Jennifer Woolard, Chair
Tyren Frazier, Vice Chair
Dana G. Schrad, Secretary
Michael N. Herring
David R. Hines
Scott Kizner
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COMMONWEALTH of VIRGINIA

Board of Juvenile Justice

DRAFT MEETING MINUTES

September 5, 2018

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

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

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

Department of Juvenile Justice (Department) Staff Present: Ken Bailey, Andrew "Andy" K. Block, Jr., Patrick Bridge, Carol Brown, Ken Davis, Greg Davy, Lisa Floyd, Wendy Hoffman, Joanna Laws, Andrea McMahon, Ronnie Moore, Charisse Mullen (Attorney General's Office), Jamie Patten, Edward Petersen, Kristen Peterson, Deron Phipps, Lara Todd, James Towey, Angela Valentine, and Robin Binford Weaver

Guests Present: Asif Bhavnagri (Office of the Secretary of Public Safety and Homeland Security), Kerry Chilton (disAbility Law Center of Virginia), Jae K. Davenport (Deputy Secretary of Public Safety and Homeland Security), Will Egen (Commission on Youth), Rebecca Keel (Rise for Youth), Adele McClure (Office of the Lieutenant Governor), Katie O'Connor, Valerie Slater (Rise for Youth), and Amy Woolard (Legal Aid Justice Center)

CALL TO ORDER

Chairperson Jennifer Woolard called the meeting to order at 9:36 a.m.

INTRODUCTIONS

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

APPROVAL of June 13, 2018, MINUTES
The minutes of the June 13, 2018, Board meeting were presented for approval. On motion duly made by Michael Herring and seconded by Dana Schrad, the Board approved the minutes as presented.

PUBLIC COMMENT PERIOD
There was no public comment.

DIRECTOR'S CERTIFICATION ACTIONS
Ken Bailey, Certification Manager, Department

Included in the Board packet were the individual audit reports and a summary of the Director's certification actions completed on June 13, 2018.

The 2-A Court Service Unit received a second consecutive 100% compliance on its audit.

The audit for the 5th Court Service Unit found five areas of non-compliance involving misinterpretation of training requirements, social history issues, supervision plans, and contact with juveniles during commitment. The 5th Court Service Unit was determined to be compliant during the subsequent monitoring visit.

As in previous Board meetings, Mr. Bailey detailed the significant changes and issues associated with the social history format and supervision plan audit requirements. Mr. Bailey is confident the next round of court service unit audits will demonstrate 100% compliance with these requirements.

Mr. Bailey stated that the Certification Team has asked the Regional Program Managers to perform follow-up visits to court service units that have audit deficiencies to help them establish compliance.

The audit for the 11th Court Service Unit found five areas of non-compliance in the same general areas as their 2016 audit. Mr. Bailey discussed the unit's recent improvements under the management of a new Court Service Unit Director, who has previous experience as a director. The Certification Team completed its monitoring visit, and the 11th Court Service Unit was determined to be 100% compliant with regulations. The Regional Program Manager also visited the facility and found compliance.

The audit for the 19th Court Service Unit found three areas of non-compliance on social history issues, supervision plans, and contact with juveniles during commitment. The Certification Team completed their monitoring visit, and the 19th Court Service Unit was determined to be 100% compliant with the regulations. The Regional Program Manager made follow-up visits to help establish compliance.

The audit for the 25th Court Service Unit found five deficiencies. The Certification Team completed its monitoring visit and found the 25th Court Service Unit in compliance with regulations. The Regional Program Manager made an additional visit.

After the audit for the Chaplin Youth Center found six areas of non-compliance, Chaplin submitted its corrective action plan. The Certification Team made a subsequent monitoring visit and found Chaplin Youth Center to be in compliance with the regulations. The one major audit finding of concern was the lack of fire inspections, which Mr. Bailey believed was due to staff turnover and an oversight in required documentation. The Certification Team performed the follow-up status reviews and determined this issue was under control. The Team will monitor Chaplin to ensure compliance continues.

The audit for the Foundations Group Home found one deficiency on the lack of a sanitation inspection for 2017. A current sanitation inspection is now on file.

The audit for the Loudoun County Juvenile Detention Center and Post-Dispositional Program found two areas of non-compliance related to the tuberculosis (TB) screening timeframe, and documentation. Under the regulation, the TB screening may not be older than 30 days and must be completed within the first five days depending on the youth's TB screen history. The Certification Team completed its monitoring visit, and this issue was corrected. Loudoun County Juvenile Detention Center and Post-Dispositional Program has a new RN monitoring these requirements.

The audit for the Lynnhaven Boys Home found three deficiencies related to TB requirements for staff and residents. In the past year, Lynnhaven Boys Home has experienced staffing issues. The Lynnhaven Boys Home elected to shut down its facility to address these issues and placed their youth in other Tidewater Youth Services Commission (TYSC) facilities. The Lynnhaven Boys Home re-staffed the program and re-opened after the audit and before the Certification Team's monitoring visit. The Certification Team found Lynnhaven compliant with the requirements.

The audit for the Virginia Beach Crisis Intervention Home, a shelter care facility, found seven deficiencies related to the facility's medical records and its frequent exceeding of its certified population. Historically, this has been an ongoing problem with the facility. The Home accepts youth pursuant to court orders and the facility generally tries to make space to receive them, which causes the facility to exceed its certified population. The Certification Team completed its follow-up visit, and found the Virginia Beach Crisis Intervention Home to be in compliance.

The audit for the Virginia Beach Juvenile Detention Center and Post-Dispositional Detention Program found four areas of non-compliance. The Certification Team made subsequent monitoring visits and found the Virginia Beach Juvenile Detention Center and Post-Dispositional Detention Program to be compliant with the regulations.

BOARD OF JUVENILE JUSTICE ELECTIONS

The by-laws for the Board of Juvenile Justice authorize the election of a Chairperson, Vice-Chairperson, and Secretary from its membership. Each officer must be elected by the Board at its first regular meeting of the fiscal year. Officers serve for a term of one year and are eligible for re-election.

Chairperson Woolard asked for nominations among the Board members for the three positions of Chairperson, Vice-Chairperson, and Secretary and provided a description of each office.

- The Chair is the presiding officer of the Board at its meetings.

- The Vice-Chair presides over the Board meetings in the event of the chair's absence or disability or if there is a vacancy in the office.

- The Secretary reviews and recommends improvements to Board meeting procedures; ensures development of resolutions, serves as the Board's parliamentarian, signs minutes and policy documents, and ensures materials and equipment are available for the Board to carry out its functions.

On motion duly made by Michael Herring and seconded by David Hines, the Board of Juvenile Justice approved the nomination of Jennifer Woolard as Chairperson.

On motion duly made by David Hines and seconded by Michael Herring, the Board of Juvenile Justice approved the nomination of Tyren Frazier as Vice-Chairperson.

On motion duly made by Tyren Frazier and seconded by David Hines, the Board of Juvenile Justice approved the nomination of Dana Schrad as Secretary.

APPROVAL OF THE BOARD OF JUVENILE JUSTICE BY-LAWS
James Towey, Legislative and Regulatory Affairs Manager, Department

Pursuant to § 7.01 of the by-laws, the Board of Juvenile Justice must review the by-laws annually to ensure compliance with any amendments to applicable sections of the *Code of Virginia*. The Board made several changes to the by-laws last fiscal year. The by-laws may be amended at any regular or special meeting of the Board.

Chairperson Woolard asked the Board if there was any interest in modifying or changing the by-laws for this fiscal year.

Board Member Hines asked whether the Board wanted to consider making officer appointments in two-year increments instead of annually.

Board Member Schrad raised a concern about Board members who have one year remaining on their terms and would not be eligible for election nomination under Board Member Hines' suggestion. Board Member Schrad cautioned against this route because a willing Board member could be eliminated from consideration during an odd year of his or her term. The annual elections allow members to be re-elected to a position.

Chairperson Woolard agreed with Board Member Schrad's concern and asked whether the by-laws could be phrased differently so as not to preclude an interested Board member from being nominated while in his or her fourth year of service.

Board Member Hines stated that the Board's elections normally go forward as presented with no issues and noted that the annual election does not tie up the Board meeting agenda.

Board Member Schrad noted that it is probably good to have annual elections for purposes of public accountability. If there is opposition to a Board member's election, the public can voice concerns.

Chairperson Woolard noted a consensus among the Board members to keep the by-laws as written with annual elections. Chairperson Woolard asked if there was anything to prevent re-election by Board members.

Mr. Towey answered all members are eligible for re-election under the Board's by-laws.

On motion duly made by Michael Herring and seconded by David Hines, the Board of Juvenile Justice approved the Board of Juvenile Justice By-Laws.

DEPARTMENT OF JUVENILE JUSTICE REPORT OF FINDINGS: SHENANDOAH VALLEY JUVENILE CENTER
Andrew K. Block, Jr., Director, Department

Director Block offered a slide presentation (attached) on the Shenandoah Valley Juvenile Center (SVJC) investigation and Department recommendations.

The Board's core responsibility is to issue regulations governing both the conduct and the processes of state operated programs in local court service units, juvenile correctional centers (JCCs), and local juvenile detention centers (JDCs). The Board also reviews the work of the Department's Certification Unit to ensure local juvenile detention centers comply with the regulations set by the Board. Recently, the Board approved several amendments to regulations related to juvenile correctional centers and local juvenile detention centers.

SVJC, a locally operated juvenile detention center, is under considerable media attention because of litigation filed last year. The attention is due in part to the scrutiny of the United States programs on family separation and immigration. In response to the lawsuit and concerns regarding allegations of practices at the facility, Governor Northam requested the Secretary of Public Safety and Homeland Security and the Department to investigate the SVJC. The Department conducted its investigation in June, and the final report was issued in August.

All juvenile detention centers, including Shenandoah Valley, are locally operated by the jurisdiction in which they exist or a regional commission. While the Department has oversight of staff in the

SVJC and other local detention facilities, the staff are local rather than state employees. The Department certifies SVJC and ensures compliance with the regulations.

The SVJC has contracted with the Office of Refugee Resettlement (ORR) for the past ten years to house unaccompanied immigrant youth. These youth are detained for crossing the border into the United States or picked up in the country. ORR deemed these youth to be a public safety risk by virtue of their behavior either in this country or in their home country prior to coming to the United States.

ORR operates three programs across the country similar to the one in SVJC in secure detention centers that have an array of different placements. SVJC is considered the most restrictive type of setting ORR operates.

The Department has oversight responsibility of local juvenile detention centers to ensure their compliance with Board regulations. The Director of the Department has the authority to take action against a facility for health and safety violations or other critical regulatory violations. Those actions include closing a facility or removing youth from the facility, as with the Richmond Juvenile Detention Center. The Department's Certification Unit performs periodic audits and conducts monitoring visits annually.

Youth in ORR programs are under federal, not state, jurisdiction. Theoretically, the federal government could bar the Department from accessing the youth placed in the federal program even though youth are in a facility the Department certifies and supervises. Part of the problem is the ORR program exists in an entirely different setting, even though it is in a Virginia facility over which the Department would otherwise have oversight.

The Department's Community Placement Program (CPP) partners with local juvenile detention centers pursuant to contracts or memoranda of understanding, much like the federal program with SVJC. Through CPPs, local juvenile detention centers house youth in state custody and serve them in specific ways dictated by the contract. Since 2015, the Department has operated a CPP in Shenandoah and continues to have regular, ongoing contact with those youth. The Department has recently established a Quality Assurance Unit responsible primarily for working with the CPPs across the Commonwealth. The Quality Assurance staff monitor youth in the CPP units, which are located outside the federal unit. The youth held under normal circumstances in pre-trial detention are receiving visits from their probation officers and other service providers.

In October 2017, the Washington Lawyers Committee for Civil Rights, a private law firm, filed a lawsuit on behalf of the youth in the federal program in SVJC alleging various constitutional violations. The allegations amounted to cruel and unusual punishment, and violations of the federal residents' juvenile due process rights. Specific allegations included excessive use of force, excessive use of isolation, excessive time in physical restraints, and lack of access to nutrition and mental health services. These are serious allegations.

In addition to the spring 2018 visit, the Certification Team visited SVJC to ensure the facility was operating in accordance with the Department's regulations. This visit did not include the ORR program and nothing of significance was found. In June 2018, Governor Northam asked for an investigation by the Department. On June 21, Secretary Moran and Director Block visited the facility. The Department also sent the Certification Team and Quality Assurance staff to the facility to interview the youth currently in the federal program at that time, which included 22 youth. On June 25, the ORR gave the Department access to review the records of the federal youth but prohibited them from photocopying the records.

Because of the interviews and the review of records, and pursuant to its statutory duty, the Department filed two complaints with Child Protective Services (CPS), which conducted its own independent investigation of the specific allegations. As part of its investigation, CPS interviewed youth, reviewed records and video tape, and talked with staff named in the allegations. Based on this information, CPS made no findings of abuse or neglect. The allegations reported to CPS were not directly related to the allegations made in the lawsuit, but required reporting to CPS.

The Department did not talk with the plaintiffs or review their specific records. Their identities are sealed and listed as John Doe #1, John Doe #2, and John Doe #3.

Director Block emphasized that although the Department made findings in its reports, the Department is not weighing in on the lawsuit. The allegations made against SVJC are very serious allegations, which the facility has denied. The court has not made any findings at this point with regard to the lawsuit.

The Department's investigation sought to ensure that all youth involved in the program were safe; based on the information discovered in the investigation, there were no findings of health, safety, or life violations.

The Department did, however, have concerns with how business was conducted at SVJC, and developed a series of recommendations. SVJC has been responsive and proactive to the Department's recommendations. The first recommendation was for SVJC to enhance staff training on proactively and positively working with youth, specifically, youth who had harrowing lives and experiences in their home country. Childhood trauma can harm a youth's emotional, psychological, and cognitive development. The Department thought it important that SJVC facility staff learn more trauma-informed and trauma-responsive skills.

Even before the Department made this recommendation, SVJC had already begun working with the Missouri Youth Services Institute (MYSI), the same entity that trained juvenile correctional center staff on the development of the community treatment model. SVJC is now taking steps to initiate this program.

SVJC works with traumatized youth and youth from different cultural and ethnic backgrounds than many of its staff. The second recommendation is for SVJC to increase its culture-specific

programming and have more bilingual staff. SVJC has hired a clinician recently to work specifically with its youth.

The Department's regulations allow the use of both physical restraint and mechanical restraint. The investigation concluded that SVJC's procedures did not violate the limits the regulations imposed regarding restraints. The Department believes SVJC can enhance its programs by decreasing the use of these restraints and performing more staff training on alternative de-escalation strategies. SVJC staff have completed more training, specifically including the Handle with Care program, which utilizes the same curriculum as in the juvenile correctional center and all juvenile detention centers.

As part of the community treatment model, the Department sought to redesign the interior of Bon Air Juvenile Correctional Center to make it more developmentally appropriate and less sterile. The Department suggested that SVJC make similar efforts to redesign its facility. SVJC is a clean and well-maintained facility but maintains a correctional design. Although this recommendation is not a requirement, SVJC is moving forward with trying to change and modify the setting within its limitations.

The investigation highlighted an oversight gap with youth in the ORR program in SVJC. Because no allegations were made regarding the ORR program in the past ten years, the Department was not aware of this gap until now.

The Department proposed two recommendations for the Board's consideration.

One of the primary allegations in the lawsuit involved the use of mechanical restraint chairs and spit hoods. Sometimes when youth are restrained, they may spit on or try to bite staff. SVJC uses a spit hood placed over the youth's head to prevent these actions. The restraint chair and spit hood are permitted by the Department's existing and proposed regulations. During the Board's most recent review of both the correctional center and detention center regulations, the Department, Board, advocates, and other stakeholders focused primarily on the use of isolation rather than mechanical restraints. The allegations in the lawsuit are sufficient for the Department to reintroduce the issue. The Department wants to ensure the Board is informed about mechanical restraints in order to determine whether the proposed changes to the regulations are sufficient or require additional amendments.

The Department cannot compel the federal government to provide access to the ORR youth; however, our certification process provides a mechanism to direct the facility to follow certain regulations.

The Department is asking the Board to approve a fast-track regulation requiring a facility, certified by the Department that enters into a third party contract to abide by two stipulations: (1) the contract must allow Department staff the same access to youth in the custody of a third party as the Department has to any other youth in the facility; and (2) a program established by contract with a third party, at a minimum, must meet the Department's regulatory and certification standards. This

will give the Department an additional tool to ensure every youth in a juvenile detention center over which the Department has oversight is under the same scrutiny and the same base level expectations.

The Department has not used the restraint chair in several years. Through application of the community treatment model, the Department has developed a broader array of tools to interact with youth and improve de-escalation strategies.

The primary reason for which the restraint chair is employed is to address youth engaged in dramatic, self-injurious behavior. For example, if youth bite themselves, bang their heads, or try to put things in their body, until staff can take them to the hospital. Staff must have a way to stop this behavior until they can take the resident to the hospital. The alternatives include using hands-on physical restraint or mechanical restraints. Generally, the Department has used mechanical restraints primarily to deal with dramatic, self-injurious situations. At this point in the Department's transformation progress, the Department is striving to terminate the use of the mechanical restraint chair .

The Board limited the use of the restraint chair in the proposed juvenile correctional center regulations to only those situations in which residents are being transported on campus.

Board Member Herring asked if a detainee is in crisis, unresponsive to all lesser interventions, and out of control, because the staff cannot use the restraint chair, whether staff's only recourse is hands-on restraint.

Director Block affirmed.

Board Member Herring responded that in the adult world, the more hands-on restraint you employ, the greater the risk of injury to the subject.

Director Block stated that the November 7 Board meeting will focus on restraints. The Department wants to share information with the Board on practices and explain the local detention centers' use.

The current correctional center and detention center regulations impose limitations on restraints, but make no distinction between using a restraint chair and using handcuffs.

Board Member Hines asked if there would be discussion at the November meeting on the use of any other mechanical restraints other than the chair.

Director Block responded that while other mechanical restraints will be discussed, the primary focus will be on the chair.

Board Member Hines suggested that in trying to control a child, the chair might be a better alternative over the use of handcuffs and leg restraints.

Director Block said the Department would provide information on the full continuum of usage.

Board Member Schrad asked about the recommendation on training, specifically dealing with de-escalation training involving youth.

Director Block noted that this is an alarming issue, and sometimes until a better system is in place, hard choices will be made.

There is an oversight and programmatic gap specifically for youth in the ORR program. Theoretically, other programs might be effected by this gap. Although the ORR program has its own regulations, audit, and certification process, the Department believes it is important for us to have eyes on the youth who are in the ORR program in Virginia facilities.

The fast-track regulation proposed would make clear that any program in a local detention center operating pursuant to a third party contract is subject to the Department's regulatory and certification standards, guidelines, and practices. In addition, Department staff would have the same access to the youth in the ORR program as the Department has with any other youth in the facility. The Director noted that SVJC and local juvenile detention center administrators are not opposed to this recommendation, and were unable to attend today's Board meeting due to a state conference. SVJC is in discussions with ORR on their willingness to abide by this recommendation before the regulations are passed; however, many approvals are required when dealing with the federal government. The more access and oversight the Department has, and the more transparency in its regulated facilities, the safer the Department can keep youth and staff.

Chairperson Woolard speculated that if ORR does not agree to these recommendations before they are approved, this type of situation could happen again. In the meantime, there is still the issue of ORR denying the Department access to their youth.

Director Block agreed.

Board Member Herring commented that the enhanced training and other recommendations passed would not necessarily have retroactive effect and would not impact youth who are currently the subject of the lawsuit, and asked whether, going forward, juvenile detention facilities under the oversight of the Department would have to comply with the regulations in order to enter into a contract with a third party?

Director Block affirmed.

Board Member Herring asked if this SVJC situation would not happen again to another set of youth.

Director Block answered that if ORR disagrees, SVJC could face a choice of being de-certified or taking the federal money and federal youth. Having the expanded oversight and access under the

proposed regulatory amendment will give the Department the tools needed to prevent similar situations in the future.

Board Member Hines asked if a facility continues to pursue third party contracts with the federal government, whether the Department has the authority to prohibit the facility from housing state youth.

Director Block answered yes, and explained that the facility also could be precluded from housing local youth.

Board Member Tyren Frazier asked if the Board should expand this consideration to include facilities in addition to local juvenile detention centers and group homes and asked whether a juvenile correctional center may have a similar contract with the federal government or other third party.

Director Block responded that the Department is not prepared to move forward on that part at this meeting. The Director discussed a program in Northern Virginia (Youth for Tomorrow) that has a federal contract but is licensed by the Department of Social Services. Chief Deputy Director Angela Valentine added that some of that facility's programs have dual licensing by the Department of Social Services and Department of Behavior Health and Developmental Services.

Director Block noted that Virginia Juvenile Community Crime Control Act money could be used to establish group homes, in which the Department would have authority.

Board Member Frazier asked what the SVJC daily population was when the Department visited and the average daily population of the CPP.

Chief Deputy Director Valentine said there were 22 youth at SVJC when the Department visited the facility. Chief Deputy Director Valentine did not know the exact number of CPP residents, but noted that the facility was under their licensed capacity for pre and postdispositional local youth in the CPP.

Board Member Frazier asked about the population of third party contracts compared to the rest of the facility's population.

Chief Deputy Director Valentine responded that on a daily basis, the federal program has more youth than the local programs. The Department's CPP has a maximum of eight youth at the SVJC facility.

Board Member Schrad asked if the ORR youth are segregated from the state and local youth.

Director Block answered operationally the federal youth are separate. The federal youth have their own units and their own wing of school, and for the most part, remain separate from the other youth.

Chief Deputy Director Valentine added that while the youth are housed in separate units, some ORR youth attend school with local youth, depending upon whether the federal youth attended public school prior to placement at SVJC and if the federal youth can maintain their education. If so, the federal youth may attend school with the local and CPP youth. Those federal youth that cannot maintain a regular curriculum and need individualized schooling attend school in a separate area.

Board Member Schrad surmised that even though there is minimal interaction or blending of the populations, having different sets of regulations regarding restraints for the federal youth and local youth might be problematic for staff and youth. She agreed that having regulations allowing the Department to have oversight is important but inquired about intervention.

Director Block answered that if the Board passed the fast-track regulation and any additional regulations regarding restraints, these provisions would apply to youth in third-party programs.

Board Member Hines asked if the Department was provided a copy of the contract and whether the contract speaks to restraint measures?

Director Block affirmed that the Department was given a copy of the contract, and it did not speak to restraint.

Board Member Schrad asked whether the Department had to approve the third party contract.

Director Block answered the Department was not required to approve the contract.

Director Block noted Deputy Secretary of Public Safety and Homeland Security, Jae K. Davenport's attendance at this meeting and explained that Secretary Moran and the Governor's Office have been involved and are supportive of the recommendations made in the report.

Chief Deputy Director Valentine confirmed with Mr. Bailey that the Certification Team and Quality Assurance Unit visited SVJC and applied Department regulations to SVJC and the ORR unit in order to meet the certification regulations. SVJC has followed that process all along.

Board Member Schrad asked if SVJC staff were applying the regulations to the ORR unit voluntarily.

Director Block confirmed that was correct.

Chairperson Woolard asked if the Department was granted access to the incident reports for youth under ORR jurisdiction or whether these documents were maintained separately.

Mr. Bailey answered that the ORR program completes incident reports and sends them directly to their home office. The Certification Team requests copies and receives some incident reports, especially those related to abuse. The Certification Team wants to ensure those reports are referred to and investigated by local Child Protective Services (CPS). The ORR program communicates this

information to the Certification Team, redacting the youth's name. The Certification Team is informed when an incident occurs, given the details, and follows up with CPS on the findings.

Director Block said that if an incident such as an escape or other major event, occurs in a local detention center, under this proposal, the ORR program would need to ensure the Department has the identifying information of the youth involved in those serious incidents.

REQUEST APPROVAL TO SUBMIT AMENDMENT TO REGULATION GOVERNING JUVENILE SECURE DETENTION CENTERS AS A SEPARATE FAST-TRACK REGULATORY ACTION
Kristen Peterson, Regulatory and Policy Coordinator, Department

Ms. Peterson presented a proposed amendment to the Regulation Governing Juvenile Secure Detention Centers for Board approval. The proposal is a stand-alone, separate provision to be added to the regulation. The provision will apply to JDCs entering into contracts with separate entities to house residents that are otherwise under the custody of these entities and will require that the written agreements contain language compelling these programs to be subject to the Department's certification standards and regulations governing JDCs.

There is a gap in terms of the Department's oversight impeding the ability to properly monitor programs to ensure youth are protected and programs comply with the Department's regulatory provisions.

The amendment would require these programs to allow the Department the same access to juveniles in the programs that the Department currently has with other juveniles detained in pre or post dispositional programs. The proposed amendment would apply, not only to the SVJC's ORR arrangement, but also the unique contractual arrangements that detention centers currently have with the Department, such as the CPP and detention reentry programs. Both programs have youth under state commitment who are being housed and cared for by the JDCs.

Typically, when the Department presents regulations to the Board for approval, it uses the lengthy standard regulatory process, which involves the Notice of Intended Regulatory Action (NOIRA), various levels of executive review, and extensive public comment periods. This time, the Department is requesting that the Board approve the regulation for submission through an expedited fast-track process. The Administrative Process Act allows state agencies to use the fast-track process for regulations expected to be noncontroversial. There are triggering events that may prevent the Department from using this process. If members of either applicable standing committee of the House or Senate or members of the Joint Commission on Administrative Rules objects to the proposed fast-track amendment, then the Department would have to proceed with the standard regulatory process. In addition, if there were ten or more individuals of the public who opposed the proposed fast-track amendment, the regulation would go through the standard process. Because of the possibility of these triggering events, the Department is requesting that the Board approve two separate regulatory measures: (1) approve the proposed amendment to the regulation for submission through the fast-track process; and (2) simultaneously, approve the regulation language for

incorporation into the large, comprehensive package that the Board approved at the June 13, 2018, meeting. If a triggering event occurs that prevents the Department from moving the regulation through the fast-track process, the proposed amendment would be incorporated into the large package for advancement through the proposed stage of the regulatory process, bypassing the initial stage.

On page 118 of the Board packet, the various timeframes are listed for the standard regulatory process as well as the fast-track regulatory process. Assuming the regulation goes through the fast-track process, it will save the Department a minimum of 78 days.

Board Member Herring stated his intention to vote in favor of the proposed regulation but raised some concerns. If the regulations governing these facilities are designed to ensure safe, humane, and effective supervision and treatment for all residents, why would the state sanction something less than safe, humane, and effective treatment for a juvenile resident? Board Member Herring asked why the Board would not modify the regulations to ensure all residents of certified facilities are subject to the requirements of § 6VAC35-20. Furthermore, he noted a concern that the wording of the proposed amendment would not cover agreements entered into verbally.

Board Member Herring recommended that if the Board wants broad language to ensure all juveniles are subject to the same regulations and to respond to this crisis, then the language in the proposed regulation simply should provide that every juvenile in one of these facilities must be governed by the same regulations.

Board Member Schrad noted her substantive support of the proposal but was concerned that it leaves a gap in the Department's authority. She asked how having access to the federal youth and records alone would give the Department authority to act on any violation discovered. For instance, if the federal contractor gives the Department access to the records and the youth but is not addressing the treatment, she asked whether the Department would have the authority to either void the contract, remove the federal youth from the facility, or what other alternatives the Department could exercise under that scenario.

Board Member Hines stated his understanding that the Board is trying to focus on the Department's responsibility to regulate and investigate a complaint within a state-certified facility and to ensure the Department's authority to enter that facility and talk with the youth, regardless of whether the youth is local, state, or under contract.

Ms. Peterson agreed and explained that the Department's ultimate objective is to be able to determine if these facilities are complying with the regulatory requirements. The certification regulations, 6VAC35-20, authorize the Department not only to conduct certification audits, but to act on what is found. Under the certification regulations, the Director may withdraw funding, close a facility, or move youth out of a facility. The contract is the vehicle to ensure the federal government agrees to comply with the regulatory provisions. Ms. Peterson thinks the existing

certification regulations are sufficient to give the Department the authority to respond to concerns found in the audits or monitoring visits.

Board Member Hines agreed with Mr. Herring's recommendation that the regulation be expanded to cover oral agreements.

Chairperson Woolard asked if the Department receives copies of third party contracts or whether the facilities are required to notify the Department when entering into these agreements. Chairperson Woolard advised that the Department should be aware when a facility is entering into a written or oral agreement.

Director Block noted that the Department could add a section C providing, in the event of a written agreement, the local juvenile detention centers shall immediately notify the Department.

Board Member Hines asked whether this suggestion could be handled administratively.

Chief Deputy Director Valentine stated that JDCs have always notified the Department's Certification Team when entering into these contracts with separate entities.

Board Member Schrad asked if contracts are reviewed during the certification audits.

Mr. Bailey said there is no requirement at this point to review these contracts.

Director Block said if the Board wanted to craft language requiring notification it does not seem complicated. The broad language in the regulations gives the Department authority to intervene and applies to every juvenile in the facility.

Chairperson Woolard said it would be better simply to know when a JDC is entering into a contract.

Board Member Herring asked how the Department would respond to a savvy commentator who questioned why the Board did not pass something more plenary, such as a provision prohibiting facilities from housing juveniles who are not subject to the full scope of the applicable regulations.

Board Member Schrad agreed and recommended that the Board avoid using a band-aid approach when a more holistic approach is favorable.

Director Block acknowledged that the regulations may already contain those provisions; however, the Department has identified an exception where the provisions are not applicable to federal programs.

Board Member Herring said if that is true, then the Department has the leverage to control what SVJC does operationally. If not, then it is not in the regulations.

Board Member Frazier asked if the Board adjusts the regulation with a subsection C, could the Board, at a later meeting, add the overall broader statement of the regulation used in the proposed fast-track regulation.

Ms. Peterson said the regulation can be amended as suggested, expanded to include oral contracts, and submitted through the fast-track process. As an alternative, the Department can file the proposed regulation and craft broader language to address Mr. Herring's comments and bring that proposed regulation back to the Board in November.

Board Member Hines noted that by adding "oral" to the regulation, this accomplishes everything the Department wants to accomplish and closes any gap.

Department Analyst Lara Todd suggested the Board require any agreement to house youth be in writing, as this is a best practice. An oral agreement is problematic because there is no documentation regarding the parameters or requirements

Chairperson Woolard suggested the Board move forward with the fast-track regulation with a few modifications discussed earlier on written or oral agreements and discuss at the November meeting the notification provision and the best practices concerning written agreements.

Board Member Schrad noted there is a need for expediency based on the critical concern of the SVJC issue and agreed to proceed with this specific targeted approach and come back at the Board's November meeting to look more broadly at the issue. Board Member Schrad agreed with some of the concerns Mr. Herring raised, especially in the area of law enforcement certification and licensure. State certification brings continuity and consistency, and the Board's end goal is to ensure consistency across all facilities in terms of how these youth are cared for and supervised, regardless of the contract.

Chairperson Woolard asked if the Board could make modifications to the regulation at the November meeting.

Ms. Peterson responded affirmatively. She explained that she had delayed filing the comprehensive detention center regulation packet because she thought, with the SVJC issues, the Board might want to amend it. She explained to the Board the numerous options regarding filing of the regulation. The Board can submit the proposed comprehensive package now and at the Board's November meeting discuss making additional amendments to the regulation, submitting those changes before proceeding to the final step in the regulatory process. It might be best to delay the filing of the comprehensive package until the Board makes the final decision on the amendments. There is a possibility that a number of individuals might oppose this fast-track process. If so, this is a triggering event that would prevent the Department from using the fast-track process, and the proposed amendment would start over in the NOIRA stage. It will lengthen the process if the requisite individuals object to the proposed amendments.

Board Member Herring said there might be consensus to the dual track. The remaining question is the substance.

Board Member Schrad said it might be best to take a mulligan on the overall package. This gives the Board time to fast-track this critical recommendation. It might be best to come back in November and re-examine the comprehensive package, not only the mechanical restraints, but also the reporting and supervision relationship with the detention centers.

Chairperson Woolard asked if the Department would hold off submitting the regulations approved by the Board at the last meeting until after November.

Ms. Peterson said yes.

Chairperson Woolard noted that would set the process back two months.

Board Member Schrad did not recall that the overall package had any front burner issues that needed attention.

Director Block said the local JDC regulations were slightly different than the juvenile correctional center regulations. There were no dramatic changes, just improvements, especially around the use of isolation. If the Department waited, it would not change current practices.

Board Member Schrad and Chairperson Woolard asked whether the JDCs had concerns with delaying the regulatory process.

Chief Deputy Director Valentine said there should not be any push back from the detention centers.

Chairperson Woolard asked the Board for its position on the proposed fast-track regulation and whether the language on page 117 of the Board packet should be modified to address the "written agreement."

Board Member Schrad noted that all agreements should be written.

Chairperson Woolard asked if the Board wanted to proceed with the motion now and save the "best practices" discussion for November

Board Member Schrad answered yes.

Chairperson Woolard asked the Board if they were in agreement with modifying the text of 6VAC35-101-45 to provide, "When a detention center enters into 'an' agreement with a separate entity…" and to strike references to "written."

Board Member Herring asked if there were exigent circumstances or other scenarios under which a facility may hold youth without an agreement.

Director Block believes there are statutory provisions that allow a youth to be moved from the facility under instances such as gang membership conflict. The Code specifically speaks to incidents like those where youth might move to another local detention center or to a jail temporarily.

Board Member Hines provided an example of a detention center that has reached capacity but has an agreement with another facility to take the youth. In that case, the agreement might be with another detention center.

Board Member Herring presented a hypothetical in which several high-risk juvenile gang members need to be detained in the middle of the night, and one detention center calls another detention center, who agrees to detain the juvenile in its facility. Board Member Herring asked whether this agreement would trigger the application of the proposed amendment.

Chief Deputy Director Valentine responded that the statutes contain criteria specifically addressing how a youth may be detained. The statutes mandate the filing of a petition, detention order, or court order and in either case, the juvenile meets with court service unit intake officers, and a legitimate charge must be established to detain these individuals in a juvenile detention center.

After some additional conversation, Director Block indicated that the Board could add a subsection C to 6VAC35-101-45 requiring such agreements to be in writing and the detention center to notify the Department immediately upon entering into such an agreement.

Ms. Peterson asked whether structuring the language in that way would mean these programs would no longer be subject to the Department's regulations.

Director Block clarified that the language would mean if there is an agreement it must be in writing and is subject to Department regulations.

Board Member Hines stated that the Board is trying to ensure that no youth is held in a facility without a written agreement and asked if the Board is now saying that verbal agreements are not permitted.

Chief Deputy Director Valentine commented that she is unaware of any local juvenile detention center having a verbal agreement to house youth in their facility.

Board Member Hines expressed concerned that the Board may be moving forward quicker than advisable, and asked the Board to consider unintended consequences if there are oral communications or agreements facilities enter into that the Board may disallow because it is not in writing. He recommended delaying this discussion until November.

Director Block replied that it could wait until the November meeting.

Ms. Peterson responded yes, the Board can approve the proposed amendment noted in the Board packet on page 177 and return in November to discuss a proposed section C. Ms. Peterson clarified the language would begin, " "When a detention center enters into **an** agreement with a separate entity..."

The Board agreed.

Chairperson Woolard asked if this fast-track amendment, once approved, would apply to the existing agreement that Shenandoah has with the federal government.

Director Block stated that it would apply when the proposed amendment takes effect. It could be subject to constitutional challenge, but reading a Virginia Attorney General's opinion on constitutional prohibitions against interfering with existing contracts, the proposed amendment may survive constitutional challenge.

On motion by Dana Schrad and seconded by Dave Hines, the Board of Juvenile Justice approved the proposed amendment to 6VAC35-101, Regulation Governing Juvenile Secure Detention Centers, which adds a new regulatory provision addressing contracts between juvenile detention centers and separate entities. The Board grants the Department of Juvenile Justice permission to (i) proceed with the filing of the proposed amendment through the fast-track regulatory process pursuant to the Code of Virginia §2.2-4012.1; and (ii) add the proposed amendment to the comprehensive regulatory package approved by the Board on June 13, 2018, for advancement to the proposed stage of the standard regulatory process.*

**Note: With respect to (ii) of the Board's motion, the Board approved the pre-drafted motion but, as provided in the discussion above, agreed to revisit the issue regarding amendments to the comprehensive package at the November meeting before advancing the package to the next stage of the regulatory process.*

DIRECTOR'S COMMENTS
Andrew K. Block, Jr. Director, Department

Lieutenant Governor Justin Fairfax recently toured Bon Air Juvenile Correctional Center.

Yvonne B. Miller High School officially began a new school year on September 4. Over the summer, the Department replaced old glass windows in the school with safety glass. Unfortunately, this work has taken longer than expected, and some rooms are not available for the post-secondary programs. Adjustments are being made to accommodate.

The school year ended very well with a record number of youth receiving diplomas.

The numbers for FY2018 include a decline in intakes and a record number of lows for youth in local detention centers. For two days, the Department's population at Bon Air dipped below 200, which is historic. The Department's efforts in transformation are having the desired effect.

The Department continues to work with the Department of General Services and Isle of Wight County on the new facility.

BOARD COMMENTS

There were no comments by the Board.

NEXT MEETING

The next Board meeting is scheduled for November 7 at the Main Street Centre, 600 East Main Street, Richmond.

ADJOURNMENT

Chairperson Woolard adjourned the meeting at 11:44 a.m.

Report To Board of Juvenile Justice: Shenandoah Valley Juvenile Center Investigation

Andrew K. Block
Sept. 5, 2018

Virginia Department of Juvenile Justice

Safety. Connection. Purpose. Fairness.

Agenda

- DJJ's relationship with Shenandoah Valley Juvenile Center (SVJC) and Office of Refugee Resettlement (ORR)
- DJJ Report Issued by Gov. Northam's Office
  - Investigative process
  - Findings
  - Recommendations
    - For SVJC
    - For DJJ Board
- Overview of Mechanical Restraints
  - Current DJJ practices
  - Current DJJ and JDC regulations
  - Recently proposed regulation changes

Shenandoah Valley Juvenile Center

- The SVJC is an independent juvenile detention facility managed by the Shenandoah Valley Juvenile Center Commission.
- SVJC staff are not state employees.
- For ten years SVJC has had a contract with Office of Refugee Resettlement to house unaccompanied immigrant minors deemed to be a risk to public safety (1 of 3 such contracts across the country).

DJJ Oversight of JDCs

- DJJ has oversight, but not operational, responsibility.
- DJJ Board establishes regulations for local juvenile detention centers (JDCs).
- DJJ Certification Unit conducts periodic audits of local facilities.
- Upon finding health, welfare, or safety violation, DJJ Director may:
  - ✓ Withhold funds.
  - ✓ Remove juveniles from the facility/program.
  - ✓ Place facility/program on probationary certification status for up to 6 months.
  - ✓ Summarily suspend the facility's certificate.

Office of Refugee Resettlement

- The ORR is a federal program under the U.S. Department of Health and Human Services (HHS) that works with unaccompanied immigrant minors.
- Unaccompanied minors are placed at SVJC when ORR has determined that a less secure placement would not be appropriate.
- Pursuant to a cooperative agreement that SVJC entered with ORR and HHS, ORR monitors SVJC for compliance with their requirements through announced and unannounced monitoring visits.
- The federal youth program is audited and overseen solely by ORR. DJJ has no contractual relationship with ORR, and has no auditing, monitoring authority or responsibility over the federal youth housed at SVJC.

Ongoing DJJ/SVJC Contact

- SVJC has had a Community Placement Program (CPP) since Sept. 1, 2015, which places DJJ youth in SVJC physical custody.
- Youth in the CPP receive regular contact from Quality Assurance staff, parole officers, and others.
- Court Service Unit staff regularly visit youth in pre-trial detention.
- DJJ certification unit conducts monitoring visits for pre-trial detention at least annually, or more often if requested by Board, DJJ, or administrator.

Investigation Timeline

- **October 2017** – Federal lawsuit filed on behalf of youth in ORR custody incarcerated at Shenandoah Valley Juvenile Detention Center (SVJC). Allegations denied by SVJC.
- **March 2018** – DJJ Certification Team visits SVJC to observe current conditions in non-ORR units, and to review prior certification documents.
- **June 21, 2018** – Associated Press publishes story reporting filing of federal lawsuit.

Investigation Timeline

- **June 21, 2018** – Governor Northam orders an investigation. Secretary of Public Safety and Homeland Security Brian Moran and Director Block conduct evening visit of facility.
  - DJJ Certification Staff and Quality Assurance staff also visit facility June 21 and 25 and interview youth in ORR custody.
- **June 22, 2018** – DJJ staff file two complaints with Child Protective Services (CPS) as a result of interviews.
- **June 25, 2018** – DJJ staff review records of youth in ORR custody. DJJ staff <u>did not</u> interview plaintiffs in lawsuit or review their records.
  - Identities and records sealed.

Findings

- **July 3, 2018** – CPS investigation concludes that there was no abuse or neglect.
- **Aug. 13, 2018** – Secretary of Public Safety and Homeland Security's office issues final report, including DJJ investigation, concluding that SVJC was meeting its regulatory obligations, and that there were no apparent threats to health or safety of residents, including in the ORR program.
  - The report <u>does not</u> provide opinion on the merits of the lawsuit.

Report Recommendations for SVJC

In addition to findings DJJ also made recommendations for SVJC:

- **Recommendation 1:** SVJC should provide staff with training and professional development in the areas of positive youth development, cognitive behavioral interventions and trauma informed care.
  - ***SVJC Response:*** *In progress. Missouri Youth Services Initiative (MYSI) training was completed Nov. 2017 in SVJC's Community Placement Program unit and with two assistant shift supervisors. MYSI to provide more coaching to all SVJC staff on MYSI methods in first week of October.*
- **Recommendation 2**: SVJC should increase the staff's understanding of and sensitivity toward the unique cultural backgrounds of the youth in the federal program, expanding culturally relevant programming and number of bilingual staff.
  - ***SVJC Response:*** *SVJC continues ongoing effort to recruit bilingual staff. Mental Health Clinician recently hired to work directly with ORR Program youth.*

SVJC Recommendations / Response

- **Recommendation 3:** SVJC should strengthen the procedures for the use of mechanical restraints and re-train staff on the use of physical and mechanical restraints.
- **Recommendation 4**: SVJC should provide ongoing training in the effective use of de-escalation techniques for all staff at SVJC.
  - ***SVJC Response**: From June through August, all SVJC direct care staff underwent 12 hours of recertification in "Handle With Care" curriculum, including verbal de-escalation techniques and appropriate use of physical and mechanical restraints. An additional two-hour component, "Verbal Instead of Physical," was included in the recertification, and is now a regular part of the training. It uses relationship building as an agent of change.*

SVJC Recommendations / Response

- **Recommendation 5:** SVJC should explore design and furniture modifications to create a setting more conducive to working with a population that has high rates of trauma.
  - ***SVJC Response:** SVJC's activities coordinator has worked with youth on design changes, such as murals and whiteboards, in collaboration with MYSI. The youths' feedback will be considered alongside SVJC's current research of possible furniture options which are conducive to working with a high-trauma population and also meet safety and security concerns in a juvenile detention facility.*

Recommendations For DJJ Board

- **Recommendation 1**: The Board of Juvenile Justice should amend the regulations governing local juvenile detention centers to require that any time such a center enters into a contract with a third party to house youth in the custody of the third party, the contract must allow for DJJ staff to have the same access to the youth and their records as DJJ has to all other youth in that facility.
- **Recommendation 2**: DJJ will inform and educate the Board about the use of mechanical restraints in juvenile correctional centers and locally operated juvenile detention centers in Virginia in order that the Board may properly consider the current regulations regarding the use of mechanical restraints and whether any changes might be necessary.

DJJ Use of Restraint Chair

- Since the full adoption of the Community Treatment Model, DJJ has abandoned the use of the restraint chair as a matter of practice, with the exception of using it, as a last resort, to transport residents on campus.
- The last use occurred in December 2015, for transportation.
- Since 2011, the restraint chair has been considered for use 8 times at Bon Air JCC.
  - Five incidents noting actual use of the restraint chair.
  - Transportation of resident from one campus location to another: Three incidents.
  - To prevent active self-injurious behaviors: Two incidents.
  - On three occasions, chair was considered but not used for youth engaging in self-injurious behavior including head-banging and self-biting.
  - Majority of the previous use of restraint chair occurred between 2013 and 2014.

Regulations for Mechanical Restraints

Current Provisions

- Mechanical restraints include: handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and mobile restraint chairs.
  - Spit guards/bite guards and helmets are not addressed in either regulation.
  - The provisions below are applicable to all mechanical restraints. No provisions applicable solely to mobile restraint chairs.
- Regulations governing JCCs and JDCs provide controls to prevent unnecessary application of mechanical restraints and to ensure safe restraint.
  - Restraints shall NEVER be applied as punishment.
  - Residents may not be restrained to fixed objects or in unnatural positions.
  - Staff authorized to use restraints must receive training, including how to check the resident's circulation and how to check for injuries.
  - The facility must record mechanical restraint use in the resident's case file or a central log book.

Regulations for Mechanical Restraints

Current Provisions

- When residents are mechanically restrained, staff must:
  - ✓ Provide for their reasonable comfort and ensure access to water, meals, and restroom; and
  - ✓ Make direct personal checks on the residents at least every 15 minutes or more often if the resident's behavior warrants.
- If a resident is mechanically restrained for more than two cumulative hours in a 24-hour period, except during routine transportation, staff must consult with a mental health professional.
- If a mechanically-restrained resident exhibits self-injurious behavior, staff must immediately consult with a mental health professional and monitor the resident in accordance with established protocols.

Regulations for Mechanical Restraints

Next Steps at November 7th Board Meeting

- Review of current regulations and approved, new regulations.
- Review of current JCC and JDC practices.
- Presentations from internal and external experts.
- Board may consider additional regulatory action or may maintain current scheme.

Proposed Regulation Regarding 3rd Party Contracts With Juvenile Detention Centers

Background

- DJJ certifies and regulates JDCs.
- But there is no existing regulatory or statutory mechanism allowing the DJJ's Certification Unit to interview residents detained in a JDC who are under the custody of an outside entity.
- The proposed amendment will apply to agreements between JDCs and any third party (including DJJ) to address this oversight gap.
- DJJ requests that the Board approve proposed amendments for submission through the expedited "fast-track" process available for noncontroversial regulatory proposals.

Proposed Regulation Regarding 3rd Party Contracts With Juvenile Detention Centers

Request Approval For Amendment To Regulation

- Proposed amendment provides that when JDCs enter into contracts with separate entities to detain a juvenile in the separate entity's custody, the written agreement must:

  (i) provide that the program housing the juvenile is subject to the department's certification regulations; and
  (ii) give the department the same access to these juveniles and their records as all other residents for purposes of complying with the certification regulations.

Questions?