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Robert Vilchez, Vice Chair  
Dana G. Schrad, Secretary  
David R. Hines  
Scott Kizner  
Robyn D. McDougale  
Anita James Price  
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COMMONWEALTH of VIRGINIA  
*Board of Juvenile Justice*

## DRAFT MEETING MINUTES

June 16, 2021 ☞ Virtual Meeting

Pursuant to amendments to the Budget Bill approved on April 24, 2020, and set forth in Item 4.0-0.1, and in light of the Governor's declaration of a state emergency to curb the spread of COVID-19, the Board of Juvenile Justice met by videoconference at its June 16, 2021, meeting. The Board considered a virtual meeting necessary due to concerns that the nature and continuing spread of the virus throughout the Commonwealth rendered meeting at a single location unsafe for Board members, Department of Juvenile Justice personnel, and members of the public.

**Board Members Present:** Tyren Frazier, David Hines, Scott Kizner, Robyn McDougale, Dana Schrad, Gregory (Greg) Underwood, and Robert (Tito) Vilchez. Anita James Price was present, but due to technology issues, she was unable to vote or speak during the meeting.

**Board Member Absent:** Quwanisha Roman

**Department of Juvenile Justice Staff Present:** Ken Bailey, Melinda Boone, Valerie Boykin, Ken Davis, Jenna Easton, Mike Favale, Wendy Hoffman, Joyce Holmon, Linda McWilliams, Kristen Peterson, James Towey, and Angela Valentine

### CALL TO ORDER and INTRODUCTIONS

Chairperson Tyren Frazier called the meeting to order at 9:31 a.m. Chairperson Frazier welcomed those present and asked for Board member introductions. Director Valerie Boykin asked for staff introductions. Due to limitations with the media platform used for the meeting, guests were not able to make introductions.

Director Boykin announced the departure of Kristen Peterson from the Department of Juvenile Justice (Department). Director Boykin, along with the Board members, wished Kristen well and thanked her for her many contributions to the Department and the Commonwealth.

### CONSIDERATION OF MINUTES FOR APRIL 29, 2021

The minutes of the April 29, 2021, Board meeting were provided for approval. On motion duly made by Dana Schrad and seconded by Robyn McDougale, the Board approved the minutes as presented by roll call vote as follows: Tyren Frazier – Aye, David Hines – Aye, Scott Kizner – Aye, Robyn McDougale – Aye, Dana Schrad – Aye, Greg Underwood – Aye, and Robert Vilchez – Aye. Motion carried.

### PUBLIC COMMENT

There was no public comment.

## **DIRECTOR'S CERTIFICATION ACTIONS**

Ken Bailey, Certifications Manager, Department of Juvenile Justice

Included in the Board packet are the individual audit reports and a summary of the Director's certification actions taken on April 8, 2021.

Mr. Bailey noted the audit results for this cycle were well done, which demonstrated the Department's ability to continue the provision of services to youth and remain in compliance with regulations during difficult times.

The Court Service Units for the 3<sup>rd</sup> District, 9<sup>th</sup> District, and 20W District received 100% compliance on their audits and a letter of congratulations for their performance level.

The audit for the 15<sup>th</sup> Court Service Unit found two areas of non-compliance. A follow-up review on March 1 reported compliance could not be determine due to not having applicable cases to review. The 15<sup>th</sup> Court Service Unit was certified for three years, with the requirement that the Regional Program Manager monitor areas of non-compliance.

The audit for the 20L Court Service Unit found five deficiencies, and the unit was certified for three years. There was continued non-compliance in one area, and in two areas compliance could not be determined because of no applicable cases to review. The Regional Program Manager will monitor and report to the Director in September. 20L Court Service Unit has undergone changes in administration.

The 25<sup>th</sup> Court Service Unit had six deficiencies in their previous audit. The current audit found one deficiency, which was corrected by the time of the follow-up review on March 2, and the 25<sup>th</sup> Court Service Unit was certified for three years.

The audit for the 27<sup>th</sup> Court Service Unit found one deficiency, which was corrected by the follow-up review, and was certified for three years.

Mr. Bailey concluded the audits were conducted virtually with excellent IT resources for the Certification Unit to review audit points electronically. Virtual auditing has been well received by the Court Service Units.

## **CONSIDERATION OF THE FY 2021 – 2022 VIRGINIA JUVENILE COMMUNITY CRIME CONTROL ACT PLANS**

Jenna Easton, Program Manager, Department of Juvenile Justice

Ms. Easton presented the FY 2021-2022 Virginia Juvenile Community Crime Control Act (VJCCCA) plans for the Board's approval.

Ms. Easton requested the Board's approval on year two of the 2021-2022 biennium plans for Charlottesville (Combined Plan), Danville, Hampton, Henrico, Manassas City, and Surry. These six localities added prevention programs to their plans, which were first implemented in FY 2021. The plans were approved for only one year because the VJCCCA staff wanted to closely monitor this type of program. Due to the pandemic and associated school disruptions across the Commonwealth, the prevention programs were underutilized. The VJCCCA staff recommended approval of these six plans for FY 2022 and the continued implementation of prevention programming. The Martinsville Combined Plan was approved last year for one year in order to monitor the Anchor Program. The VJCCCA staff are working closely with Anchor staff to improve programming and help them move toward a shelter care facility that will be utilized as a detention alternative versus a group home.

On motion duly made by Dana Schrad and seconded by Robyn McDougale, the Board of Juvenile Justice approved the following VJCCCA plans for year two of the 2021-2022 biennium: Charlottesville Combined Plan, City of Danville, City of Hampton, Henrico County, City of Manassas, Martinsville Combined Plan, and Surry County by roll call vote as follows: Tyren Frazier – Aye, David Hines – Aye, Scott Kizner – Aye, Robyn McDougale – Aye, Dana Schrad – Aye, Greg Underwood – Aye, and Robert Vilchez – Aye. Motion carried.

The Board was requested to approve four plans reviewed and approved by VJCCCA staff. Fauquier and Rappahannock added a parenting program; Shenandoah added electronic monitoring; and Wythe added a program that is an online offense specific class called Third Millennium.

On motion duly made by Tyren Frazier and seconded by Robyn McDougale, the Board of Juvenile Justice approved the following revised VJCCCA plans for year two of the 2021-2022 biennium: Fauquier County, Rappahannock County, Shenandoah County, and Wythe County by roll call vote as follows: Tyren Frazier – Aye, David Hines – Aye, Scott Kizner – Aye, Robyn McDougale – Aye, Dana Schrad – Aye, Greg Underwood – Aye, and Robert Vilchez – Aye. Motion carried.

The Board was requested to approve three plans for one additional quarter through September 30, 2021. These plans are currently receiving intense technical assistance from VJCCCA staff to help improve and develop them. Oversight and technical assistance will continue throughout the year to ensure compliance and utilization of best practices. The three plans for which the VJCCCA staff are requesting approval are City of Lynchburg, City of Richmond, and the Frederick Combined plan (Frederick and Clarke Counties and the City of Winchester).

On motion duly made by Robyn McDougale and seconded by Robert Vilchez, the Board of Juvenile Justice approved the VJCCCA plans for the City of Lynchburg, the City of Richmond, and the Frederick Combined Plan for one additional quarter through September 30, 2021, by roll call vote as follows: Tyren Frazier – Aye, David Hines – Aye, Scott Kizner – Aye, Robyn McDougale – Aye, Dana Schrad – Aye, Greg Underwood – Aye, and Robert Vilchez – Aye. Motion carried.

## **LEGISLATIVE UPDATE**

James Towey, Legislative and Regulatory Affairs Manager, Department of Juvenile Justice

The 2021 General Assembly session was especially active for the Department with a focus on criminal justice reform. The Department soon will publish an updated legislative manual that will be available on the website, and a copy will be mailed to Board members.

Mr. Towey reviewed the bills with a direct impact on the Department.

## Eligibility Ages (SB 1456)



- Currently, there is no age requirement for pre-dispositional confinement in a secure facility.
- Establishes an eligibility age of 11 for pre-dispositional confinement in a secure facility.
- Those that are 10 and under charged with a violent juvenile felony, enumerated in subsections § 16.1-269.1(B) and (C), may initially be detained in a secure facility but may not remain in a secure facility.

Currently, there is no age requirement for pre-dispositional confinement. SB 1456 established an eligibility age of 11 for pre-dispositional confinement with a narrow exception for youth under the age of 10 or charged with a more serious offense.

## Eligibility Ages (SB 1456)



- Currently, a juvenile must be at least 11 to be eligible for commitment to DJJ.
- Increases the eligibility age for commitment to 14.
- Juveniles 11-13 charged with a violent juvenile felony, enumerated in § 16.1-269.1(B) and (C), may be committed to DJJ.

As of today, commitment to the Department requires a juvenile to be 11 years of age. This bill increased the age for commitment to 14. There is a narrow exception for youth ages 11 - 13 charged with more serious offenses.

## Eligibility Ages (SB 1456)



- Governor's Amendment to HB 1936.
- HB 1936 – Creates degrees of punishment corresponding to the severity of a robbery offense.
  - Robbery + causes serious bodily injury or death of any other person = Class 2 felony.
  - Robbery by using or displaying a firearm in a threatening manner = Class 3 felony.
  - Robbery by using physical force not resulting in serious bodily injury or by using or displaying a deadly weapon other than a firearm in a threatening manner = Class 5 felony.
  - Robbery by using threat or intimidation or any means not involving a deadly weapon = Class 6 felony.

A Governor's amendment impacted the eligibility age bill. HB 1936 separated the punishment of robbery into four different categories. Instead of one type of punishment, there are now four types.

## Eligibility Ages (SB 1456)



- Governor's Amendment amends § 16.1-269.1(C) to only include among the enumerated offenses the Class 2 and Class 3 robbery offenses.
- Thus, the Class 5 and Class 6 robbery categories are extracted from § 16.1-269.1(C) and, consequently, are extracted from the definition of "violent juvenile felony," defined in § 16.1-228 as any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

The Governor's amendment revised the portion of the transfer statute that deals with the transfer of youth from the juvenile court to the circuit court for certain offenses. It now only includes among the listed offenses that initiate transfer the more serious robbery categories set forth by the new bill. As a result, less severe robbery categories are extracted from the transfer statute as well as from the definition of "violent juvenile felony."

## "Appeal" to Magistrate (HB 1878)



- Section 16.1-260(E) - if the intake officer refuses to authorize a petition relating to an offense that would be a Class 1 misdemeanor or a felony, the complainant shall be notified of the right to apply to a magistrate for a warrant.
- If the magistrate determines that probable cause exists, he shall issue a warrant returnable to the JDR court. The intake officer must then accept and file a petition founded upon the warrant.

Another important bill put forward by the Department and passed by the General Assembly, is the "Appeal to the Magistrate". Currently, if the intake officer refuses to authorize a petition for a class one misdemeanor or a felony, the complainant is notified of their right to apply to a magistrate for a warrant notwithstanding the intake officer's decision. If the magistrate determines probable cause exists, the magistrate shall issue a warrant returnable to the Juvenile and Domestic Relations (JDR) court.

### **“Appeal” to Magistrate (HB 1878)**



- If the intake officer finds PC but diverts the case based on information about the youth and the offense, the diversion decision can thus be “appealed” to a magistrate.
- When appealed, the magistrate may only consider PC. So the magistrate must overturn the diversion decision if there is PC, regardless of considerations for alternatives that might better rehabilitate the juvenile.
- The complainant can obtain a warrant even after the 120 day period, after the youth has successfully completed diversion.

This would fix the following problem experienced by the Department: if the intake officer finds probable cause but diverts the case based on information about the youth and the offense, the intake officer can appeal to the magistrate. When appealed, the magistrate is unable to see the information about the youth that caused the intake officer to see diversion as appropriate. The magistrate is only allowed to determine probable cause, meaning they are only allowed to determine whether or not they believe there is evidence that a crime was committed. As a result, the magistrate must overturn the intake officer’s decision to divert if probable cause is found, even if it was in the best interest of the youth to be diverted rather than be proceeded against by the filing of a petition.

### **“Appeal” to Magistrate (HB 1878)**



- Limits a complainant’s ability to apply for a warrant to the magistrate to cases in which the intake officer has made a finding of no PC.
- The complainant may still address concerns with the CA and may still appeal PC decisions to the magistrate.
- The application to the magistrate shall be filed within 10 days of the issuance of written notification of the right to appeal to a magistrate at the time of the intake officer’s finding of no PC. The written notification will indicate that a decision was made that no PC exists and shall inform the complainant that he/she has 10 days to apply for a warrant to the magistrate.
- The complainant shall provide the magistrate with a copy of the written notification upon application.

As a result of the legislation, the complainant cannot appeal a diversion decision, and the magistrate cannot override the intake officer’s decision to divert a youth. A complainant’s ability to apply to the magistrate is now limited to cases in which the intake officer makes a finding of no probable cause.

## Naloxone (HB 1894)



- Section 54.1-3408(X) – Certain state agency employees may possess and administer naloxone for life-threatening overdoses.
- HB 1894 expands list to include DJJ probation and parole officers and juvenile correctional officers.
  - Must complete training program to possess and administer.
  - DBHDS will provide “train the trainer” sessions to state agencies.

Another important piece of legislation that passed during the 2021 General Assembly session pertained to the opioid crisis and Naloxone, which is used to stop an overdose. Existing statute listed certain state agency employees who have the authority to possess and administer Naloxone in the case of a life-threatening overdose. The list included correctional officers from the Department of Corrections (DOC) as well as their probation officers; however, the list did not include this Department’s counterparts to the DOC. HB1894 expanded the list to include the Department’s probation officers and resident specialists. Training is provided, and the agency is able to obtain doses of Naloxone.

## Child Support (HB 1912)



- Section § 16.1-290(D) provides that whenever a juvenile is placed in the temporary custody of or committed to DJJ, DJJ shall apply for child support with DSS. The parents shall be responsible for child support from the date DJJ receives the juvenile.
- Eliminates this requirement so that DJJ is no longer required to apply for child support, and the parent of a juvenile is no longer responsible to pay child support, for a juvenile who is in the temporary custody of or committed to DJJ.

The Department was required by statute to apply for child support for youth committed to its care. HB 1912 eliminated that requirement. In FY 2020, the total child support received by the Department was \$435,000, about an average of \$1,300 per resident. The General Assembly put \$435,000 back into the Department’s budget after eliminating the child support requirement.

## Serious Offenders (HB 1991)



- The court may modify the punishment for youth committed as serious offenders despite the terms of any plea agreement or order.
  - Bill resolves concerns that courts are bound to and cannot modify the terms of the plea agreement.
- DJJ retains its discretion and obligation to petition the court for review hearings for such youth, despite the terms of a plea agreement or commitment order.

Another important bill passed in the General Assembly pertaining to serious offenders. The bill clarified the court's authority to modify the punishment of youth committed as serious offenders regardless of a plea agreement that might attempt to prohibit changes to their sentences. This is a clarifying bill that emphasized the court can modify the punishment at the required status review hearings for serious offense, regardless of any attempt to impose limitations as part of a plea agreement.

## Youth Justice Diversion Programs (HB 2017)



- Authorizes any jurisdiction to establish a youth justice diversion program.
  - Monitored by an advisory committee.
  - Uses juvenile volunteers as lawyers and jurors.
  - Uses volunteer attorneys as judges.
  - Conducts peer trials of juveniles referred by intake officers.
  - Sentences emphasize restitution and rehabilitation, not incarceration.

The General Assembly passed legislation that allows for Youth Justice Diversion Programs. Youth Justice Diversion Programs can be established in a jurisdiction by an advisory committee and with the concurrence of the chief judge. Juveniles volunteer as lawyers and jurors, and the program enlists voluntary attorneys as judges. There are peer trials for juveniles, who may be referred to the program by the intake officer. The sentence emphasizes restitution and rehabilitation rather than confinement.



### Youth Justice Diversion Programs (HB 2017)



- Requires establishment of a local youth justice diversion advisory committee and approval of the program by the chief judge of the JDR court.
- Advisory committee duties:
  - Establish criteria for program eligibility; and
  - Establish policies and procedures for program operation.
- Advisory committee may include DJJ representative from local office serving the jurisdiction and a representative of juvenile court services.

Youth Justice Diversion Programs require the establishment of a local advisory committee within each jurisdiction with approval needed by the chief judge of the JDR court. The advisory committee's duties are enumerated, but much discretion is left to the advisory committee of each jurisdiction as to how the program will be operated. The advisory committee may include a Department representative from the local office serving that jurisdiction and a representative of the juvenile court services.

### Youth Justice Diversion Programs (HB 2017)



- Class 1 misdemeanors and felonies ineligible.
- Requires consent of alleged juvenile offender's parent or legal guardian and referral by an intake officer.
- Juvenile's failure to comply with program sentence within 180 days may result in filing of the petition.
  - Intake officer must provide required advisement.

This program does not apply to class one misdemeanors and felonies; the program only applies to lesser crimes. The program does require the consent of the juvenile's parent or guardian, and a referral is needed by the intake officer. If there is a failure to complete the program successfully within 180 days, the result is the filing of a petition. It is up to the jurisdiction if they want to enroll in the Youth Justice Diversion Program.

## Confidentiality of DJJ Records (HB 1206)



- Amends § 16.1-300 to provide that social, medical, psychiatric, and psychological reports and records shall be open for inspection to:
- DSS that is providing services, care, a family assessment or investigation regarding a juvenile who is the subject of the records, and
- DBHDS that is providing treatment, services, or care for a juvenile who is the subject of the record.

A statute is in place that makes sure the Department's juvenile records and reports are kept confidential with limited exceptions. HB 1206 provides that the records and reports of juveniles can be opened to inspection by the Department of Social Services (DSS), local DSS offices, Department of Behavioral Health and Developmental Services (DBHDS), and their local offices who provide treatment to the same youth. This bill helps to reduce the duplication or inconsistency of services by ensuring service agencies are on the same page with regard to a particular youth they are all serving.

## Confidentiality of DJJ Records (HB 1206)



- Contingent upon entry of a formal agreement with DJJ to provide coordinated services to juveniles who are the subject of the records.
- Prior to making any report or record open for inspection, the CSU or DJJ shall determine which reports or records are relevant to the treatment, services, or care of the juvenile and shall limit the inspection to such relevant reports or records.
- Any local agency that inspects the reports and records shall not disseminate any information received unless required by law.

A formal agreement between DSS and DBHDS or their local offices is needed with the Department in order to provide coordinated services. Safeguards are established to make sure relevant records are protected and that any records produced and shared with DSS and DBHDS are relevant for the stated purpose. Any local office that inspects the reports and records shall not disseminate the information further.

## Confidentiality of DJJ Records (HB 1206)



- Enactment clause: Commission on Youth shall convene a work group that will review current data and record sharing provisions with regard to youth served by the juvenile justice and child welfare systems and make recommendations on best practices for the sharing, collection, and use of such data and records while respecting the privacy interests of youth and families by November 1.
- The work group will include representatives from DJJ.

This bill requires the Commission on Youth to convene a workgroup to develop recommendations on best practices for the sharing of data, records, and reports while also respecting the privacy interests of the youth and their families. The report is due by November 1. The workgroup includes two representatives from the Department, including the Director.

Board Member Vilchez would like to have a copy of all presentations before the meetings.

### **DIRECTOR REMARKS**

Valerie P. Boykin, Director, Department of Juvenile Justice

Director Boykin congratulated those court service units that received 100% on their certification audits, and Mr. Bailey and his staff for continuing operations during unprecedented times. The Certification Unit created virtual opportunities to collect the information and the court service units were compliant and thought the process useful.

Bon Air Juvenile Correctional Center continues to ease out of pandemic operations and increase services in a safe manner. Director Boykin thanked the operational divisions of Residential, Community, and Education for their hard work during COVID-19. She also thanked the agency's administrative support divisions that offered support and guidance and provided materials to make this a smooth process for the past 15 months. Director Boykin announced that Bon Air has not had a new resident case of COVID-19 since December 5, 2020.

Bon Air maintains an all-time low population of 114 youths, with total commitments to date across the state hovering at 220 for the past several months. When the Department began transformation planning in 2014 with implementation in 2015, the Department had 600 youth in secure care across the Commonwealth. At the start of the pandemic, the Department had just under 350 youth in secure care. This decrease is attributed to ongoing efforts to reform practices and expanded utilization of the continuum. Also, the low number could be related to the pandemic and the courts slowing down operations. The Department's mantra is the right youth gets the right intervention at the right time. The agency will continue to offer alternatives to secure confinement and safely provide services to youth across the Commonwealth.

Yvonne B. Miller High School is moving to a year-round educational program that will begin on August 2. This summer, senior boot camp will be held, along with staff professional development and convocation. Director Boykin is pleased to announce graduation ceremonies for 21 students on June 21. Bon Air will have some COVID-19 restrictions on visitation protocols. Board members are invited to the event.

Bon Air resumed in-person visitation this past Sunday. This process will be gradual with half the campus participating in visitation last Sunday, and the other half of the campus later this month. Bon Air last held visitation in October 2020. Restrictions were eased at that time, but COVID-19 surged in the Commonwealth, and the Department returned to no visitation. The Department continues to monitor the pandemic and hopes to be able to lift restrictions soon.

As noted in Mr. Towey's presentation, the Commission on Youth is focusing on crossover youth, and Director Boykin is happy to serve on the workgroup. Director Boykin hopes to improve operations for young people involved in the foster care system as well as the juvenile justice system. It would be beneficial to identify these youth early and be able to provide cross-system development and planning.

Director Boykin provided an orientation to new JDR judges last week. The Department appreciates the partnership with the Supreme Court. In addition, the Department continues to explore chances with law enforcement to look at cross-training and diversion opportunities; continues community engagement by embarking on an effort to have regular meetings with advocacy groups; and continues to explore opportunities to develop and provide technical assistance to the Department's providers and other non-profit groups across the Commonwealth.

#### **BOARD COMMENTS**

Chairperson Frazier recognized Board Members Robyn McDougale and David Hines for their eight years of service to the Board of Juvenile Justice. The other members shared their appreciation as well. Director Boykin thanked Board Members McDougale and Hines for the time they devoted to the process and all their contributions toward transformation.

#### **NEXT MEETING DATE**

September 1, 2021, at 9:30 a.m.

#### **ADJOURNMENT**

Chairperson Frazier adjourned the meeting at 10:25 a.m.