiated. The MAYSI-2 results are often not a part of this initial referral process. There were also guidelines established several years ago when a Senate Joint Resolution required that DJJ adopt a uniform mental health screening, and after a workgroup was established, the MAYSI-2 was selected. Some of those guidelines included not administering it to weekenders each time they come in to serve a weekend sentence and not administering it to youth who had been released and re-admitted to the facility within seven days. There have also been varying interpretations regarding the level of training staff need and who conducts such training to administer the MAYSI-2. The instrument was developed for non-clinical staff to administer specific to juvenile justice populations.



### **Recommendation**

We believe this regulation warrants more detailed discussion, but we do make the following recommendation:

A. Each resident shall undergo a mental health screening, as required by § 16.1-248.2 of the Code of Virginia to ascertain the resident's suicide risk level and need for a mental health assessment. Such screening shall include the following:

1. A preliminary mental health screening, at the time of admission, consisting of a structured interview and observation as provided in facility procedures; and
2. *The administration of an objective mental health screening instrument within 48 hours of admission and in accordance with guidelines established by the Virginia Department of Juvenile Justice and in conjunction with the authors of the currently adopted objective mental health screening instrument.*

#### **6. 6VAC35-101-900 (D). Staffing pattern.**

D. At all times, there shall be no less than one direct care staff member with current certifications in standard first aid and cardiopulmonary resuscitation on duty for every 16 residents, or portion thereof, being supervised by staff.

### **Issue/Discussion**

We have no concerns with this regulation other than where it is placed in the overall document. We believe that this regulation would be more appropriately placed in the Staff Training and Retraining section.

### **Recommendation**

Move this regulation to Article 3 – Employee Orientation and Training

#### **7. 6VAC35-101-920 (A). Work and employment.**

A. Assignment of chores, that are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

### **Issue/Discussion**

We do not feel that daily chores, such as maintaining living quarters, should be included as part of the post-d program resident's service plan.

### **Recommendation**

Remove the “service plan” requirement, as paid employment is addressed in a separate regulation.

**8. 6VAC35-101-1100 (I). Room confinement and isolation.**

- I. During isolation, the resident is not permitted to participate in activities with other residents and all activities are restricted, with the exception of (i) eating, (ii) sleeping, (iii) personal hygiene, (iv) reading, and (v) writing.

**Issue/Discussion**

There are two issues with this regulation. The first issue is with not permitting residents in “isolation” to participate in activities with other residents. There are circumstances when it is appropriate and applicable to have residents in room confinement participate in recreational activities with their unit or perhaps another unit to ensure they receive the one hour of physical recreation outside of the locked room (as also required by regulations). If “isolation” refers to medical isolation, and the resident may be contagious, then it would not be appropriate. However, the regulation is interpreted for any child serving room confinement or isolation since those terms are used interchangeably throughout this section. The second issue is with allowing writing when in a locked room. For significant security concerns, many facility administrators do not allow residents to have pencils/pens or other writing utensils in their rooms at any time. It is not appropriate or reasonable to allow a resident serving disciplinary room confinement, due to disruptive behavior, to have such an implement in their room.

**Recommendation**

The group would like to hear DJJ’s intention with this regulation. The recommendation is to delete it.

**9. 6VAC35-101-1130 (A). Mechanical restraints.**

- A. Written procedure shall govern the use of mechanical restraints. Such procedures shall be approved by the department and shall specify:
1. The conditions under which handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and a mobile restraint chair may be used;
  2. That the facility administrator or designee shall be notified immediately upon using restraints in an emergency situation;
  3. That restraints shall never be applied as punishment or a sanction;
  4. *That residents shall not be restrained to a fixed object or restrained in an unnatural position;*
  5. That each use of mechanical restraints, except when used to transport a resident or during video court hearing proceedings, shall be recorded in the resident’s case file or in a central log book; and
  6. That a written record of routine and emergency distribution of restraint equipment be maintained.

### Issue/Discussion

“Fixed Object” means a fixture that is secured to a wall or foundation such as a sink or door handle or not designed to assist in mobile transport such as a desk, chair or table. Fixtures designed for mobility assistance such as wheelchairs, restraint chairs or hospital beds are not considered fixed objects when used in accordance written procedures are approved by DJJ for their use under 6VAC-101-1150.

The reason for this relates to long term hospitalization. If a resident is hospitalized for several days and there is no possibility of release from custody this usually indicates a high risk offender. Maintaining a resident in handcuffs and/or shackles long term in my opinion creates an unnatural position that is not humane. The better solution is for individual facilities to be able to write and receive approval for specific policies and procedures that allow for the use of mechanical restraints with certain objects under specific conditions. The objective would be to maintain security in an unsecure environment while affording the resident the least restrictive most natural positioning. In our case we would, based on the medical condition and risk level, allow for single point restraint to a hospital bed or wheelchair which in my opinion is not fixed. There is currently no definition of “fixed object” and this could either lead to the program placing themselves in violation of the regulation, creating a security risk or maintaining a resident in two point restraints which I would argue is far more “unnatural” than a single point restraint.

### Recommendation

VJDA would suggest that 6VAC25-101-1130 (A) be expanded to include a definition of a “fixed object” under Applicable definitions.

VJDA would request that the definition exclude objects designed for mobility such as restraint chairs, wheel chairs or rolling hospital beds.

### **10. 6VAC35-101-1200 (A). Individual service plans in postdispositional detention programs.**

A. A written plan of action, the individual service plan, shall be developed and placed in the resident’s record within 30 days following admission and implemented immediately thereafter. The individual service plan shall:

1. Be revised as necessary and reviewed at intervals; and
2. Specify (i) *measurable short-term and long-term goals*; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.

### Issue/Discussion

There should be no distinction between short and long term goals as the duration of the program is only six months. Since the service plan must be developed within the first thirty days, that really only leaves five months for goals which, again, should not be divided among “short” and “long”. The 5-day plan, developed in conjunction with the CSU, as required by 6VAC35-1180.B.2., addresses short-term adjustment to the program goals.

**Recommendation**

Remove the qualifiers “short-term” and “long-term” and just state “goals”.



Andy K. Block, Jr.  
Director

## COMMONWEALTH OF VIRGINIA

### Department of Juvenile Justice

#### MEMORANDUM

**TO:** State Board of Juvenile Justice

**FROM:** Virginia Department of Juvenile Justice

**DATE:** June 15, 2016

**SUBJECT:** Request to Advance the Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (6VAC35-160) to the Proposed Stage of the Regulatory Process.

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#### I. Summary of Action Requested

The proposed amendments to the Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System, 6VAC35-160, have been proceeding through the regulatory process since March 18, 2015, and the public comment period for the regulation at the NOIRA stage closed January 29, 2016.

The proposed changes are the result of a comprehensive review of the regulation. The changes establish clear, concise, and consistent rules, rights, and responsibilities for accessing and receiving juvenile record information from Virginia Juvenile Justice Information System (VJJIS), the Department of Juvenile Justice's (Department's) centralized confidential juvenile information data management system.

The Department requests that the Board of Juvenile Justice (Board) adopt the proposed and amended language and advance the regulation to the Proposed Stage of the regulatory process.

Section II provides the background of the regulation. Section III summarizes the major substantive changes proposed in the draft the Board is requested to consider adopting before advancing the regulation to the Proposed Stage of the regulatory process. The text of the regulation, with the proposed changes underlined, is attached to this memorandum.

#### II. Background

The Regulations Governing Juvenile Record Information and the VJJIS detail the processes participating agencies must follow in order to submit, process, preserve, and disseminate juvenile record information. Participating agencies include state-operated court service units, Department-operated facilities, locally-

operated court service units, secure juvenile detention centers, and any other agency, organization, or individual statutorily eligible to access and receive juvenile record information from the Department's electronic data management system.

The regulation details the procedures a participating agency must follow when it receives a request for juvenile records, as well as the process for challenging the accuracy of a juvenile record. The regulation also explains the process for expunging and disposing of records and authorizes the Department to conduct audits to ensure and verify compliance with the regulations.

The regulation was last reviewed July 12, 2004, and became effective on August 16, 2004.

### Timeline of the Review of the Regulation

*December 14, 2015*

NOIRA Published

*January 29, 2016*

The public comment period at the NOIRA stage closed. No public comments were received.

### **III. Summary of Draft Language for NOIRA**

The proposed amendments to the regulation remove antiquated terms and requirements and provide clarifying language for processes that were previously vague. Additionally, the proposed amendments ensure Commonwealth Information Technology Resource Management (ITRM) Standards are met. Commonwealth ITRM Standards are the technology standards that apply to all state agencies.

Below is a summary of the proposed changes to the regulation. The summary breaks down the changes by section:

#### **Section 10 – Definitions**

- Adds the following definitions: (i) Commonwealth of Virginia (COV) ITRM Standards; (ii) Commonwealth of Virginia (COV) Network; (iii) data owner; (iv) remote access; and (v) telecommunication connection.
- Removes the definition for VJJIS functional administrator, the Department's employee currently responsible for overseeing the operation of a specific component of the VJJIS, and replaces it with the term "data owner" in order to conform to terms used in the ITRM Standards that apply to all state agencies. References to the VJJIS functional administrator in Sections 150, 280, 290, 300, 320, 340, 350, and 355 also are replaced with "data owner."
- Adds language in definitions of "expunge" and "juvenile record information" to clarify that the references to identifying information are to "personal" identifying information.

#### **Section 30 – Designation as a participating agency**

- Removes boot camps from the designation as a participating agency in the VJJIS.

#### **Section 40 – Signed agreement required**

- Amends section title to: "Signed memorandum of agreement and nondisclosure agreement required."

- Amends the language to require a nondisclosure agreement in addition to the signed agreement to ensure protection of confidential juvenile information.

#### **Section 50 – Data submissions**

- Makes a technical change to clarify that participating agencies must submit information required by the Department’s procedures rather than its policies.

#### **Section 60 – Access provided to participating agencies**

- Makes a technical change to clarify that the Department’s authority to limit or expand the scope of a participating agency’s access is pursuant to confidentiality procedures rather than confidentiality policies.

#### **Section 70 – Designation of authorized individuals**

- Amends the language to make background checks mandatory for individuals who will be given access to the VJJIS system.
- Amends language to specify that persons with access to juvenile record information must sign an Information Security Agreement.

#### **Section 90 – Security of physical records**

- Removes the language that requires authorized persons to be clearly identified in order to access areas where juvenile record information is collected, stored, processed, or disseminated. (Note: this section still requires that “only authorized persons” may have access.)

#### **Section 100 – Requirement when records are automated**

- Amends language to require the Department to designate a data owner rather than a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures.
- Removes the requirements to: (i) maintain backup copies of juvenile record information; (ii) develop a disaster recovery plan; and (iii) control system specifications and documentation to prevent unauthorized access and dissemination. (Note: these are the Commonwealth’s responsibilities under the COV ITRM Standards. Participating agencies are required to comply with the Commonwealth’s requirements).
- Amends language to require participating agencies to develop and implement a logical access procedure to prevent unauthorized access and dissemination.
- Adds language to require all data be completely erased or otherwise made unreadable when discarding old computers.

#### **Section 110 – Access controls for computer security**

- Amends language by adding the qualifier “logical” when referencing “access controls” to clarify that the access controls involve user authorizations.

#### **Section 130 – Security of Telecommunications**

- Removes language referencing dedicated telecommunications lines.
- Adds a requirement to implement a screen saver lockout after a maximum of 15 minutes of computer inactivity.
- Replaces references to “Telecommunications facilities” with “Telecommunications connection.”

**Section 170– Information to be disseminated only in accordance with law and regulation; Section 210 – Determining requester’s eligibility to receive the information.**

- Removes the reference to the Health Insurance Portability and Accountability Act (HIPAA). (Note: the Office of the Attorney General has previously opined that the Department is not a HIPAA-covered entity.)

**Section 180 – Fees.**

- Clarifies that the required agreement to pay to obtain juvenile record information must be written.

**Section 220 – Responding to requests**

- Amends the language to require records containing sensitive data be encrypted prior to dissemination.
- Removes the unnecessary language that requires a designated individual to obtain consent from the requester regarding fees associated with the juvenile record information request as this requirement is contained in Section 180.
- Modifies the time to provide requested records from seven days to ten business days.

**Section 280 – Challenge**

- Replaces references to “functional proponent” with “data owner.”

**Section 290 – Administrative review of challenge results; Section 340 –Confirmation notice required to VJJIS functional administrator**

- Amends language by adding the term “calendar” to denote that the reference to “days” is to “calendar days.”

**Section 310 – Expungement requirements; Section 320 – Notification to participating agencies; Section 330 –Procedures for expunging juvenile record information**

- Amends language to add the qualifier “personal” to all references to “identifying information.”

**Section 330 – Procedures for expunging juvenile record information**

- Amends language to clarify that the computerized records ordered expunged must be deleted from all databases and electronic files in accordance with the ITRM SEC 514-013 Removal of Electronic Data from Electronic Media standard.

**Section 350 – Expungement order received directly by participating agency.**

- Requires the data owner to contact the appropriate court and determine the validity of an expungement order received directly from the court rather than obtaining a copy of the order.

**Section 390 – Annual report to the board.**

- Repeals this section that requires the Department to report to the board annually on the status of the Juvenile Justice Information System.



DEPARTMENT (BOARD) OF JUVENILE JUSTICE  
Comprehensive Review of 6VAC35-160

Part I  
General Provisions

**6VAC35-160-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Access" means the ability directly to obtain information concerning an individual juvenile contained in manual or automated files.

"Commonwealth of Virginia Information Technology Resource Management Standards" or "COV ITRM Standards" means the information technology standards applicable to all Commonwealth Executive Branch agencies that manage, develop, purchase, and use information technology resources in the Commonwealth of Virginia.

"Commonwealth of Virginia Network" or "COV Network" means the Virginia Juvenile Justice Information System (VJJIS) infrastructure that provides the connectivity between participating agencies and the applications.

"Data Owner" means a Department of Juvenile Justice, or department, employee who is responsible for the policy and practice decisions regarding data as identified by COV ITRM Standard Security (SEC) 501-.08.

"Department" means the Department of Juvenile Justice.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

"Dissemination" means any transfer of juvenile record information, whether orally, in writing, or by electronic means to any person other than an employee of a participating agency who ~~has a right to the~~ is authorized to receive the information under § 16.1-300 of the Code of Virginia and who is not barred from receiving the information by other applicable law.

"Expunge" means to destroy all records concerning an individual juvenile, or all personal identifying information related to an individual juvenile that is included in aggregated files and databases, in accordance with a court order or the Code of Virginia.

"Juvenile record information" means any information in the possession of a participating agency pertaining to the case of a juvenile who is or has been the subject of an action by an intake officer as provided by § 16.1-260 of the Code of Virginia, as well as to personal identifying information concerning such a juvenile in any database or other aggregated compilation of records. The term does not apply to statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

"Need to know" means the principle that a user should access only the specific information necessary to perform a particular function in the exercise of his official duties. Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access ~~on a need-to-know basis~~ only necessary to perform official job duties and responsibilities.

"Participating agency" means the ~~Department of Juvenile Justice~~ department, including state-operated court service units, or any locally operated court service unit, secure juvenile detention center, home, juvenile group home or emergency shelter; or any public agency, child welfare agency, private organization, facility or person who is treating or providing services to a child pursuant to a contract with the department or pursuant to

the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia, that is approved by the department to have direct access to juvenile record information through the ~~Virginia Juvenile Justice Information System~~ VJJIS or any of its component or derivative information systems. The term "participating agency" does not include any court.

"Remote access" means a connection to the department's systems from a remote location other than a department facility.

"Telecommunication connection" means the infrastructure used to establish a remote access to department information technology systems.

"Virginia Juvenile Justice Information System" (~~VJJIS~~) or "VJJIS" means the equipment, facilities, agreements and procedures used to collect, process, preserve or disseminate juvenile record information in accordance with § 16.1-224 or § 16.1-300 of the Code of Virginia. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

~~"VJJIS functional administrator" means a Department of Juvenile Justice employee who is responsible for overseeing the operation of a specific component of the Virginia Juvenile Justice Information System. Such persons are sometimes referred to as "functional proponents" of particular information reporting systems. The functional administrator is not to be confused with the department's overall administrator of the VJJIS.~~

## Part II

### Participating Agencies in the ~~Virginia Juvenile Justice Information System~~ VJJIS

#### **6VAC35-160-30. Designation as a participating agency.**

A. The department, including its central administration, department-operated facilities, and state-operated court service units, is considered a single participating agency for purposes of this regulation.

B. ~~Locally operated court services units, and secure juvenile detention homes and boot camps as defined in § 16.1-228 of the Code of Virginia~~ centers shall be participating agencies in the ~~Virginia Juvenile Justice Information System~~ VJJIS.

C. Any other agency that is eligible to receive juvenile record information under § 16.1-300 of the Code of Virginia may apply to the department for status as a participating agency.

#### **6VAC35-160-40. Signed memorandum of agreement and nondisclosure agreement required.**

The department shall develop a ~~written~~ memorandum of agreement and a nondisclosure agreement with each other participating agency delineating the participating agency's access to and responsibility for information contained in the ~~Virginia Juvenile Justice Information System~~ VJJIS.

#### **6VAC35-160-50. Data submissions.**

A. All participating agencies shall submit data and other information as required by department ~~policy~~ procedures to ensure that juvenile record information is complete, accurate, current and consistent.

B. Administrators of participating agencies are responsible for ensuring that entries into the ~~juvenile justice information system~~ VJJIS are accurate, timely, and in a form prescribed by the department.

C. All information entered into the ~~Virginia Juvenile Justice Information System~~ VJJIS shall become part of a juvenile's record and shall be subject to the confidentiality provisions of § 16.1-300 of the Code of Virginia.

**6VAC35-160-60. Access provided to participating agencies.**

A. In accordance with ~~policies~~ statutes, regulations, and procedures governing confidentiality of information and system security, the department may limit or expand the scope of access granted to participating agencies.

B. When individuals or participating agencies are providing treatment or rehabilitative services to a juvenile as part of an agreement with the department, their access to juvenile record information shall be limited to that portion of the information that is relevant to the provision of the treatment or service. Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access on a need-to-know basis.

C. An individual's juvenile record information shall be made available only to participating agencies currently supervising or providing services to the juvenile, and only upon presentation of the unique identifying number assigned to the juvenile. Once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access on a need-to-know basis.

**6VAC35-160-70. Designation of authorized individuals.**

A. Each participating agency shall determine what positions in the agency require regular access to juvenile record information as part of their job responsibilities and as documented in the employee work profile.

B. ~~In accordance with applicable law and regulations, the~~ The department may ~~shall~~ require a background check of any individual who will be given access to the VJJIS system through any participating agency. The department may deny access to any person based on the results of such background investigation or due to the person's violation of the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of juvenile record information.

C. Only authorized ~~employees~~ individuals shall have direct access to juvenile record information.

D. Use of juvenile record information by an unauthorized ~~employee~~ individual, or for a purpose or activity other than one for which the person is authorized to receive juvenile record information, ~~will~~ shall be considered an unauthorized dissemination.

E. Persons who are given access to juvenile record information shall be required to sign an agreement Information Security Agreement in accordance with department procedure stating that they will use and disseminate the information only in compliance with law and these regulations, and that they understand that there are criminal and civil penalties for unauthorized dissemination.

**6VAC35-160-90. Security of physical records.**

A. A participating agency that possesses physical records or files containing juvenile record information shall institute procedures to ensure the physical security of such juvenile record information from unauthorized access, disclosure, dissemination, theft, sabotage, fire, flood, wind, or other natural or man-made disasters.

B. Only authorized persons ~~who are clearly identified~~ shall have access to areas where juvenile record information is collected, stored, processed, or disseminated. Locks, guards, or other appropriate means shall be used to control access.

**6VAC35-160-100. Requirements when records are automated.**

Participating agencies having automated juvenile record information files shall:

1. Designate a ~~system administrator~~ data owner to maintain and control authorized user accounts, system management, and the implementation of security measures;
2. ~~Maintain "backup" copies of juvenile record information, preferably off-site;~~

- ~~3. Develop a disaster recovery plan, which shall be available for inspection and review by the department;~~
2. Develop and implement a logical access procedure to prevent unauthorized access and dissemination
- ~~4. Carefully control system specifications and documentation to prevent unauthorized access and dissemination; and~~
53. Develop procedures for discarding old computers to ensure that information contained on those computers is not available to unauthorized persons. All data must be completely erased or otherwise made unreadable in accordance with COV ITRM Standard SEC 514-03, Removal of Commonwealth Data from Electronic Media Standard.

#### **6VAC35-160-110. Access controls for computer security.**

A. Where juvenile record information is computerized, logical access controls shall be put in place to ensure that records can be queried, updated or destroyed only from approved system user accounts. Industry standard levels of encryption shall be required to protect all confidential juvenile record information moving through any network.

B. The logical access controls described in ~~subsection A of this section~~ shall be known only to the employees of the participating agency who are responsible for control of the juvenile record information system or to individuals and agencies operating under a specific agreement with the participating agency to provide such security programs. The access controls shall be kept ~~under maximum security conditions~~ secure.

C. Computer operations, whether dedicated or shared, that support juvenile record information shall operate in accordance with procedures developed or approved by the department.

D. Juvenile record information shall be stored ~~by the computer~~ in such a manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion except via an approved system user account.

#### **6VAC35-160-130. Security of telecommunications.**

A. ~~Ordinarily, dedicated telecommunications lines shall be required for direct or remote access to computer systems containing juvenile record information. However, the~~ The department may permit the use of a nondedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to juvenile record information to authorized persons. Industry standard levels of encryption shall be required to protect all juvenile record information moving through any network.

B. Where remote access of juvenile record information is permitted, remote access devices must be secure. Remote access devices capable of receiving or transmitting juvenile record information shall be secured during periods of operation. When the remote access device is unattended, the device shall be made inoperable for purposes of accessing juvenile record information by implementing a screen saver lockout period after a maximum of 15 minutes of inactivity for devices as required by COV ITRM Standards SEC 501-08. In addition, appropriate identification of the remote access device operator shall be required.

C. The Telecommunications ~~telecommunications connection~~ facilities used in connection with the remote access device shall also be secured. ~~The telecommunications~~ Telecommunication connections facilities shall be reasonably protected from possible tampering or tapping.

#### **6VAC35-160-150. Correcting errors.**

Participating agencies shall immediately notify the appropriate ~~VJIS functional administrator~~ data owner when it is found that incorrect information has been entered into the ~~juvenile justice information system~~ VJIS.

The ~~VJJIS functional administrator~~ data owner will make arrangements to correct the information as soon as practicable in accordance with department procedures.

**6VAC35-160-170. Information to be disseminated only in accordance with law applicable statutes and regulation regulations.**

A. In accordance with § 16.1-223 of the Code of Virginia, data stored in the ~~Virginia Juvenile Justice Information System~~ VJJIS shall be confidential. Information from such data that identifies an individual juvenile may be released only in accordance with § 16.1-300 of the Code of Virginia, applicable federal law, and this regulation.

B. Unauthorized dissemination of juvenile record information will result in the disseminator's being subject to the administrative sanctions described in 6VAC35-160-380. Unlawful dissemination also may be prosecuted as a Class 3 misdemeanor under § 16.1-309 of the Code of Virginia or as a Class 2 misdemeanor under § 16.1-225 of the Code of Virginia.

C. Additional disclosure limitations are provided in the ~~Health Insurance Portability and Accountability Act (42 USC §§ 1320d-5 and 1320d-6)~~ and the federal substance abuse law (42 USC § 290dd2(f)).

**6VAC35-160-180. Fees.**

Participating agencies may charge a reasonable fee for search and copying time expended when an individual or a nonparticipating agency requests juvenile record information. The participating agency shall inform the requester of the fees to be charged, and shall obtain written agreement from the requester to pay such costs prior to initiating the search for requested information. Any release shall be in accordance with applicable statutes and regulations.

**6VAC35-160-210. Determining requestor's eligibility to receive the information.**

A. Upon receipt of a request for juvenile record information, an appropriately designated person shall determine whether the requesting agency or individual is eligible to receive juvenile record information as provided in § 16.1-300 of the Code of Virginia, federal law, and this regulation.

B. The determination as to whether a person, agency or institution has a "legitimate interest" in a juvenile's case shall be based on the criteria specified in ~~§ 16.1-300 A (7)~~ subdivision A 7 of § 16.1-300 of the Code of Virginia.

C. When there is a request to disseminate health records or substance abuse treatment records, the person responding to the request shall determine whether the requested information is protected ~~by the Health Insurance Portability and Accountability Act of 1996 or~~ by the federal law on substance abuse treatment records (42 USC § 290dd-2 and 42 CFR Part 2), and may consult with designated department personnel in making this determination. Health records and substance abuse treatment records shall be disseminated only in strict compliance with the applicable federal statutory requirements, the Code of Virginia, and this regulation.

**6VAC35-160-220. Responding to requests.**

A. Once it is determined that a requestor is entitled to juvenile record information, a designated individual shall inform the requestor of the procedures for reviewing the juvenile record information, including the general restrictions on the use of the data, when the record will be available, and any costs that may be involved.

B. When the request for juvenile record information is made by an individual's parent, guardian, legal custodian or other person standing in loco parentis, the request shall be referred to designated personnel of the department. (See 6VAC35-160-230.)

~~C. Before beginning the search for the requested juvenile record information, a designated individual shall inform the requester of any fees that will be charged pursuant to 6VAC35-160-180 and shall obtain the consent of the requester to pay any charges associated with providing the requested information.~~

~~DC. All records containing sensitive data (e.g. name, date of birth, social security number, address) shall be encrypted prior to electronic dissemination.~~ Except as provided in subsection B of this section, requested records shall be provided as soon as practicable, but in any case within ~~seven~~ ten business days unless compliance with other applicable regulations requires a longer response time.

~~ED. If the request for information is made to a participating agency and the participating agency does not have access to the particular information requested, the requestor shall be notified and shall be told how to request the information from the appropriate source, if known.~~

~~FE. Personnel of the participating agency shall provide reasonable assistance to the individual or his attorney to help understand the record.~~

~~GF. The person releasing the record shall also inform the individual of his right to challenge the record as provided in 6VAC35-160-280.~~

~~HG. If no record can be found, a statement shall be furnished to this effect.~~

#### **6VAC35-160-260. Reporting unauthorized disseminations.**

A. Participating agencies shall notify the department when they observe any violations of the ~~above~~ dissemination regulations contained in Part III of this chapter. The department ~~will~~ shall investigate and respond to the violation as provided in law and this ~~chapter~~ regulation.

B. A participating agency that knowingly fails to report a violation may be subject to an immediate audit of its entire dissemination log and procedures to ensure that disseminations are being appropriately managed.

### Part IV

#### Challenge To and Correction of Juvenile Record Information

#### **6VAC35-160-280. Challenge.**

A. Individuals, or persons acting on an individual's behalf as provided for by law, may challenge their own juvenile record information by completing documentation provided by the department and forwarding it to the ~~functional proponent~~ data owner who is responsible for the applicable component of the ~~the Virginia Juvenile Justice Information System VJJIS~~ as prescribed in department procedures.

B. When a record that is maintained by the VJJIS is challenged, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." The individual shall be given an opportunity to ~~make~~ provide a brief written statement describing how the information contained in the record is alleged to be inaccurate. When a challenged record is disseminated while under challenge, the record shall carry both the flagged message and the individual's statement, if one has been provided.

C. The ~~VJJIS functional administrator~~ data owner or designee shall examine the individual's record to determine if a data entry error was made. If a data entry error is not obvious, the ~~VJJIS functional administrator~~ data owner shall send a copy of the challenge form and any relevant information to all agencies that could have originated the information under challenge, and shall ask them to examine their files to determine the validity of the challenge.

D. The participating agencies shall examine their source data, the contents of the challenge, and information supplied by the VJJIS for any discrepancies or errors, and shall advise the ~~VJJIS functional administrator~~ data owner of the results of the examination.

E. If a modification of a VJIS record is required, the ~~VJIS functional administrator~~ data owner shall ensure that the required change is made and shall notify all participating agencies that were asked to examine their records in connection with the challenge.

F. Participating agencies that, pursuant to 6VAC35-160-220, have disseminated an erroneous or incomplete record shall in turn notify all entities that have received the erroneous juvenile record information as recorded on the agency's dissemination log.

G. The participating agency that received the challenge shall notify the individual or person acting on the individual's behalf of the results of the challenge and the right to request an administrative review and appeal those results.

#### **6VAC35-160-290. Administrative review of challenge results.**

A. If not satisfied with the results of the challenge, the individual or those acting on his behalf may, within 30 calendar days, request in writing an administrative review of the challenge by the ~~Director~~ director of the ~~Department of Juvenile Justice~~ department.

B. Within 30 days of receiving the written request for the administrative review, the ~~Director~~ director of the ~~Department of Juvenile Justice~~ department, or a designee who is not the ~~VJIS functional administrator~~ data owner who responded to the challenge, shall review the challenge, the findings of the review, and the action taken by the ~~VJIS functional administrator~~ data owner. If the administrative review supports correction of the juvenile record information, the correction shall be made as prescribed above.

#### **6VAC35-160-300. Removal of a challenge designation.**

When the challenge to the juvenile juvenile's record information has been resolved ~~is determined to be correct~~, either as a result of a challenge or an administrative review of the challenge, the ~~VJIS functional administrator~~ data owner shall notify the affected participating agencies to remove the challenge designation from their files.

### Part V Expungement

#### **6VAC35-160-310. Expungement requirements.**

When a court orders or law requires the expungement of an individual's juvenile records, all records and personal identifying information associated with the expungement order shall be destroyed in accordance with the court order or statutory requirement. Nonidentifying information may be kept in databases or other aggregated files for statistical purposes.

#### **6VAC35-160-320. Notification to participating agencies.**

The ~~VJIS functional administrator~~ data owner shall notify all participating agencies to purge their records of any reference to the person whose record has been ordered expunged. The notification shall include a copy of the applicable court order, along with notice of the penalties imposed by law for disclosure of such personal identifying information (see § 16.1-309 of the Code of Virginia).

#### **6VAC35-160-330. Procedures for expunging juvenile record information.**

A. Paper versions of records that have been ordered expunged shall be destroyed by shredding, incinerating, pulping, or otherwise totally eradicating the record.

B. Computerized versions of records that have been ordered expunged shall be deleted from all databases and electronic files in such a way that the records cannot be accessed or recreated through ordinary use of

any equipment or software that is part of the ~~Virginia Juvenile Justice Information System VJJIS~~ and in accordance with the ITRM SEC 514-03 Removal of Electronic Data from Electronic Media standard.

C. If personal identifying information concerning the subject individual is included in records that are not ordered expunged, the personal identifying information relating to the individual whose records have been ordered expunged shall be obliterated on the original, or a new document shall be created eliminating the personal identifying references to the individual whose record has been ordered expunged.

**6VAC35-160-340. Confirmation notice required to ~~VJJIS functional administrator~~ data owner.**

Within 30 calendar days of receiving expungement instructions from the ~~VJJIS functional administrator~~ data owner, the participating agency shall expunge the juvenile record information in accordance with 6VAC35-160-330 and shall notify the ~~VJJIS functional administrator~~ data owner when the records have been expunged. The notification to the ~~VJJIS functional administrator~~ data owner shall indicate that juvenile records were expunged in accordance with court order and shall not identify the juvenile whose records were expunged.

**6VAC35-160-350. Expungement order received directly by participating agency.**

When a participating agency receives an expungement order directly from a court, the participating agency shall promptly comply with the expungement order in accordance with 6VAC35-160-330 and shall notify the ~~VJJIS functional administrator~~ data owner of the court-ordered expungement. The ~~VJJIS functional administrator~~ shall data owner, upon receipt of such notification, shall contact the appropriate court and determine the validity of the notification, as applicable. obtain a copy of the order from the appropriate court.

Part VI

Disposition of Records in the Juvenile Justice Information System

**6VAC35-160-355. Record retention.**

All records in the ~~Virginia Juvenile Justice Information System VJJIS~~ shall be retained and disposed of in accordance with the applicable records retention schedules approved by the Library of Virginia. When a participating agency or a unit of a participating agency disposes of records in the physical possession of the participating agency or the unit of a participating agency, the person who disposes of such records shall notify the ~~VJJIS functional administrator~~ data owner to remove that same information from VJJIS.

Part VII

Enforcement

**6VAC35-160-360. Oversight by the ~~Department of Juvenile Justice~~ department.**

A. The ~~Department of Juvenile Justice~~ department shall have the responsibility for monitoring compliance with this chapter and for taking enforcement action as provided in this chapter or by law applicable state and federal statutes and regulations.

B. The department shall have the right to audit, monitor, and inspect any facilities, equipment, software, systems, or procedures established pursuant to required by this chapter.

**6VAC35-160-390. ~~Annual report to the board.~~**

~~The department shall annually report to the board on the status of the Juvenile Justice Information System, including a summary of (i) any known security breaches and corrective actions taken; (ii) any audits conducted;~~



whether random or for cause; and (iii) any challenges received alleging erroneous information and the outcome of any investigation in response to such a challenge.



Andy K. Block, Jr. *COMMONWEALTH OF VIRGINIA*  
Director

## Department of Juvenile Justice

### MEMORANDUM

**TO:** State Board of Juvenile Justice

**FROM:** Virginia Department of Juvenile Justice

**DATE:** June 15, 2016

**SUBJECT:** Request to Advance the Proposed Regulation, Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice (6VAC35-170), to the Final Stage of the Regulatory Process.

#### I. Summary of Action Requested

The Proposed Regulation, Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice, 6VAC35-170, has been proceeding through the regulatory process since February 2014, and the public comment period for the regulation at the proposed stage closed February 28, 2016.

The proposed changes are the result of a comprehensive review of the regulation. The changes establish clear, concise, and consistent rules, rights, and responsibilities for researchers conducting human research on juveniles, and protect the confidentiality of participating juveniles who are under the care of the Department of Juvenile Justice (Department) or other Board of Juvenile Justice (Board) regulated programs or facilities.

The Department requests that the Board adopt the proposed and amended language and advance the regulation to the final stage of the regulatory process.

Section III summarizes the major substantive changes proposed in the draft; section IV summarizes the proposed changes that the Board is requested to consider adopting before advancing the regulation to the final stage.

#### II. Background

The Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice, 6VAC35-170, establishes the regulatory requirements and minimum standards for research on human subjects who are under the care or supervision of the Department or other Board-

regulated programs or facilities. The regulation became effective February 1, 2005, and is intended to protect the safety, rights, and confidentiality of human research subjects.

### Timeline of the Review of the Human Research Regulation

April 21, 2014	NOIRA Published
November 12, 2014	Board approved proposed language
December 28, 2015	Proposed language published in the <i>Virginia Register</i> .
February 28, 2016	The public comment period at the proposed stage closed. No public comments were received.

### III. Summary of Proposed Changes as Published in the Virginia Register on December 28, 2015

The proposed amendments provide the public information on the requirements and the decision process for research proposals involving only data requests. Specifically, the proposed language sets out the process and procedures for all external data requests and research proposals within the Commonwealth's juvenile justice system. The proposed language provides the process for the review and approval of two new types of external data requests: 1) external aggregate data requests (new section: 6VAC35-170-62) and 2) external case-specific data requests (new section: 6VAC35-170-65).

The proposed language also addresses researcher noncompliance (new section 6VAC35-170-185). Additionally, the proposed amendments require researchers to report noncompliance with the conditions of the signed research agreements and authorize the Department and Human Research Review Committee to prohibit further research or restrict the publication and use of the data research results.

Below is a summary of the proposed changes to the regulation. These changes were approved by the Board in November 2014 and were published in the *Virginia Register* on December 28, 2015. During the public comment period, no comments were received on these changes. The summary breaks down the changes by section:

#### **Title – Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice**

- Changes the title to “Regulation Governing Minimum Standards for Juvenile Information Requests from and Research Involving Human Subjects within the Department of Juvenile Justice”

#### **Section 10 – Definitions**

- Adds the following definitions: (i) aggregate data, (ii) case-specific data, (iii) de-identified data, (iv) encrypted, (v) external research, (vi) human research review committee, and (vii) written.
- Substantively amends the following definitions: (i) human research, (ii) organizational unit head.

#### **Section 30 – Professional ethics**

- Amends to add the American Evaluation Association as an example of a professional society that follows the standard of ethics to which all research must conform.

**Section 40 – Confidentiality requirements of all research**

- Replaces language with newly adopted term, “de-identified data,” to allow the researcher to utilize such data without violating the regulation’s confidentiality provisions.

**Section 50 – Conditions for department approval of external research**

- Amends to require, as a condition for the Department’s approval of a research request involving aggregated or de-identified data, that the request comply with all department procedures posted on its website.

**Section 62 – Review and approval of aggregate data requests**

- Adds a new section that sets out the review and approval process for aggregate data requests.
- Language requires the requests be submitted pursuant to department procedures and gives the external coordinator the authority to approve such requests.

**Section 65 – External case-specific data requests**

- Adds a new section that sets out the procedures for submitting external case-specific data requests.
- Language requires the requests be submitted to the Department using the Research Proposal Form, Research Agreement Form, and other attachments.
- Language identifies the information that must be removed from the data provided to researchers, but grants the director the discretion to disseminate data containing some identifiers for research benefiting the department.
- Language requires the designation of a committee to review the data, determine whether the research is beneficial to the department, verify that the juvenile’s information is protected, and make recommendations to the director as to whether to approve the request.

**Section 80 – Informed consent required for human research**

- Adds new language to address the procedure when two legally authorized representatives of an incompetent prospective human research subject disagree as to whether to provide consent, in which case, the subject is prohibited from participating in the human research project.

**Section 100 – Proposal for external research**

- Amends language to clarify that the required endorsement that must be included in the research proposal submitted to the coordinator for an external research project be written.

**Section 120 -- Research proposals not involving human research**

- Repeals this section, which requires Department staff to review and the director to approve or deny research proposals not involving human research.

**Section 140 – Timeline for review of human research proposals**

- Amends language to clarify that the Human Research Review Committee will review human research proposals within 30 **business** days of receiving the proposal.

**Section 170 – Recommendation to director and final action**

- Amends language to clarify that the director will approve or deny a human research proposal within 10 **business** days of receiving the human research review committee’s recommendation.

**Section 185 – Researcher noncompliance**

- Adds a new section to require the researcher to report noncompliance with the approved research proposal to the Human Research Review Committee and the institutional review board, and gives the Department the authority to restrict or terminate further research, or prohibit the researcher from presenting or publishing the research results in cases of noncompliance.

**Section 190 – Committee reports required**

- Removes the requirement that the annual report on human research projects that the Human Research Review Committee must submit to the Governor, the General Assembly, and the director include a summary of human research proposals that were not approved.

**Section 200 – Progress reports**

- Adds a requirement that the researcher submit an annual progress report to the coordinator of external research when the research is not completed within one year of approval.

**Section 220 – Final report**

- Adds language to allow the director or his designee to waive the non-endorsement statement that would otherwise need to be included in any final report, indicating that the findings of the report are not endorsed by the Department.

**III. Summary of Proposed Changes after the Regulation was Published in the Virginia Register**

Below is a summary of the Department-recommended changes to the regulation from what was approved by the Board at its November 12, 2014 meeting.

**Section 162 – Review and approval of aggregate data requests**

- Replaces ‘coordinator of external research’ with a generic reference to the “department” as the entity that will determine whether the requirements for aggregate data requests are satisfied, and will approve such requests.

6VAC35-170

CHAPTER 170

REGULATION GOVERNING MINIMUM STANDARDS FOR JUVENILE INFORMATION REQUESTS FROM AND RESEARCH INVOLVING HUMAN SUBJECTS OR RECORDS OF WITHIN THE DEPARTMENT OF JUVENILE JUSTICE

**6VAC35-170-10. Definitions.**

Unless the context clearly indicates otherwise, the following words and terms when used in this ~~regulation~~ chapter shall have the following meanings, consistent with the definitions offered in § 32.1-162.16 of the Code of Virginia:

"Aggregate data" means statistics that relate to broad classes, groups, or categories so that it is not possible to distinguish the properties of individuals within those classes, groups, or categories.

"Case-specific data" means nonaggregated data that provides information about individuals within a group.

"Coordinator of external research" is the department employee designated by the director to receive research proposals from external entities and ensure that the proposals are reviewed in accordance with this ~~regulation~~ chapter and related department procedures.

"De-identified data" means data with common identifiers, such as names, phone numbers, social security numbers, addresses, etc., removed in order to eliminate the ability of an individual viewing the data to determine the identity of an individual.

"Department" means the Department of Juvenile Justice.

"Director" means the Director of the Department of Juvenile Justice, ~~or his designee.~~

"Encrypted" means the transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process or key or the securing of the information by another method that renders the data elements unreadable or unusable.

"External research" means research conducted at or using the resources of a facility, program, or organization that is owned, operated, or regulated by the department or the Board of Juvenile Justice by researchers who are not part of the department or under contract to the department, or who are not employees of another state agency conducting a study at the direction of the General Assembly.

~~"Human subject" means any individual who is under the department's care, custody or supervision, or a member of the family of such an individual, who is or who is proposed to be a subject of human research.~~

~~"Human research" means any systematic investigation using human subjects, that may expose those subjects to physical or psychological injury, and that departs from the application of established and accepted therapeutic methods appropriate to meet the subject's needs including research development, testing and evaluation, utilizing human subjects that is designed to develop or contribute to generalized knowledge. Human research shall not be deemed to include research exempt from federal research regulation pursuant to 45 CFR 46.101(b).~~

"Human Research Review Committee" means the committee established by the department to oversee human research proposals and activities in accordance with 6VAC35-170-130 and § 32.1-162.19 of the Code of Virginia.

"Human subject" means any individual who is under the department's care, custody, or supervision, or a member of the family of such an individual, who is, or who is proposed to be, a subject of human research.

"Informed consent" means the knowing and voluntary agreement without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion of a person who is capable of exercising free choice. The basic elements necessary for informed consent regarding human research include:

1. A reasonable and comprehensible explanation to the person of the proposed procedures and protocols to be followed, their purposes, including descriptions of any attendant discomforts, and risks and benefits reasonably to be expected;

2. A disclosure of ~~any~~ alternative procedures or therapies that might be helpful to the person;
3. An instruction that the person may withdraw his consent and stop participating in the human research at any time without prejudice to him;
4. An explanation of ~~any~~ costs or compensation that may accrue to the person and whether third party reimbursement is available for the proposed procedures or protocols; and
5. An offer to answer, and answers to, ~~any~~ questions by the person about the procedures and protocols.

"Legally authorized representative" means the parent or parents having custody of a prospective subject; the legal guardian of a prospective subject; or any person or judicial or other body authorized by law to consent on behalf of a prospective subject to such subject's participation in the particular human research, including an attorney in fact appointed under a durable power of attorney, provided the power grants the authority to make such a decision and the attorney in fact is not employed by the person, institution, or agency conducting the human research. No official or employee of the institution or agency conducting or authorizing the research shall act as a legally authorized representative.

"Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the human subject.

"Organizational unit head" means the person in charge of a juvenile correctional center, ~~halfway house~~, court service unit, ~~regional office~~ or other organizational unit of the department.

"Principal researcher" means the individual who is responsible for the research design, the conduct of research, supervision of ~~any~~ research staff, and the research findings.

"Research" means the systematic development of knowledge essential to effective planning and rational decision-making. It involves the assessment of current knowledge on conceptual problems selected, statement of those problems in researchable format, design of methodologies appropriate to the problems, and the application of statistical techniques to organize and analyze data. Research findings should provide valuable information to management for policy options.

"Researcher" means an individual conducting research.

"Research project" means the systematic collection of information, analysis of the data, and the preparation of a report of findings.

"Written" means the required information is communicated in writing. Such writing may be available in either hard copy or electronic form.

#### **6VAC35-170-30. Professional ethics.**

The All research shall conform to the standards of ethics of professional societies such as the American Correctional Association, the American Psychological Association, the American Sociological Association, the National Association of Social Workers, the American Evaluation Association, or their equivalent.

#### **6VAC35-170-40. Confidentiality requirements of all research.**

A. Research findings shall not identify individual subjects.

B. All records and all information given by research subjects or employees of the department shall be kept confidential in accordance with § 16.1-300 of the Code of Virginia, and applicable rules and regulations regarding confidentiality of juvenile records.

C. Persons who breach confidentiality shall be subject to sanctions in accordance with applicable laws, regulations, policies, and procedures.

D. Confidentiality does not preclude reporting results ~~in a consolidated form that protects the identity of individuals,~~ utilizing de-identified data or giving raw data to the department for possible further analysis.

**6VAC35-170-50. Conditions for department approval of external research.**

The department ~~will~~ may approve research projects only when it determines, in its sole discretion, that the following conditions have been met:

1. The department has sufficient financial resources and staff to support the research project, and that on balance the benefits of the research justify the department's involvement;
2. The proposed research will not interfere significantly with department programs or operations, particularly those of the operating units that would participate in the proposed research; ~~and~~
3. The proposed research is compatible with the purposes and goals of the juvenile justice system and with the department's organization, operations, and resources; and
4. The proposed research requests for aggregate data or de-identified data, and the human research proposals, comply with all department procedures, which shall be posted on the department's website.

**6VAC35-170-62. Review and approval of aggregate data requests.**

A. Aggregate data requests shall be submitted to the department in accordance with procedures posted on the department's website.

B. The ~~coordinator of external research department~~ shall determine the following prior to approving the request:

1. The request meets the conditions for department approval of research identified in 6VAC35-170-30 and 6VAC35-170-50;
2. The data requested is accessible;
3. An estimate of the time required to process the data request; and
4. Based on staff workload, if staff resources are available to process the data request.

C. The ~~coordinator of external research department~~ may approve and coordinate the provision of data.

D. The principal researcher shall be notified in writing of the approval or denial of the data request within 20 business days of the department receiving the proposal.

1. The department shall provide the principal researcher with documentation of the rationale for the denial of the request when applicable.
2. The department shall provide the principal researcher with a written estimated timeline for receipt of the data when applicable.

**6VAC35-170-65. External case-specific data requests.**

A. External case-specific data requests shall be submitted to the department via the Research Proposal Form, the Research Agreement Form, and any attachment required by department procedures.

B. The Research Agreement Form shall be signed by the principal researcher and the student researcher, if applicable, at the time of submission.

C. The coordinator of external research shall determine the following within 10 business days of receiving the research proposal:

1. The request meets the conditions for department approval of research identified in 6VAC35-170-30 and 6VAC35-170-50;
2. The proposal is not a human research proposal and is not required to be reviewed by the Human Research Review Committee;
3. The principal researcher has appropriate academic or professional standing or job-related experience in the area to be studied;



4. The proposal is in the required format and includes all required information;

5. The proposal complies with basic research standards and applicable laws;

6. The data requested is accessible;

7. Department staff and resources are available to process the data request; and

8. An estimate of the time required to compile the data request.

D. The following identifiers shall be removed from the data provided to researchers:

1. Names;

2. Dates (date of birth, date of admission, date of release, etc.);

3. Postal address information, other than town or city, state, and zip code;

4. Telephone numbers;

5. Social security numbers;

6. Medical record numbers;

7. Account numbers (Juvenile Tracking System, Direct Care, etc.);

8. Biometric identifiers, including finger and voice prints; and

9. Full face photographic images and any comparable image.

E. The director or his designee may on a case-by-case basis approve the dissemination of data containing a limited number of the identifiers listed in subsection D of this section for research benefiting the department.

F. The human research review process shall be followed when the data requested by a researcher are such that a reasonable person could identify the research participants.

G. Industry standard levels of encryption shall be required to protect all juvenile record information provided to researchers.

H. Upon determining the requirements in subsection C of this section are met, the director or his designee shall designate a committee to meet within 20 business days of receiving the proposal. The committee shall:

1. Review the data requested and determine if it is necessary to restrict the scope of the information provided.

The scope of information may be restricted for any reason.

2. Determine the research is beneficial to the department.

3. Ensure juvenile confidential information will be adequately protected.

4. Make a recommendation to the director or his designee to approve or disapprove the request.

I. The director shall approve or deny the proposal within 10 business days of receiving the recommendation.

J. The department shall notify the researcher of the director's decision within five business days of the director making the decision.

K. Notification of the denial of a proposal shall include a written rationale.

L. Notification of the approval of a proposal shall include the research agreement. The research agreement shall outline the respective responsibilities of the parties and will specify:

1. When progress reports shall be required. If the external research also involves human research, this schedule of progress reports shall be developed in consultation with the Human Research Review Committee;

2. The department shall have unrestricted permission to use the research findings in accordance with professional standards of research;

3. A final report shall be submitted electronically to the department;

4. Unless waived by the director or designee, all external articles, reports, and presentations made from the data collected shall be submitted electronically to the department and shall include the statement, "The findings of this study are the responsibility of the researchers, and cooperation by the Virginia Department of Juvenile Justice in facilitating this research should not be construed as an endorsement of the conclusions drawn by the researchers."; and

5. The research agreement is not effective until signed by both the principal researcher and the director or his designee.

M. The department shall provide a final signed copy of the research agreement to the principal researcher by first class mail, electronic mail, or facsimile.

**6VAC35-170-80. Informed consent required for human research (see § 32.1-162.18 of the Code of Virginia).**

A. If a human subject is competent, informed consent shall be given in writing by the subject and witnessed.

B. If a human subject is not competent, informed consent shall be given in writing by the subject's legally authorized representative and witnessed.

C. If a human subject is a minor who is otherwise capable of giving informed consent, informed consent shall be given in writing by both the minor and his legally authorized representative.

D. If two or more persons who qualify as legally authorized representatives with decision-making authority inform the researcher that they disagree as to participation of the prospective subject in human research, the subject shall not be enrolled in the human research that is the subject of the consent.

~~D.~~ E. Notwithstanding consent by a legally authorized representative, no person who is otherwise capable of giving informed consent shall be forced to participate in any human research.

~~E.~~ F. A legally authorized representative may not consent to nontherapeutic research unless the Human Research Review Committee determines that such nontherapeutic research will present no more than a minimal risk to the human subject.

~~F.~~ G. No informed consent form shall include any language through which the human subject waives or appears to waive any legal rights right, including any release of any individual, institution, or agency or any agents agent thereof from liability for negligence (see § 32.1-162.18 of the Code of Virginia).

**6VAC35-170-100. Proposal for external research.**

A. If the research is proposed to take place in a particular organizational unit, the principal researcher shall present a preliminary research proposal to the head of that organizational unit and get the organizational unit head's endorsement of the proposal, in accordance with procedures established by the department.

B. The principal researcher shall submit to the coordinator of external research a complete research proposal describing the research project, and containing:

1. Name, address, telephone numbers, title and affiliation of the principal researcher;
2. Name of the person who will immediately supervise the project, if different from the principal researcher;
3. Funding source, if any;
4. Date of the proposal's submission to the department;
5. Title or descriptive name of the proposed research project;
6. Statement of the specific purpose or purposes of the proposed research project with anticipated results, including benefit to the department;
7. A concise description of the research design and techniques for data collection and analysis, and of the likely effects of the research methodology on existing programs and institutional operations;
8. ~~Time frames~~ Timeframes indicating proposed beginning and ending dates for (i) data collection, (ii) analysis, (iii) preliminary report, and (iv) final report;
9. A listing of ~~any~~ resources the researcher will require from the department or its units, such as staff, supplies, materials, equipment, work spaces, or access to clients and files;
10. ~~Endorsement~~ A written endorsement from the head of the organizational unit where the research will be conducted, if applicable;
11. For student research, endorsement from the researcher's academic advisor or other appropriate persons;
12. For research involving records of juveniles at state and local court service units, a written endorsement from the appropriate juvenile and domestic relations judge or judges;

13. For human research, a written endorsement from the institutional review board of the institution or organization with which the researcher is affiliated; and

14. For all research projects, a signed and dated statement that the principal researcher and research staff have read, understand, and agree to abide by these regulations.

**6VAC35-170-120. ~~Research proposals not involving human research. (Repealed.)~~**

~~Designated department staff shall review research proposals that do not involve human research and make a recommendation to the director within 20 days of receiving the proposal. The director shall approve or deny proposals within 10 days of receiving the staff recommendation.~~

**6VAC35-170-140. Timeline for review of human research proposals.**

A. ~~The human research review committee~~ Human Research Review Committee will review proposals involving human research within 30 business days of receiving a complete research proposal.

B. At the request of the researcher, the ~~committee~~ Human Research Review Committee may conduct an expedited review when the proposed research involves no more than minimal risk to the human subjects and:

1. The proposal has been reviewed and approved by another agency's human research review committee; or
2. The review involves only minor changes to a research project that was previously approved.

**6VAC35-170-170. Recommendation to director and final action.**

A. ~~The committee~~ Human Research Review Committee shall make a recommendation to the director to deny, approve, or conditionally approve the proposed human research.

B. The director shall approve or deny the proposal within 10 business days of receiving the committee's recommendation.

C. The research agreement shall become effective only after all reviews required by this regulation and department procedures are completed and the director signs the agreement on behalf of the department. The coordinator of external research must send a copy of the signed ~~Research Agreement~~ research agreement to the researcher before the project may begin.

**6VAC35-170-185. Researcher noncompliance.**

A. The researcher shall report noncompliance with the approved research proposal to the Human Research Review Committee and the institutional review board.

B. Research activities identified by the department or the Human Research Review Committee as failing to comply with the approved proposal or in violation of the Code of Virginia or the Virginia Administrative Code may result in the department restricting or terminating further research and the department may prohibit the researcher from presenting or publishing the research results.

**6VAC35-170-190. Committee reports required.**

A. In accordance with § 66-10.1 of the Code of Virginia, the ~~committee~~ Human Research Review Committee shall submit to the Governor, the General Assembly, and the director at least annually a report on human research projects approved by the committee; and the status of such research, including any significant ~~deviations~~ deviation from the proposals as approved.

B. ~~The committee~~ Human Research Review Committee shall also annually submit to the Board of Juvenile Justice the same report as required by subsection A of this section. ~~The report to the board shall also include a summary of human research proposals that were not approved.~~

**6VAC35-170-200. Progress reports.**

A. The department may require periodic reports on the progress of any research project. The principal researcher shall be responsible for providing such reports, and any supplementary information requested by the department, in a timely manner.

B. The researcher shall submit an annual progress report to the coordinator of external research when the research is not completed within one year of approval.

**6VAC35-170-220. Final report.**

A. The department shall require that a formal final report be submitted to the coordinator of external research; and may require up to 10 copies of the report.

B. The report shall, unless waived by the director or designee, contain the following statement:

"The findings of this study are the responsibility of the researchers, and cooperation by the Virginia Department of Juvenile Justice in facilitating this research should not be construed as an endorsement of the conclusions drawn by the researchers."

6VAC35-170-9998

FORMS (6VAC35-170)

Research Proposal Summary (undated; filed 12/2015)

Research Agreement (undated; filed 12/2015)