Robert Vilchez, Chair
Scott Kizner, Vice Chair
Synethia White, Secretary
Lisa Cason
Eric English
Tyren Frazier
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COMMONWEALTH *of* VIRGINIA
Board of Juvenile Justice

BOARD MINUTES

November 1, 2024
Bon Air Juvenile Correctional Center Campus

Board Members Present: Lisa Cason, Eric English, William (Will) Johnson, Scott Kizner, David Mick, Laura O'Quinn (remote participant), Robert (Tito) Vilchez, and Synethia White

Board Members Absent: Tyren Frazier

Department of Juvenile Justice (Department) Staff: Ken Bailey, Brendan Bartley, Ken Davis, Michael Favale, Phil Figura, Amy Floriano, Madeline Garber, Pam Hinton, Wendy Hoffman, Dale Holden, Hamlet Hood, Nina Hyland, Nikia Jones, Melodie Martin, Andrea McMahon, Ashaki McNeil, Linda McWilliams, Stephanie Morton, Leah Nelson, Margaret O'Shea (Attorney General's Office), Kristen Peterson, Cassandra Sheehan (Attorney General's Office) Lara Todd, James Towey, Rachel Wentworth, and Rebecca Westfall

Guests (Noted on the Sign-In Sheet): Sandra Aviles, Syleethia Carr, Quinton Harrell, Tyler Layne, Samantha Mier, Abbey Philips, Erika Raines, Valerie Slater, Frank Valdez, Joe Valdez, Amy Walters, and Joe Young

CALL TO ORDER AND INTRODUCTIONS
Chairperson Tito Vilchez called the meeting to order at 9:35 a.m. and asked for introductions.

CONSIDERATATION OF REMOTE PARTICIPATION
Chairperson Vilchez was notified by Board Member Laura O'Quinn that she would participate in the meeting remotely because her principal residence is more than 60 miles from the meeting location. This reason is authorized by the new board policy governing remote participation.

Chairperson Vilchez asked Board Member O'Quinn for a general description of her location. Board Member O'Quinn noted she was in Clintwood at her home office.

On motion duly made by Synethia White and seconded by Eric English, the Board of Juvenile Justice approved (1) the Chair's decision to approve the request of Board Member Laura O'Quinn to participate from a remote location on the grounds that her principal residence location is more than 60 miles from the meeting location, and (2) affirmed that her voice could be heard by all persons at the primary meeting location. All Board members present declared "aye," and the motion carried.

CONSIDERATION OF BOARD MINUTES

The minutes of the July 31, 2024, Board meeting were offered for approval. On motion duly made by Eric English and seconded by Lisa Cason, the Board approved the minutes as presented. All Board members present declared "aye," and the motion carried.

PUBLIC COMMENT

Chairperson Vilchez announced that five individuals had signed up for public comment; to allow for the Board's other business, the public comment period was limited to a total of 30 minutes with five minutes for each individual speaker.

Delaney Toomer and Kathleen Samuelson, UVA Law Students, spoke on behalf of the Youth Justice Program, Legal Aid Justice Center. A copy of their remarks is attached to the meeting minutes.

Valerie Slater spoke on behalf of Rise for Youth. A copy of her remarks is attached to the meeting minutes.

Syleethia Carr, spoke as CEO of Not Me I Believe, Inc. Ms. Carr indicated that she started this organization because she believed in children and families. Ms. Carr expressed concern that Bon Air has lost its way. Ms. Carr shared that she was a resident at Bon Air as a kid, and she talked about her experiences being locked in a cell and the resulting mental challenges. Ms. Carr continued to discuss the detriments of being locked in a cell and the hardships of punishment and speculated that what is going on at Bon Air is affecting the youth in the worst way.

Sandra Aviles is a community organizer with Charlottesville United for Public Education. Ms. Aviles said she had a heavy heart when thinking about the youth at Bon Air. She said their path is not set in stone and our collective responsibility is to help guide them towards a future that is bright, safe, and full of potential. She said she wanted to see a more holistic approach to supporting our youth that moves beyond punishment and focuses on true rehabilitation and growth, which means implementing more resources like restorative justice programs, mental health support, and educational opportunities that allow these young people to reconnect with their communities in meaningful ways. She said it is about creating a system that heals and supports rather than one that perpetuates the harm and continues the same cycle.

Ms. Aviles said resources alone are not enough. She expressed a need for the right people, with the heart for this work, who understand the trauma these children have faced, individuals like Ms. Carr, who have been part of this same system, and who can be positive role models guiding them and providing influence that they may have lacked in their home or in their communities, staff who believe in these kids and look past their mistakes and to the potential that lies within each of them.

Ms. Aviles said children need positive role models who can help them understand that they are valued and that change is possible. She called for a commitment to building a system that pours love, hope, and resilience into vulnerable youth, asserting that they need us and we need them to become the positive force they are capable of being in this world.

Ms. Aviles noted that there were a lot of comments focused on root issues and that, without addressing the fundamental challenges at Bon Air, the involved children would not find stability and could not be

expected to grow into healthy members of society. If the children are to stay involved, they need help to lay strong roots.

Quenton Harrell from Charlottesville told of adopting a young man this year, who was his mentee and has been at Bon Air for two and half years with a blended sentence. He has thrived and grown since being at Bon Air and in the facility in Charlottesville. He came into the system at 15 as an undeveloped mind but has experienced a hunger and desire to gain and learn. He has taken advantage of the programs. Mr. Harrell expressed his support of RISE and the Legal Aid Justice Center's comments because, from a family perspective and from the monthly family therapy sessions, his son has experienced some depression during times of lockdown.

Mr. Harrell believed that education is a concern and asked DJJ to hear this concern, his request, and his solution. His concerns included the lockdowns, the reports in the news, and a recent gas leak from which Mr. Harrell's son complained about a headache and vomiting. Mr. Harrell said his son was recruited for the ASPIRE program and served as a peer advocate. Staff expected him to organize the group. Mr. Harrell's son has completed all the schoolwork he can along with some college courses, but there are no more courses or education being offered. His son has a blended sentence. He was denied parole at his first annual review. The next review is in another year, and Mr. Harrell continues to encourage him to grow and gain knowledge. Mr. Harrell asserted the only course his son can take now is barbering. Mr. Harrell and his wife encourage him to excel at barbering, but he asserts that there is no other educational opportunities. Mr. Harrell's son planned to take the electrical course, but the teacher retired or left. Mr. Harrell sends his son books, but they are returned as contraband. Mr. Harrell asked DJJ to consider a policy where certain books are accepted so his son can continue to learn and shared his willingness to donate books to Bon Air's library so all the young men can have books to pursue other interests.

Director Floriano offered to meet with Mr. Harrell after the meeting to discuss his son's educational arrangements and suggestions for other programs.

Chairperson Vilchez thanked those that provided public comment.

Board Member Scott Kizner voiced his disappointment in not having the Division of Education report on today's meeting agenda. He had previously requested this presentation at a future meeting but would have preferred it today. Board Member Kizner asked how the meeting agendas are set and if the Board is involved in that process and asked to have an educational update at the next in-person meeting.

Chairperson Vilchez noted the next Board meeting is in December and is scheduled to be virtual. Board Member Kizner expressed a sense of urgency to have conversations. He said the gap of knowledge presented and the gap of knowledge heard today are so far apart that discussion is needed. He stated that the agenda for the meeting included no time for discussion, which he believed was needed on the day's and past meeting's public comment. Board Member Kizner continued by saying that he hoped the Board and agency leadership would work together on drafting the meeting agendas to enable Board members who want to bring forth an issue to add it to the meeting agenda for discussion.

Director Floriano responded that she would be happy to work with the Board on drafting the meeting agenda and reiterated that the Board is policy-driven, which is why agenda topics are prioritized to

focus on policies and regulations. Director Floriano also noted that the Board would be able to tour Bon Air after the meeting, there would be a lot of information on education, and staff would be on hand to answer questions. Director Floriano also explained that she had to leave the last meeting early and was not present for some of the Board's conversations. She said the Department would be happy to put an education presentation on the agenda for the next in-person meeting.

Board member Kizner conveyed his appreciation for the upcoming tour but expressed concern that it would not allow the Board to have honest conversation, noting that the Board had been informed the day before that, due to Freedom of Information Act regulations, the tour would consist of two Board members at a time. Board Member Kizner welcomed a highlight of positive things on the tour, but he hoped for discussion and a chance to offer Board insights to staff. Board Member Kizner expressed confusion with the Bon Air audit report, which seemed inconsistent with the public comments.

Chairperson Vilchez acknowledged that the Board was listening and assured the group that education would be added to the next in-person meeting agenda.

Request Authorization to Initiate the Proposed Stage to Add Community Placement Program Regulations to 6VAC35-101, Regulation Governing Juvenile Secure Detention Centers
Ken Davis, Regulatory Coordinator, Department

Mr. Davis reminded the Board that at the December 13, 2023, Board meeting, the Board authorized the initiation of the Notice of Intended Regulatory Action (NOIRA) to add Community Placement Program (CPP) regulations to the Regulation Governing Juvenile Secure Detention Centers. The Department submitted that action for Executive Branch review. It was published in the Virginia Register of Regulations and completed a 30-day public comment period that ended in July. No comments were submitted during the public comment period. Mr. Davis said he was respectfully requesting that the Board move this action forward to the Proposed Stage of the standard regulatory process.

Mr. Davis explained that the workgroup decided not to create a separate chapter for these provisions, instead opting to make a new Part X within the Regulation Governing Juvenile Secure Detention Centers. The workgroup's rationale was that the juvenile detention centers (JDCs) house the CPPs, and this would also be the easiest and cleanest way to make the change.

On page 14 of the Board packet, the first amendment was to Section 10, Definitions. The only change was to add a definition for community placement programs as follows: a CPP is a direct care residential program for committed juveniles in a JDC or other department-approved setting established by written agreement with the department.

Mr. Davis said the new provisions follow the Definitions. Section 1280 establishes the basic requirements for JDCs to operate CPPs. First, they must be approved by the department, and that approval must appear on the JDC certificate issued by the department. The CPP capacity will be included in the overall capacity for the JDC. Also, there must be a written agreement between the department and the JDC. This retains the current practice and allows for flexibility both for the JDC and the department.

Section 1290, Mr. Davis said, is similar to 1280, except 1290 details requirements for any private entity to house CPPs. Currently, there are no plans to use private entities for CPPs, but the work group

decided it was the better part of wisdom to ensure provisions were provided in case this changed. If private entities ever were used, the department must approve by written agreement in accordance with Section 1310. Any private entity wanting to operate as a CPP will have to comply with all provisions of the JDC regulation because, in effect, they will have to operate a JDC.

Mr. Davis said Section 1300 clarifies eligibility of youth who can participate in CPPs. CPPs are only for youth with a valid commitment pursuant to §§ 16.1-278.8 or 16.1-285.1 of the Code.

Mr. Davis continued, explaining that Section 1310 outlines requirements that must be contained in the agreement. Every agreement the department has with a JDC or other entity for a CPP must include criteria for the youth served, including age ranges, how serious incidents will be reported in the CPP, and how healthcare services will be provided. The agreements must describe the residential programming, staffing ratios, and housing information and must address mental health services, transition planning, and disposition of juvenile records. There is a requirement that written department approval be given for any portion of work subcontracted. In addition, the agreement must contain the process for removing youth from the CPP and terms for terminating the agreement. As a final note, Mr. Davis said all the above items are currently addressed in contracts and do not increase the burden for the department or the JDCs or compromise resident care. This is the same level of scrutiny that the department provides now.

Mr. Davis pointed out that, in addition to the agreement, all the CPPs will be required to have a written statement on their program philosophy, residential program details, behavior management program, provision of services, educational and employment services, and family engagement. As with the written agreement, this aligns with the current department practice.

Mr. Davis moved on to Section 1330, which requires each CPP to assign a case manager to provide services to CPP residents. This aligns the program with 6VAC35-71-770, which requires case management services. This ensures CPP residents receive the same level of services as those provided in a juvenile correctional center (JCC).

Mr. Davis said 6VAC35-71-790 requires that individual service plans be developed and placed in each resident's record within 30 days following arrival at the facility and implemented thereafter. Section 1340 requires the CPP case manager to collaborate with the department to maintain each resident's individual service plan. This ensures the department does not lose sight of the plan once the resident is moved to a CPP.

Mr. Davis continued by saying that Section 1350 requires CPPs to prepare and distribute to the department a written progress report on each resident at least every 90 days. The progress report must contain progress toward meeting individual service plan objectives and applicable length of stay requirements, educational progress, family involvement, and continuing needs. These requirements align closely with the quarterly reports required for JCC residents in 6VAC35-71-800.

Mr. Davis finished the summary of changes by saying that Section 1360 requires residents to be released only upon written approval by the department.

Mr. Davis explained that if the Board agrees, the regulation will be moved to the Proposed Stage of the standard regulatory process and submitted to the Virginia Regulatory Town Hall for Executive

Branch review. The amended regulation will be published in the Virginia Register of Regulations with a sixty-day public comment period. The public comments received will be reviewed and presented to the Board. The Board then will receive the final proposed text for approval and advancement to the Final Stage of the process.

Mr. Davis concluded his presentation and asked for questions.

Board Member Kizner noted that in the past, the Board memo showed the current regulation and highlighted the amendments. Board Member Kizner asked if all the amendments were brand new. **Mr. Davis** responded that these are new and will be appended as Part X at the end of the JDC regulation.

Board Member White asked whether this new portion is for continuity of care to have the same standards as the JCC if the youth is moved to a CPP, to make sure there is information sharing on the youth and their treatment plans. **Mr. Davis** affirmed, adding that the changes will memorialize requirements in the regulation and ensure the CPPs are certified like the JCC and JDCs. There were gray areas for CPP youth because they were housed in a JDC but were still committed youth. It has been unclear which regulation applies to them. These changes will provide clarity.

On motion duly made by Scott Kizner and seconded by Synethia White, the Board of Juvenile Justice approved the proposed amendments to the Regulation Governing Juvenile Secure Detention Centers (6VAC35-101), including any modifications agreed upon by the Board at the November 1, 2024, meeting, and authorized the Department to advance the action to the Proposed Stage of the Standard Regulatory Process. All Board members present declared “aye” and the motion carried.

Consideration of Request to Advance Regulation Governing Juvenile Data Requests and Research Involving Human Subjects (6VAC35-170) to the Proposed Stage of the Standard Regulatory Process; Request to Amend Guidance Document Interpreting 6VAC35-170, Review and Approval of Data Requests and Research Proposals
Kristen Peterson, Regulatory Coordinator, Department

Ms. Peterson began by stating that this regulation details requirements and the process for research on human subjects who are under the care or supervision of the Department of Juvenile Justice. Ms. Peterson directed the members to the memorandum on page 23 and the proposed text on page 35 of the Board packet and explained that the regulation covers requests to obtain data regarding individuals under custody or supervision of JCCs, court service units (CSUs), and other board-regulated programs and facilities. She said the department is seeking to advance this action to the next stage of the process.

Ms. Peterson reminded the board that in December 2023, the Board approved the research regulation to be moved to the First Stage of the regulatory process. The regulation went through executive branch review and received no comments during the public comment period. She explained that at that meeting, the proposed text of the regulation was not presented; however, the Board was provided with concepts for the planned review and would hear the proposed text at today’s meeting.

Ms. Peterson said the review initially was conducted in large part due to the Governor's directive that state agencies reduce their regulatory requirements by 25% by the end of the administration. She said that while this regulation was reviewed and changed in 2020, part of the impetus to evaluate the provisions again, was to determine whether the department could accomplish some regulatory

reduction. Many changes, Ms. Peterson said, are intended to reduce the agency's regulatory footprint and accomplish the Governor's objectives.

Ms. Peterson shared the other reason for reviewing this regulation again: to perform the periodic review state agencies must conduct of their regulations once every four years, and on which the department has fallen behind.

Ms. Peterson described the accompanying guidance document, intended to supplement the research regulation, and the work group's proposed amendments to align the document with the regulatory amendments. She reminded the Board that because guidance documents follow a different process than regulations, the Board will need to permit DJJ to amend the guidance document at the appropriate time.

Ms. Peterson pointed to definitional changes, summarized on page 24 of the Board packet, before discussing the complexity of the regulation, as a whole and the challenges staff continue to have in interpreting its provisions. She explained that the regulation was reviewed by the agency's data and research unit and legislative and regulatory affairs unit, and shared how the research team had sometimes questioned the scope of the regulatory chapter and how it applied in specific scenarios. Thus, the work group created Section 15 to provide additional information and guidance about the chapter's scope. Section 15 is the applicability section that sets out various types of research projects and data requests that are subject to the regulation. Section 15 also indicates what types of projects are not subject to the regulation. Language in § 16.1-300 of the Code of Virginia identifies a list of individuals authorized to inspect juvenile record information that is otherwise confidential. Ms. Peterson said the workgroup made it clear that the regulation does not apply if individuals are seeking data or research in accordance with this statutory provision, and must follow another regulatory chapter.

Ms. Peterson noted another requested change to carve out an exception for research performed by other state agencies at the direction of the General Assembly. That language is currently in the regulation in another section. The work group suggested highlighting the information to eliminate confusion.

Ms. Peterson went on to explain an exception to the general rule that entities seeking juvenile data and records in accordance with § 16.1-300 generally are not subject to this chapter; the exception is in Section 17 of the proposed regulation. Section 16.1-300 (A) (10) of the Code identifies two entities authorized to inspect juvenile records. One category includes state criminal justice agencies. The work group clarified the new process for those entities in the regulation, which specifically includes a requirement to complete various forms to demonstrate that the party requesting juvenile data information meets the requirements to be deemed a state criminal justice agency. In addition, they must agree to release any information they receive only in aggregated form to protect the confidentiality of that information. Ms. Peterson added that Section 17 also addresses entities who may perform research on behalf of DJJ and provides that they may be subject to all or a portion of this process at the director's discretion.

Ms. Peterson next addressed Section 20, which includes requirements for external researchers. She explained that the language in the existing regulation allows individuals who do not possess all the mandated academic, professional, or experience credentials, but are directly managed by a person

with standing or job experience in the study area, to serve as the external project lead. Ms. Peterson shared the work group's recommendation to remove this authorization in order to ensure communicated information is protected by having someone serve in the capacity of the external project lead who has the requisite credentials. This is the department's current practice and is not a significant change.

Ms. Peterson next described the workgroup's recommendation to repeal Section 30 pertaining to professional ethics, again with the intent of accomplishing regulatory reduction. The language in this section required research to conform to professional ethical standards and listed examples of some standards such as the American Correctional Association, American Psychiatric Association, and others. The work group was concerned that the language was vague and unclear as to what the regulated community should do. Ms. Peterson mentioned the Office of Regulatory Management (ORM)'s guidance to state agencies on the development and reduction of their regulations, and its recommendation that agencies provide clear guidance if referencing a document or a source outside of the regulation. Ms. Peterson also identified an additional concern that the department has not historically used these standards in its decision making and, therefore, has not enforced the provision.

Ms. Peterson moved on to Section 55, which addresses aggregate data requests, defined in Section 10 as a broad class of rules or categories that do not distinguish individual properties within the groups. Ms. Peterson said that in 2016, the department developed express regulatory language that set out a process entities must follow for these types of requests. The department has since decided that this area does not require regulatory oversight since the process for requesting aggregate data involves simply going to the agency's website to fill out a form. The work group recommended the language be removed to accomplish additional regulatory reduction.

Ms. Peterson went on to discuss Section 65, which, she explained, addresses sensitive identifiers and sensitive data. The section lists nine identifiers deemed sensitive by the agency that, therefore, must be redacted before information can be communicated to researchers and data requesters. Language toward the end of the provision provides the director the discretion to disseminate data with a limited number of those identifiers if the research will benefit the department. Ms. Peterson explained the director's authority to do this on a case-by-case basis under the existing regulation and the work group's recommendation to clarify the language so that that the director will only be authorized to provide information with these limited identifiers if the information or request does not conflict with confidentiality requirements in Title 16.1 of the Code of Virginia. The workgroup also added language to Section 65 establishing additional categories of identifiers that may be deemed sensitive based on other information included in the data set. This change addresses occasions when information might otherwise not be deemed sensitive, but it becomes sensitive because it is captured with other information. The workgroup sought to ensure that information is protected. This language is currently in the guidance document, and ORM has indicated that if requirements are contained in a guidance document they also must be in the regulation.

Ms. Peterson moved on to discuss Sections 65 and 67, which address the Virginia Longitudinal Data System (VLDS) and various data trusts. VLDS is a data system that consists of data from participating agencies, including DJJ. Qualified individuals can access the data through a process that involves approval or denial of the request by the sponsored agencies in order to generate cross-agency research. Since 2020, the regulation included language about the VLDS and the process of making requests through the VLDS; however, the language in the regulation is somewhat unclear. The work

group recommended changes to the regulation to clarify the language and to align the language to the guidance document. Specifically, although the language in the regulation suggests that if an entity is submitting a request for case-specific data through the VLDS, they are exempt from the regulatory requirements for case-specific data requests, this is not entirely accurate. The language has been modified to reflect the actual process, as explained in the guidance document. That is, if the department is serving as the sponsoring agency in those instances, the entity does not need to follow the process for external case-specific data requests.

Board Member Kizner asked for clarification on who this regulation applies to, a state agency seeking data or other individuals like UVA doctoral students, as an example. **Ms. Peterson** responded that it is the full gamut, from university students seeking data to conduct research to other individuals asking for data from or seeking to perform research on the department.

Ms. Peterson said the workgroup added language in the regulation to address what is called a data trust, which is a fairly new legislatively created trust that provides another environment for information sharing. The workgroup set out specific rules regarding access to data through those data trusts.

Ms. Peterson moved on to Section 100, which details requirements for what needs to be captured as part of the research proposal. This information is also contained in the guidance document. The guidance document provides that the external project lead must provide a copy of their CV or resume, but that requirement is not in the regulation. While the workgroup added language to impose this requirement in the regulation and explained it in the memo, somehow it was omitted from the proposed text. Ms. Peterson mentioned that the department could add this language if the Board agreed because the motion was written to allow the Board to make additional amendments during the meeting. After the conclusion of Ms. Peterson's presentation, the Board could come back to that portion if needed.

Next, Ms. Peterson discussed Section 125, a new area added to address quality or process improvement projects. She explained how sometimes research projects are conducted to determine the quality of a program and service, and the results of those projects are intended solely for the researcher, the program being observed, and other groups the department authorizes. Ms. Peterson explained that because the regulation does not, establish a process for these types of projects. the work group wanted to ensure a process was put in place.

Ms. Peterson returned to Section 70and said language in that provision indicates that when a researcher is performing human research, they are discouraged from offering incentives for human subjects. The workgroup recommended that language be removed. Ms. Peterson explained the workgroup's rationale that discouraging someone from doing something in a regulation is not useful, and in many instances, incentives were necessary to encourage participation. The workgroup acknowledged that reality and removed the provision.

Ms. Peterson also discussed the provisions in Sections 65 and 140, addressing requirements on the bodies required to review external case-specific data requests and human research proposals. For the internal committee that reviews the external case-specific data, there is a 20-day deadline for conducting the review. For the human research proposals, there is a 30-day deadline. The work group recommended that those specified deadlines be removed. The department and the bodies were

having difficulty accommodating schedules, and the workgroup did not think it was necessary for the regulation to set out specific deadlines.

Ms. Peterson moved on to the provision in Section 210 that states that, in the research agreement, language must be included that gives the department permission to use illustrations and other information resulting from the research project. The workgroup recommended the provision be repealed because the department believes this is another area where regulatory oversight is not necessary.

Ms. Peterson said several provisions in the regulation include statutory language that mirrors language contained in § 32.1-162.16 and subsequent provisions. In accordance with ORM guidance, the regulated community should be aware of the source of regulatory requirements, and if the source is a statute, the statute should be referenced. The regulation is amended to resolve this issue.

Ms. Peterson ended her presentation and asked for questions.

Board Member Kizner asked if a group seeks data from the department for such things as a survey, whether that type of request falls under this regulation or under a Freedom of Information Act (FOIA) request. He asked how a determination is made as to what becomes research versus what becomes data? **Ms. Peterson** responded that FOIA speaks to records that are already in existence. Research or data has not been collected or compiled yet and generally does not fall under FOIA.

Board Member Kizner stated his desire to not want to "muzzle" research and asked if there are checks and balances to ensure people whom the department allows to conduct research are following the best practices since the ethics section will be repealed. **Board Member White** responded that researchers still are required to come to the department with their Institutional Review Board (IRB) approval.

Ms. Peterson added that much of the IRB process is reflected in the department's process and many requirements are included in the list of information needed for the research proposal, including the IRB approvals. **Board Member White** said that should address some concerns with ethics because this makes them come to the organization with the accepted practices from the university or the research organization.

The department's research manager, **Nina Hyland,** explained applicants must describe their research methods and how they will use the data. There are several questions for them to answer before the proposal is reviewed.

Board Member Mick said he agreed some areas of the regulation could be confusing. He talked about understanding how the regulation tried to help, for instance, undergraduates at UVA to assist in research projects when they might not be qualified but are under the guidance of their professor or whoever had the qualifications. This made it easier for them to participate in the program. He also understood the regulation when the research is submitted to the department it is based on information the department provided, and the findings are their own. **Ms. Peterson** said there is also language that gives the director the authority to waive that endorsement statement and in those instances, the department would ask for all information ahead of time to ensure the department had no concern with it.

Board Member Johnson asked if there are standards in the regulation that address how research should be conducted, whether it needs to be done in a particular manner. **Ms. Peterson** responded there is nothing expressed in the regulation that requires research to be performed in an ethical manner. However, there are several requirements in the regulation that direct the research staff to review the conditions. There are other safeguards in the regulation that make it so Section 30's provisions are not needed. **Board Member Johnson** said it would probably be taken care of by the overall review. **Ms. Peterson** said the review helps to ensure the department is not approving a request that will violate state law, federal law, etc. Ms. Peterson speculated that this is why there has not been a huge focus on the standards of professional ethics. The existing regulation provides a list of standards, but the list could be far more exhaustive, and the current provision can confuse the regulated community on what they should be doing.

Board Member Mick and Board Member White discussed the general requirements of external researchers (Section 20), the difficulty of enforcement, and the possibility of applicants putting their career and name on the line if the research is not done properly or ethically. The department does have the power to end involvement, and the IRB approval that is part of the review process helps. **Ms. Peterson** pointed to language in Section 185 that speaks to researcher noncompliance and gives the department some administrative authority to rescind approvals, which is yet another safeguard.

Board Member Kizner asked if the agency has a research unit at the department and who they fall under. **Ms. Peterson** responded yes, the department has the Data Research and Records Integrity Unit with Nina Hyland as the research manager. Ms. Hyland sat on the work group that reviewed the regulation. The unit coordinates the agency's Data Research Guide every year and oversees the process for any research request and the Human Research Review Committees and other internal committees.

Board Member Kizner asked how many research requests the Department receives. **Ms. Peterson** responded that pages 157-170 of the Board packet contains a report of all pending human research projects and external case-specific data requests.

Ms. Peterson reminded the board of the unintentional omission of language in Section 100 and asked the members whether they wanted to consider additional proposed text that could be incorporated into this language before the vote. Ms. Peterson offered as an amendment to page 50, that a new number 12 be added after item number 11. The proposed language would be: "A copy of the resume and Curriculum Vitae of the principal researcher and student, if applicable." The old item 12 would become 13.

Board Member Mick asked whether this would help to know who the students are working on research projects. **Ms. Peterson** said that was correct, you would know the external project lead and their qualifications. Again, that information is already required in the guidance document, but the department is not able to enforce it because it is not a regulatory requirement.

Ms. Peterson said that a substitute motion is not necessary because the current motion is drafted to allow for amendments on the floor.

On motion duly made by Scott Kizner and seconded by David Mick, the Board of Juvenile Justice approved the proposed amendments to the Regulation Governing Juvenile Data Requests and

Research Involving Human Subjects (6VAC35-170), including any modification agreed upon by the Board at the November 1, 2024, meeting, and authorized the Department to advance the action to the Proposed Stage of the Standard Regulatory Process. All Board members present declared "aye," and the motion carried.

Consideration of Request for a Fast-Track Action to Amend Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (6VAC35-160)
Kristen Peterson, Regulatory Coordinator, Department

The next discussion focused on the fast-track request to amend the Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (VJJIS) contained in 6VAC35-160. The Board memo is on page 69 of the Board packet and the proposed text is on page 73.

Ms. Peterson said the VJJIS was created in accordance with § 16.1-222 of the Code of Virginia within the Department of Juvenile Justice and is a system responsible for receiving, classifying, and filing certain data. It has been referred to in the past as the infrastructure of all data maintained by the department. The regulation has been in place since 2004, and in addition to the information in the regulation, two external documents (Information Technology Resource Management or ITRM standards) are incorporated that are established and maintained by the Virginia Information Technology Agency (VITA).

Ms. Peterson explained that language in 1VAC7-10-140 provides when a regulation adopts text by referencing all or a portion of an external publication or document, the text in the external document becomes an enforceable part of the regulation. That means there are instances in the regulation where the regulatory provision might require the regulated community to comply with an external document and, by doing that, all the provisions in the external document become an enforceable part of the regulation. Every single requirement contained within that external document is also part of the regulation and is enforceable. Under the existing regulation, SEC 501-09.1, an external VITA document, is incorporated into the regulation. This 165-page document contains more than 900 requirements, and all those requirements are part of the regulation. The Department requests that the Board allow the department to amend the regulation and extract SEC 501-09.1 so that it is no longer a document incorporated into the regulation by reference.

Ms. Peterson then shared the department's reasons for requesting to extract the ITRM document. First, the document is outdated. It has been updated nine times since 2016 when this regulation was last amended, and it has been superseded more recently and replaced with SEC 530. Second, there is no need for this document to be incorporated into the regulation. The regulatory text contains two sections that incorporate this external document. Section 10 defines the data owner as the department employee responsible for the data decisions, and Section 130 addresses provisions for remotely accessing the VJJIS and imposes a requirement that if the device has been inactive for 15 minutes, then a screen saver or lock-out period should be implemented. SEC 530 provides no additional guidance on the definition or remote access, and the department believes the language in the regulation is sufficient, independent of the external document.

Ms. Peterson explained ORM's guidance, which maintains that anytime a document is incorporated, and the specific sections intended to be incorporated are not addressed in the regulation, the entirety of the document is incorporated. The Department recommends extracting the incorporated

document. The department believes this will accomplish a 20% reduction in the agency's regulatory requirements, a significant portion of the Governor's 25% regulatory reduction mandate. The department is requesting that the Board authorize the fast-track process to accomplish this change. The fast-track process is available for non-controversial regulations; the department believes this area is non-controversial.

On motion duly made by Will Johnson and seconded by Lisa Cason, the Board of Juvenile Justice approved the proposed amendments to 6VAC35-160-10, 6VAC35-160-130, and the list of documents incorporated by reference (DIBRs) in the Regulation Governing Juvenile Record Information and the Virginia Juvenile Justice Information System to remove any reference to COV ITRM Standard SEC 501-09.1. The Board authorizes the Department to proceed with the filing of a fast-track regulatory action to initiate these amendments. All Board members present declared "aye," and the motion carried.

Consideration of a Variance Request for Direct Supervision Staff in JCC to Actively Supervise Residents, 6VAC35-71-810
Kristen Peterson, Regulatory Coordinator, Department

The Board shifted focus to the Regulation Governing Juvenile Correctional Centers, 6VAC35-71. Ms. Peterson reminded the Board that in June 2014, the department requested a variance to the regulatory requirement in 6VAC35-71-820. The language on page 75 of the Board packet provides that there shall be at least one trained direct care staff on duty and actively supervising residents at all times that one or more residents are present. The regulation defines direct care staff as individuals whose primary responsibilities are maintaining the safety, care, and well-being of residents; implementing the structured program of care and the behavior management program; and maintaining the security of the facility. Ms. Peterson said the language in the regulation speaks to actively supervising residents, and the department has operationalized that requirement to say that direct care staff must have sight and sound supervision a minimum of once every 15 minutes.

Ms. Peterson explained the regulatory definition for "direct supervision" contained in 6VAC35-71-10as the act of working with residents who are not in the presence of direct care staff members. Those who provide direct supervision are responsible for maintaining the safety, care, and well-being of residents, in addition to providing services or performing the primary responsibilities of that position. A number of employees, for example teachers, rehabilitation counselors, and therapists, are classified, and historically have been classified, as direct supervision staff. Because of that third prong of the direct care staff provision, the department believes these individuals are not direct care staff and, therefore, are not authorized to be alone with residents outside the active supervision of direct care staff.

Ms. Peterson said that in 2014, the Board granted a variance to this regulatory requirement in order to allow teachers, rehabilitation counselors, and behavioral services staff to be alone with residents without direct care staff performing their active supervision requirements. The Board granted that variance in large part to ensure that needed services continued even if there was not a sufficient number of direct care staff to actively supervise residents while these services were provided. That variance was granted in 2014, and the Board extended it in May of 2019. The department now asks the Board to reinstate the variance for another five years. Ms. Peterson said the variance's expiration earlier in 2024 was an oversight.

Ms. Peterson directed the Board to page 77 of the packet which provides that in order for the variance to apply, the direct supervision staff must satisfy all of the requirements listed. Ms. Peterson added that in May of this year, the internal training requirements changed for direct supervision staff, who are now required to complete the same training as direct care staff, including Handle With Care, unless they have a medical waiver. Even considering these enhanced training requirements, the department still believes direct supervision staff do not meet the definition of direct care staff. For these individuals, provided they meet the requirements of the bulleted information on page 77, they would be authorized to be alone with residents outside the active supervision of direct care staff. The employee must complete their required training, listed on page 77, which includes their regular and mandated training. The employee also must complete department-approved training on the supervision and control of the residents, verbal de-escalation, etc. All that training is captured in the Handle With Care training course.

Ms. Peterson said that under the variance, when residents are not being actively supervised, the direct supervision staff must be able to immediately communicate with direct care staff. In the past, this has been accomplished through two-way radio, but the Department did not want to specify how it needs to be done, as information communication devices evolve. Ms. Peterson added that the employee must check in with the direct care staff before and after being alone with any residents.

Ms. Peterson concluded this portion of the presentation by asserting the department's belief that the variance should be reinstated to help ensure direct supervision staff can be alone with residents and still provide needed services in the JCC. Ms. Peterson respectfully asked the Board to approve the variance request for a five-year period or until the JCC regulation is amended. She noted that the JCC regulation has been moving through the process for several years, which is why the department is seeking the variance for five years.

Board Member Kizner mentioned that he recalls the 2019 conversation and asked if the underlined information on page 77 constitutes new language. **Ms. Peterson** responded that the underlined language is new language in the sense that it is not contained in the existing regulation, but that it is old language in the sense that most of it is captured in the variance that expired earlier this year. The only change made to the language was to allow for an accommodation for individuals who have a medical waiver.

Board Member Kizner asked if the department was aware of any concerns since the 2019 discussions. **Ms. Peterson** said she is not aware of any concerns.

On motion duly made by Will Johnson and seconded by Eric English and pursuant to 6VAC35-20-92 of the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities, the Board of Juvenile Justice approved a variance to the regulatory requirement in 6VAC35-71-820. The variance shall authorize direct supervision staff to supervise residents outside the active supervision of direct care staff and shall remain in effect until conforming changes are made to 6VAC35-71 or for five years, whichever occurs first. All Board members present declared "aye," and the motion carried.

Consideration of Request for Authorization for a Variance to 6VAC35-150-390 (Transfer of Case Supervision)
Kristen Peterson, Regulatory Coordinator, Department

The next agenda item focused on nonresidential services, particularly involving court service units (CSU). Ms. Peterson requested a variance to 6VAC35-150-90 that addresses youth who are being supervised in a CSU and the authority of the court and the CSU to transfer that supervision to another jurisdiction. Ms. Peterson directed the Board to the bottom of page 79 of the packet, which detailed the language in the regulation. It stated when the legal residence of an individual under supervision of a CSU is not within the jurisdiction of the original CSU, the supervision of the case may be transferred to another unit in Virginia in accordance with § 16.1-295 of the Code of Virginia and approved procedures. Ms. Peterson noted that emphasis has been added to the term, "legal residence" in bold type. Section 16.1-295 provides, "If any person on probation or under the supervision of any juvenile probation officer or other officer of the court removes his residence or place of abode from the county or city in which he was so placed on probation or under supervision to another county or city in the Commonwealth, the court in the city or county from which he removed his residence or place of abode may then arrange the transfer of the supervision to the city or county to which he moves his place of residence or abode, or such transfer may be ordered by the transferring court."

Ms. Peterson said the work group interpreted the regulatory provision fairly narrowly, and because of the fact that the regulatory provision used the language "legal residence," and the statutory provision used the language "residence or place of abode," and because neither of those terms is defined in Title 16.1 or in 6VAC35, there was no guidance. She said the work group looked to other provisions in the Code, and while they did not have any application to the juvenile courts or juveniles; Title 24.2 which governs elections, includes definitions for many of these terms. The term "residence" is defined in § 24.2-101 as requiring both domicile and a place of abode, and those terms also are defined in that section. "Domicile" is defined as a person living in a particular locality with the intention to remain, while "place of abode" is defined as the physical place where a person dwells. There is no statutory or regulatory definition for the term "legal residence" used in the CSU regulation. The work group looked at Black's Law Dictionary, and language there defined "legal residence" similar to the "domicile" definition, which is a person's true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning.

Ms. Peterson shared the workgroup's concern that because of the use of "legal residence" in the regulatory provision, it restricted the CSU's ability to transfer supervision in those cases where an individual's temporary dwelling place might change. For example, a case discussed by the workgroup included a youth going away to college who might travel hundreds of miles outside the jurisdiction where they are originally assigned to a CSU. In those instances, the workgroup believed that based on this interpretation, the department was not authorized to transfer CSU supervision, and as the department continues to enhance meaningful contact with individuals under CSU supervision, it was becoming significantly burdensome on staff and other department resources. The work group believed adding language through a variance would help address this issue.

Ms. Peterson directed the Board to the bottom of page 80 of the packet where one small phrase was added to align the language with the language in the statute, "when the legal residence **or place of abode** of an individual under supervision of a CSU is not within the jurisdiction of the original CSU, the supervision of the case may be transferred to another unit." The work group believed this would give the CSU staff greater ability to exercise their discretion in transferring the supervision of cases when the transfer is in the best interest of the child.

Ms. Peterson addressed the other point of concern, which involved facilitating resources and referrals through the CSUs to the location where the juvenile has their physical dwelling. Sometimes this is inefficient. The person within that community has the most knowledge about the resources available. Ms. Peterson's recommendation was to approve this variance so CSUs can have additional discretion.

Board Member White asked if this variance would apply or be helpful for young people who do not have a stable home setting or are moved for safety reasons. **Ms. Peterson** answered that a good example would be a youth in foster care whose legal residence might be within the locality but who has been placed outside of the locality or placed in a group home or some other temporary setting. The work group believed the department's hands were tied in its ability to transfer that supervision simply because of the existing language.

Board Member Mick asked if a youth wanted to spend the summer with their grandparents, based on approval of the CSU, this would allow the transfer of supervision. **Ms. Peterson** said that is correct. The main idea is to give the CSU the discretion to do what is in the best interests of the juvenile. If it is not in the best interests of the juvenile to transfer supervision because, for example, the CSU has developed a significant rapport with the youth, the CSU will retain supervision. But the language in the regulation would prevent them from exercising this needed discretion. **Board Member Mick** said if it is a good opportunity for youth on supervision, the Board does not want to prevent them from doing it simply because it does not meet the legal residence requirement.

Board Member English asked how confident the department is that CSUs will be able to accommodate these requests for transfer. **Director Floriano** responded that was part of the discussion that prompted this variance. One of the CSUs had a group home down the street from them and wanted to be able to supervise the residents in this group home and provide personal interactions. The youth's legal residence was in Norfolk, the group home was in Roanoke, and the only contact is virtual, which is not as effective as meeting with the youth in person. The group home was not their permanent legal residence so without this variance we were unable to transfer supervision under the regulation. Director Floriano also noted that the department was in the process of a workload study for CSUs. The department did not want to have this youth in the group home in Roanoke for a year doing virtual meetings or send them back to Norfolk or have a Norfolk staff drive to Roanoke. The department wanted to have the youth access services right there and have good personal relationships with their supervising CSU worker close to them and receive that support.

Board Member Mick said this might be a hinderance to youth in preventing them from getting a space in a group home. **Director Floriano** explained that it could be considered a loophole, then discussed one of her first actions at DJJ of extending the amount of time youth can stay in independent living. Now, the length of stay has almost tripled from four to six months to the current nine to fifteen months. This change recognized that youth need a period of time to transition back into the community with supports around them. This allowed the department to bolster those supports and help better relationships in person. This acts as a legal loophole because the Code allows it, but the wording in the regulation restricts it. The department wanted to do what could be done under Code, and still have the flexibility to address each youth's individual need through the processes.

On motion duly made by Synethia White and seconded by David Mick, pursuant to 6VAC35-20-92 of the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities, the Board of Juvenile Justice approved a variance to 6VAC35-150-390, authorizing the

transfer of court service unit (CSU) supervision to another unit in the Commonwealth of Virginia in cases where the supervisee's place of abode falls outside the jurisdiction of the original CSU. The Board authorized the variance for each of the 32 state-operated and locally operated CSUs in the Commonwealth of Virginia for a five-year period or until 6VAC35-150-390 is amended to resolve this issue, whichever occurs first. All Board members present declared "aye," and the motion carried.

Consideration of Request for Extension of Variance Applicable to New River Valley Juvenile Detention Home; Control Room
Ken Davis, Regulatory Coordinator, Department

Superintendent Joe Young and Deputy Director Erika Raines of New River Valley Juvenile Detention Home were introduced to answer questions concerning the variance request.

Mr. Davis opened by saying New River Valley had requested an extension of the variance in place since November 13, 2019; the same variance was granted in 2014. The variance allowed New River Valley to be exempt from requirements pertaining to control centers. On page 83 of the Board packet, Mr. Davis detailed the requirement in 6VAC35-101-520 pertaining to control centers: "To maintain the internal security, a control center that is secured from residents' access shall be staffed 24 hours a day and shall integrate all external and internal security functions and communications networks."

Mr. Davis explained that New River Valley was built in 1974 and is older than many of the other JDCs currently in operation; therefore, it was not constructed with a control center. Interestingly, the department's compliance manual for 6VAC35-101 states that the purpose of this particular provision is to ensure that residents have a safe and secure environment. New River Valley believes it accomplishes this goal, even though it does not have a secure control center.by a number of implemented processes. Among those, the facility keeps keys secure in a locked cabinet. They issue those keys daily to security staff, teachers, and in-house mental health staff when their shifts begin. Those keys are then returned at the end of the day. The keys are kept in a locked cabinet when not in use. There are inventory and control measures with residents prohibited from ever using them. The keys are kept secure while staff are on duty. Staff are responsible for perimeter control, and visitors approaching from the main or side intake entrances ring a bell that sounds throughout the facility. The shift supervisor or designee will answer the bell. Reception staff manage public visitors through the front entrance during business hours. During nonbusiness hours, visitors must use the side intake entrance, and the shift supervisor or designee will answer the bell.

Mr. Davis continued, saying that New River Valley also has placed 48 cameras in strategic locations both internally and externally, along with numerous monitors where all activity is observed and monitored. This is an activity that would otherwise be done at the control center. The facility consistently meets and often exceeds the 1:8 waking hours staff ratio and the 1:16 sleeping hour ratio. Written procedures require residents to remain within sight and sound supervision while moving throughout the facility, and residents must be accompanied by at least one staff member. There is also a staff intercom system monitored 24/7.

Mr. Davis said staff communicate primarily through a two-way radio system, and a multiline telephone system also is available for communication if that system fails. The facility has an emergency cell phone for outside calls to the community. As mentioned, New River Valley was built in 1974 and has never had a control center and has functioned successfully. Further, the physical plant makes it infeasible to

establish a control center that would comply with the regulation. Because of its low population, renovation plans have been postponed indefinitely. New River Valley believes the practices and procedures outlined eliminate the need for a control center because the facility can maintain security and communication without it.

Under the proposed variance, Mr. Davis said New River would be able to continue its current supervision protocol without having to comply with the relevant regulatory requirement. The wording of the proposed variance is on page 85. A Subsection B has been added to 6VAC35-101-520 that says the provisions in this section will not apply to the New River Valley Juvenile Detention Home.

Mr. Young said he appreciated the Board's consideration in passing the variance for a third time at every five-year interval. He recognized his facility is unique but still able to provide top-of-the-line, second-to-none care for these kids in a home-like setting.

Board Member Kizner asked if Mr. Young had the funds to renovate the facility. **Mr. Young** said he understood that it is time to scrap the building and build new, but the funds are not available. Mr. Young explained that he does not wait until things break down; staff are proactive in fixing things. The facility is celebrating its 50th anniversary this year and is still going strong. The Commission has tabled discussions and there are no plans in place for a massive renovation.

Board Member Kizner asked how the budgetary process works. **Director Floriano** responded that juvenile detention centers are maintained by the localities, so it would go through the local budget process.

Board Member Johnson said he understood New River renovates systems as they go along, like the HVAC, electrical, and plumbing; however, this can only be done for so long with a 50-year-old building. The facility will need to be replaced. He asked whether there are discussions at the local level about replacing, not renovating, the facility. **Mr. Young** answered that has been tabled indefinitely. Mr. Young reiterated that the facility has complied with all regulations. **Board Member Johnson** countered, asserting that they are not compliant with the law and continue to seek variances for a condition that is not considered ideal per the regulation. At some point the variances will have to end. Board Member Johnson said he understood the low population but would hope that the locality has recognized the long-term need for a facility. **Mr. Young** said he will certainly take that back to the Commission.

Mr. Davis said the extension would be for another five years, until November 2029.

Board Member Mick asked what happens if the variance is not approved. **Mr. Davis** responded that at that point, the facility will be out of compliance with the regulation and at the next audit, Mr. Bailey's unit will find them out of compliance and the facility will need to submit a corrective action plan.

Board Member Kizner suggested the board issue some statement encouraging New River Valley to look at funding a new facility because this will continue for five more years. **Director Floriano** told the board they could potentially table the motion and continue it to the next board meeting and invite a locality representative to speak to the board about the variance.

Deputy Director Favale clarified that local detention facilities are handled by the locality. **Board Member Johnson** asked whether New River must still ask for a variance, and Deputy Director Favale responded yes, this falls under the department's regulatory oversight.

Mr. Davis also offered that the variance can be extended if this action was tabled until the next meeting, since the variance will expire. Deputy Director Favale agreed, noting the Board's authority to grant the variance temporarily until the next Board meeting.

Board Member White commented that she understood the board's concerns; however, this is a local budget in a smaller area with fewer funding streams. Board Member White said she believed the board can have conversations with the locality, but cautioned the members against putting additional burdens or on the staff taking care of the youth for something out of their control. Board Member White noted the importance of, making sure the local commission is aware of the board's concerns by letting them know we want the best care for these youth and expressed hope that they would begin to have conversations around appropriate funding and planning for a new facility. Board Member White said she believed the board is here for young people and to ensure they are in compliance with their protocols and procedures, but there were no alarms for her. Board Member White said she would feel differently if the facility leadership came before the Board with safety concerns or if the facility had multiple violations or there was public comment expressing issues.

Board Member Kizner said he did not know what other option he could exercise other than voting yes for the proposal **Board Member Kizner** said he felt some external pressure, but he felt like New River keeps coming before the Board and asking for yet another variance, but the local commission does not seem to be taking any responsibility. **Board Member White** responded that she does not think the board has enough weight to pressure a local commission. **Board Member Johnson** said he is not advocating to pressure them; however, there comes a point where requests for a variance are made in perpetuity unless something is done with the facility. **Board Member Johnson** said he had no problem approving another variance and is certain Mr. Young will express the Board's concerns to his Commission. Board Member Johnson said everything he has seen indicates the facility and residents are safe and properly handled. Board Member Johnson said a 50-year-old building as an institutional environment is a concern and will not hold up forever.

On motion duly made by Will Johnson and seconded by Eric English pursuant to 6VAC35-20-92 of the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities, the Board of Juvenile Justice approved a variance to the regulatory requirements in 6VAC35-101-520. The variance shall authorize New River Valley Juvenile Detention Center to operate without a control center and shall remain in effect until the facility undergoes renovations or for five years, whichever occurs first. All Board members, apart from Scott Kizner, declared "aye," and the motion carried.

Consideration of Requests for Amendment of Board Policies

Board Policy 02-016, Cooperation with Federal, State, and Local Officials
Ken Davis, Regulatory Coordinator, Department

Mr. Davis explained that the policy requires the department to make sure all of its personnel in facilities and programs cooperate fully with federal, state, and local legislative and executive bodies. Designated

staff shall respond promptly to requests for information about programs and operations, or about specific youth from federal, state and local legislators, executives, and other constituents of juvenile justice, with due regard to privacy protection statutes. The department has recommended retaining this policy. Cooperation with federal, state, and local officials is in the department's interest. This could influence budget decisions and legislative priorities, and would be beneficial for those specific youth and assist with that youth's rehabilitation.

Mr. Davis requested the Board retain the policy. There were no questions.

On motion duly made by David Mick and seconded by Synethia White, the Board of Juvenile Justice approved retaining Board Policy 02-016, as proposed at the November 1, 2024, meeting, to take effect immediately. All Board members present declared "aye," and the motion carried.

Board Policy 20-107 Tobacco Products
Ken Davis, Regulatory Coordinator, Department

Mr. Davis said facilities regulated by the Board shall not permit residents to use, possess, purchase, or distribute any tobacco product on facility property. Staff of and visitors to any such facility shall not use any tobacco products where residents may see or smell the tobacco product. Currently, all of the residential regulations mention tobacco use; however, the provisions are not entirely consistent and do not necessarily comply fully with the policy. For instance, the existing JDC regulation speaks to staff and visitors but does not actually mention residents. Mr. Davis explained that the residential regulations, including the regulations for JDCs, JCCs, and group homes, have amended and expanded tobacco provisions but are still going through the regulatory process and he was not sure how long it will take to complete the process and become effective. The department recommended this policy be retained in its current form until those regulations become effective. The department will take another look at the policy and perhaps come back to the Board and ask either for an amendment or possibly a rescission of the policy, since the regulations would then be more comprehensive than the policy.

On motion duly made by Eric English and seconded by Tito Vilchez, the Board of Juvenile Justice approved retaining Board Policy 20-107, as proposed at the November 1, 2024, meeting to take effect immediately. All Board members present declared "aye," and the motion carried.

Board Policy 05-005, Employee Drug Screening
Kristen Peterson, Regulatory Coordinator, Department

Ms. Peterson said this policy addresses the department's requirements regarding employee drug screening. In the first paragraph on page 114 in the Board packet, in the second sentence the language requires the department to provide for urine drug screening for staff, volunteers, and contract personnel who have direct contact with probationers, juveniles, and parolees. The department recommended modifications to the policy.

Ms. Peterson provided background regarding the Department of Human Resource Management (DHRM)'s comprehensive employee drug screening policy to which all state employees are subject. DJJ has its own procedure that is also very comprehensive with specific requirements for drug screening. The DHRM policy does not fully address random drug testing. The department believes that modifying this language to address specific requirements regarding random drug testing would be beneficial to

the department and to the board, and therefore recommends changing the language in the first paragraph to read, “The department shall provide for random drug screening for department, employee, and contract personnel who have more than incidental direct contact with residents and clients served by the department.” This is consistent with the agency’s current procedural requirements, and seeks to ensure anyone who has more than direct incidental contact with juveniles or other clients will be subject to random drug screening. The department believes random drug screening is a very effective way to address and ensure reduction in the use of alcohol and drugs within the agency.

Ms. Peterson also addressed language in the existing policy that says all staff must be provided with a copy of the department's drug screening procedures, including a list of positions subject to the drug screening, and again referenced the department’s comprehensive procedure requiring all staff receive or have access to department procedures. The department believes this language is not necessary and therefore recommends removing the language and instead inserting language that requires the department to identify those individuals who are subject to whatever drug screening requirements are imposed and then setting out specifically what those drug screening procedures need to address. In the second paragraph, the recommended amendment would read as follows, ”The department's procedure governing drug and alcohol testing shall identify the positions subject to drug screening, the conditions under which such screening will occur, and safeguards for individual privacy and confidentiality, and shall comply with the provisions of the policies for drug and alcohol testing established by DHRM.” That language referencing DHRM, coupled with the additional language added regarding random drug testing, provides a helpful policy for the department. DHRM’s policies and the department's procedures provide additional guidance.

On motion duly made by Will Johnson and seconded by Synethia White, the Board of Juvenile Justice approved the amendment of Board Policy 05-005, as proposed at the November 1, 2024, meeting, to take effect immediately. All Board members present declared “aye,” and the motion carried.

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

Mr. Bailey directed the Board to the packet, which contained the individual audit reports and a summary of the Director’s certification actions completed up to September 23, 2024.

The audit for the 31st District Court Service Unit found three deficiencies. A follow-up review found the unit to be compliant with those three areas and they were certified until April 2027. The audit points included:

- 6VAC35-150-350 (A): Two of five cases reviewed did not include the parent as a contributor in the development of the supervision case plan. The follow-up review on June 4 was not determinable, as there were no new applicable cases to review.
- 6VAC35-150-350 (B): Six applicable cases were reviewed and were missing language that the supervisory review had been completed, approved, or modified as indicated. The review on June 4 indicated that one of three applicable cases reviewed was missing the language that the supervisory review had been completed, approved, or modified as indicated.
- 6VAC350-150-355(4): Two of four applicable cases reviewed had no timeframe provided for the electronic monitoring. The review on June 4 indicated that six of six applicable cases reviewed provided the proper timeframe.

The audit for the Henrico Juvenile Detention Home was 100% compliant for the second consecutive audit, and was certified until August 21, 2027, with a letter of congratulations.

The audit for the Northern Virginia Juvenile Detention Home and Postdispositional Detention Program found three deficiencies. The follow up review on August 27 found the detention home compliant with all three areas, and they were certified until May 15, 2027. The audit points included:

- The grievance procedure must be posted in all the pods, but the certification team found they were not posted.
- On two instances, certain information that should have been on the face sheet was not included.

The Summit West Transitional Living Program is a new program in Roanoke. There is also a Summit Transitional program in Chesterfield that has operated for a few years. These two transitional living programs are operated by Intercept Health. A conditional certification audit was performed in January 2024, and they were certified for six months with 100% compliance. The second phase of the audit was conducted on August 12, and the program was 100% compliant in all necessary areas. The Director certified Summit West until September 1, 2027, with a letter of congratulations for 100% compliance.

Mr. Bailey then discussed the audit for the Virginia Beach Crisis Intervention Home, which he cautioned, was somewhat confusing and not a report he usually presents. The facility is a coeducational group home and emergency shelter that has experienced a lot of changes and problematic issues, as outlined on page 137.

The original audit conducted on March 13 found some critical issues with eight violations. The unusual aspect is that there is no status update because in March, there was a complete staff turnover, and the facility had no residents. When the Certification Unit returned to assess the facility for the status report, there were no records to review in medical or any other area. At the end of July, the facility started receiving residents back into the program. The Certification Unit will return in December to reassess all areas and present a report to the director on its status and what staff have done to correct areas of noncompliance. The director extended the program's certification until January 1, 2025, with a status report to be reviewed at that point that will be shared with the Board at a future meeting.

The audit for Bon Air Juvenile Correctional Center was conducted in January 2024. It was noted that the audit was scheduled for September 2023, but was extended to January 2024 for the newly appointed administrative staff to prepare for the audit. This gave the new administration the opportunity to use this time to correct the audit deficiencies. The deficiencies noted in the report occurred prior to the end of September 2023.

- An audit point on security procedures showed that the 20 Post Order Books reviewed did not document the staff and supervisor's signature. During the status review on August 1, the Post Order Books were reviewed for units 54, 63, 65, and 67 and found in compliance, with the proper documentation of staff and shift commander's signatures.
- The original audit found a deficiency in the area of nutrition. Three of six residents interviewed stated that staff who eat in their presence do not eat the same meals as residents. The follow-up review on August 1 showed six residents from different units were interviewed, and all stated that staff do not eat different meals in their presence. This audit point was found to be in compliance.

- 6VAC35-71-1070 addresses medication incidents. The original audit found that one of one applicable medication incidents reviewed did not document that the attending physician was notified as soon as possible or the actions taken by staff. On December 18, 2022, the resident did not receive MiraLAX as prescribed by the doctor. This is a critical regulatory violation, and only one instance results in a finding of noncompliance. Follow up review on August 1 showed six out of six medical reports reviewed had no medication incidents.
- 6VAC35-71-1070 (J) addresses medication refusals. There are times when residents refuse to take medication. The original audit found three of eight medication refusals reviewed did not document the action taken by staff. For medication incident reporting, there is a list of medications that the nurse must initial when that medication was issued and coded when that medication was refused. On the back of the medication administration record (MAR), there is a place to document the action taken by staff. The original audit showed that three of the eight medication refusals reviewed did not document the action taken by staff. During the follow up review on August 1, six medication refusals were reviewed, and three of those still did not document the action taken by a staff. These were reviewed in the presence of the nurse manager at Bon Air, who acknowledged that the assessment was accurate, and no further corrective action was planned. Mr. Bailey expressed his belief that the staff at Bon Air have developed an appropriate corrective action plan, but had not followed through on implementation. This is still reported as a noncompliant critical regulatory requirement.
- During the original audit for 6VAC35-71-1140 (B) on room confinement, three of four applicable confinements reviewed did not document that staff officially checked the resident every 30 minutes or more frequently if indicated by the circumstances. The follow up noted that six of six applicable confinements reviewed documented that staff visually checked the resident within the required timeframes. This audit point was now in compliance.
- Concerning the audit point for 6VAC35-71-1140 (C) on room confinement, four of four applicable confinements reviewed did not document that the resident was afforded at least one hour of physical exercise outside their room every calendar day unless the resident's behavior or circumstances justified exception. The follow up review on August 1 showed six confinement forms that all documented the residents confined were afforded the opportunity for one hour of physical exercise outside the locked room every calendar day.

Due to the area of noncompliance, the Director extended the certification status of Bon Air to April 12, 2025, with a referral to DJJ's medical compliance administrator to monitor the area of noncompliance.

The board discussed the confusion behind the three signatures on page 156 of the packet. The signatures appear at the bottom of the document as if approving or signing the document; however, the signatures are only there to attest to the document.

BOARD AND DIRECTOR COMMENTS

Board Member White expressed interest in the information provided to the father who made public comment on the options of the educational program, and asked whether this information can be readily available to other parents or families. Board Member White said she understood the board's oversight of regulations and policies; however, there are policies related to safety and education as presented in public comment. The Board is familiar with its responsibilities and where the boundaries lie; Board Member White feels the Board owes it to the organization, as well as to the families and the children, to be on point. Finally, on a topic Board Member White raised before, the ability to share and communicate the opportunity for public comment with the community, especially impacted families,

is important. Board Member White said there has not been much public comment since she has served on the Board, and she would like to see more effort to get the word out because, almost everyone has something to say, and with something so precious as young people, there likely will be feedback on the department's proposals even for those who agree. Board Member White said she believes people are not aware they can participate in this opportunity and don't know where to find information on it or who to contact to be heard.

Director Floriano then provided her comments to the Board. Family involvement has the largest impact on how successful youth are when they return to the community, and sometimes the department struggles with getting families to interact. The department tries to adjust plans and problem solve for each youth in their education program. Director Floriano noted that she provided Mr. Harrell her email address to reach out on any further concerns, and because Mr. Harrell's son had taken advantage of all the opportunities afforded him, the department will work with him on expanded educational opportunities.

Director Floriano noted that communication is a struggle internally and is being addressed with treatment teams and leadership. DJJ has 1,700 employees, and any agency has communication challenges.

With the recent reorganization and new Superintendent, the agency would like to be more collaborative and less siloed in its interactions with youth The agency is striving to be more focused on the youth and their families when they first enter the facility, making sure information is provided to them both in writing (e.g, the website) and in conversation during treatment team meetings, and asking staff to reiterate information several different ways and several different times so it is absorbed. Many times, when youth come into the facility, the family is still reeling from the fact that their child is here and trying to adjust to this different situation.

The agency's website includes a lot of information, such as contact information. If families are not able to access the website, the youth's probation officers or treatment teams are there every step of the way to ensure families have the information they need.

Director Floriano noted that if the Board has a concern or would like to hear about a specific policy, she is happy to include it on a meeting agenda. The agency would like to see everything work as efficiently as possible to best serve the youth in our care. Director Floriano thought that public comment could be talked about along with education opportunities, to ensure families know they are welcome to attend board meetings and provide feedback.

Board Member White said she still believed those who are impacted the most should be empowered to talk about their experiences. Board Member White discussed her history of having someone in her life that made sure she never interacted with these services. Board Member White referred to herself as a "sidewalk kid," and noted that while she can express her thoughts and experiences, she believed that it comes best from the young people and families involved in the system.

Director Floriano said Bon Air has a Resident Advisory Board that meets regularly with staff, administration, and Chief Deputy Holden almost every month, made-up of current residents who provide feedback on their unit and voice concerns. In addition, youth and staff have a lot of interaction

on activities and incentives associated with the Positive Behavioral Interventions and Supports (PBIS) program.

Board Member Kizner shared that he has thought about the concerns surrounding Bon Air and asked if the department had considered completing an independent review of the facility, which would allow a different set of eyes and ears to provide feedback and help inform decisions. Board Member Kizner said he would approve of this type of review but understood if there were legal, logistical, and financial issues to consider. Board Member Kizner said the findings would not have to come back to the board but should have some level of seriousness. Board Member Kizner said he believed this falls under the purview of the board's roles and responsibilities to ask for this type of review. He expressed desire for some closure on the issues at Bon Air and reiterated his request for a discussion at the next meeting on the education program. He also said he understood that Bon Air is a much more challenging place to work than a lot of other places, making it hard to determine if what was heard at today's meeting was based on emotions or data.

Director Floriano responded that an outside security assessment of Bon Air was done after the escape in 2020. Another assessment, with the final report pending, was an analysis by the Department of Planning and Budget on the agency's psychological services to ensure the department offers the best services to its youth.

Director Floriano said she understood the emotions during public comment and that everyone wants the best for the youth who are confined. The department has a heightened responsibility to ensure those youth are being well cared for and that their needs are met. Director Floriano reiterated that if allegations are not provided to her and her team, she is not able to investigate. The facility has cameras everywhere, and they are regularly reviewed. When concerns are raised, the agency performs an investigation. Bon Air is at 98% compliance, and the deficiency in the audit was a documentation issue. The audit results are not saying something happened, all it indicates is that something was not documented properly. The agency met its PREA requirements and ensured youth were being provided for and supervised in compliance with federal regulations.

Director Floriano voiced her frustration because Bon Air staff work for a very low salary in a very difficult job. Roughly 70% of youth currently at Bon Air are in for person felonies, meaning they have hurt another person. That is how it is designed to work. The department does not want youth in the facility that have committed low-risk offenses; those youth can be dealt with in the community in group homes, alternative placements, or CPPs. Director Floriano commended her very dedicated group of staff, who work hard for these kids; sometimes harder than the child's family. The rapport between staff and youth is sometimes forgotten. Director Floriano shared that the previous night, a resident was at the hospital for serious medical treatment until midnight. Although not part of their job, administrative staff stayed with the youth because they were genuinely trying to make that connection with the youth and to build rapport. Bon Air kids matter, and staff make sure they feel it.

Director Floriano clarified that the electrical teacher mentioned earlier in public comment did leave, but the other electrical teacher has stayed and stepped up to a full-time position because he enjoys working with these youth.

Director Floriano explained that when the agency receives complaints, staff must weigh the credibility of the information, question any bias and motivation to fabricate, understand why the person is

coming forward, establish if this is a genuine effort or an organization self-promoting or working towards legislation. Director Floriano told the board members that after three years of working with her, they should know she would investigate any complaint received. Bon Air has youth in the facility that need the department's help, and they need DJJ to serve the purpose for which DJJ stands. Director Floriano said she believed that individuals would not come to work for this agency if they did not believe in the cause because these jobs are hard. Director Floriano shared her desire to emphasize and not to forget the dedication to and connection staff have with these youth.

Director Floriano said she could provide more in-depth information to the Board but shared some initial data demonstrating a positive picture. For example, completion of treatment prior to release for anger management has increased from 68% to 92%, and substance abuse treatment completion prior to release has increased from 73% to over 90%. The department had a dramatic impact on the risk continuum prior to youth being released, and they are doing well in the community. Improvement has been seen on the recidivism rate; although it is early, there has been a positive impact. The department tried to intervene with youth and firearms because of the increase in youth who have been shot and killed in murders, and other firearm-related incidents. The numbers have gone down by roughly 30%, a dramatic decrease. Additionally, there were more than 2,400 firearm offenses in fiscal year 2023 and the number has dropped to little over 2,000. There has been a drop in juveniles with committed offenses from firearms. Director Floriano attributed the shift, not necessarily to policies or programming changes, but to the efforts of Bon Air staff.

Director Floriano offered to consider all recommendations from the community, staff, the youth, and elsewhere to ensure the youth is served in the best way possible. This continues to be the standing mission. Director Floriano said she believed it is important to have someone fighting for this population. Director Floriano expressed her appreciation for the comments and concerns raised at this meeting and noted that she looked forward to the facility tour after the meeting.

NEXT MEETING AND ADJOURNMENT

Chairperson Vilchez thanked the department and staff working on the front lines at Bon Air. He shared that he looked forward to the facility tour and the opportunity to talk with staff. Chairperson Vilchez thanked Ms. Peterson, Mr. Davis, Mr. Bailey, and Mr. Favale for their hard work, for attending all the meetings, and answering all their questions. Chairperson Vilchez expressed that the Board is not perfect, and meetings and discussions help to support them and enhance their knowledge. Chairperson Vilchez said he looked forward to the next in-person meeting with the educational program update.

The next meeting is on December 6 and will be an all-virtual public meeting.

Chairperson Vilchez adjourned the meeting at 12:50 p.m.

RISE FOR YOUTH UNITED FAMILIES, SAFE COMMUNITIES

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Department of Juvenile Justice Board Meeting Public Comment, November 1, 2024
Valerie Slater, Esq., RISE for Youth, Executive Director, Criminal Defense Attorney

Good morning, Board members, staff, and attendees. My name is Valerie Slater, I am a criminal defense attorney and the executive director of RISE for Youth. RISE for Youth is a nonpartisan organization committed to ensuring every space that impacts a young person's life encourages growth and success.

1. **Why transform DJJ?**

In 2014, we all know the Department of Juvenile Justice undertook the task of evaluating and assessing the effectiveness of Virginia's juvenile justice system. Based on the assessments, national research, and considerable staff, and stakeholder input, the Department began transforming the work of the agency away from a punitive model to reflect current best practices in the field to promote success and reduce recidivism among court-involved youth.[i]

At the outset of the transformation two very significant shifts occurred.

1st Virginia moved away from incarceration as the overwhelming response to youth who caused harm and began reserving commitment for youth with the most significant treatment needs and

2nd The Department incorporated programming to address root causes of youth's harmful behavior along with the other treatments to ensure youth are prepared to successfully reenter their communities with lower likelihood of reoffending.

2. **What was the transformation meant to accomplish?**

The Department recognized the need to focus on both the positive development of the young people and the positive development and sustainability of the staff who serve them. And accordingly, developed guiding principles to reflect the developmental needs of youth and staff. DJJ took into account the high rates of trauma exposure among the youth and the stress on the staff who work with these youth, and purposefully embraced a trauma-informed approach to the work through a Community Treatment Model, embracing guiding principles from the beginning of the transformation that include:

- SAFETY: Youth and staff need to be and feel safe in their environment and need a sense of physical and emotional well-being.
- CONNECTION: Youth and staff need to feel connected to supportive and caring adults, whether they are family, staff, or coworkers.
- PURPOSE: Youth and staff need to have goals to strive toward, skills to hone, and a sense that they have a valuable role to play in the lives of people and the community around them.
- FAIRNESS: Youth need to perceive their environment and interactions as fair and transparent. They need to be held accountable in a manner proportionate to their offense and offense history, and similar to other youth in their situation. Staff need to feel that they are treated fairly, compensated adequately, and supported in their efforts to meet the expectations of the department.[ii]

By 2020 programming at Bon Air JCC had expanded significantly to included:

Medication-Assisted Treatment (MAT): In response to the growing opiate epidemic across the nation, DJJ Health Services began implementation of MAT, designed to help alleviate withdrawal symptoms and psychological cravings.

Fatherhood Program: Bon Air JCC collaborated with the Virginia Family and Fatherhood Initiative to provide mentoring services to young fathers because they often lack the skills, experience, and leadership necessary for fatherhood.

Experiential Learning: Residential Services partners with Challenge Discovery to provide youth with experiential group learning opportunities based on a shared therapeutic approach to help youth build skills necessary for reentry.

Reducing Isolation in Youth Facilities (RIYF): DJJ limited the types of incidents and the duration along with requesting regulatory changes to eliminate punitive isolation. There was a 92% reduction in the use of punitive isolation from FY 2015 to FY 2019.

Throughout FY 2020, Bon Air JCC focused training efforts on achieving fidelity in implementing the Community Treatment Model (CTM.)

Further expansive treatment instituted in 2020 as a part of the CTM included:

Mutual Help Groups established to provide a safe space for youth to discuss interpersonal and social issues that affect day-to-day living.

A mentoring program for Resident Specialist 1s was instituted by assigning each Resident Specialist 1 a senior direct care staff member as a mentor.

The Quality Monitoring and Implementation Team (QMIT) reviewing monthly data regarding CTM. During FY 2020, QMIT implemented strategies to target units with consistent challenges. These units were invited to attend QMIT meetings and required to develop a quality improvement plan to address areas of concern.

3. **What was the impact of the transformation?**

The transformation is having a positive impact!

Focusing on addressing root causes along with treatment needs and creating a healthy environment for youth rehabilitation both played a significant role in making treatment accessible to youth leading to positive outcomes.

The intentional move away from commitment as the first response for low risk behaviors resulted in the risk levels of direct care youth increasing nevertheless, between FY 2014 and FY 2022, the 12-month rearrest rates fluctuated, with an OVERALL DECREASE for both moderate-risk youth (41.8% to 35.0%) and high-risk youth (59.0% to 53.0%)[iii]

4. **What are DJJ transformation goals now?**

Now ten years later, strategic goals have shifted:

- Expanding reentry vocational programs, workforce development and mentoring.
- Supporting successful community programs and creating new initiatives that address the current concerns of the Commonwealth.

- Building trust with law enforcement and judicial partners to ensure youth are placed in the best possible, most effective programs.
- Addressing the concerns highlighted in the 2021 JLARC report, which focused on recidivism for our most serious offenders.
- Creating new resources to support victims and families, including those with Limited English Proficiency or disabilities, who have been impacted by violent crime.[iv]

But the most effective way to achieve these strategic goals has not changed. It is to cultivate and maintain a rehabilitative environment that goes back to the original guiding principles of the transformation, prioritize **safety**, **connection**, **purpose**, and **fairness** for all youth and staff.

5. **Ask**

You Board members have had an opportunity to review the Bon Air Audit report. You have had an opportunity to read staff exit interviews, Resident statements, and to review auditor findings. Please do not ignore their voices. The accounts given by previous staff and current residents align to describe a troubling breakdown in the culture and climate within Bon Air. They describe maltreatment of both residents and staff. They describe an unsafe and demoralizing environment. I will say again, it is impossible to fix what we will not admit is broken. This is not an aha or gotcha moment. This is the moment we must all decide to commit to addressing the issues that staff and residents are both outlining. It is time to embrace truth and transparency for the sake of our committed youth and staff inside Bon Air JCC. We ask you the board to take action.

- Support outside investigation into all allegations,
- Establish Monthly monitoring of the Bon Air facility with teams that include Board members and if not advocates, and legislators who are appointed to Boards and committees with oversight authority over youth justice issues,
- Ensure the monitoring includes reviewing all serious incident reports, staffing levels, school hours and implementation of all programming.

DJJ cares for Virginia's youth with some of the greatest treatment needs. Many individuals and systems have already failed these young people. In some instances, these youth have already given up on themselves. We must not allow the agency whose mission is to provide effective rehabilitative programming to fail these youth. We implore you to consider implementing the changes we suggest and to engage with us in meaningful dialogue to develop strategies and solutions that will help us find a positive way forward leading to the success of all of Virginia's youth.

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[i] https://www.djj.virginia.gov/documents/policy/data-research/publications/Transformation%20Update%202018%20FINAL.pdf
[ii] https://www.djj.virginia.gov/documents/policy/data-research/publications/Transformation%20Update%202018%20FINAL.pdf
[iii] https://www.djj.virginia.gov/documents/policy/data-research/publications/DJJ%20Transformation%20Plan%202023%20Update.pdf
[iv] https://www.djj.virginia.gov/documents/policy/data-research/publications/DJJ%20Transformation%20Plan%202023%20Update.pdf

LEGAL AID
JUSTICE CENTER

Department of Juvenile Justice Board Meeting Public Comment
November 1, 2024
Delaney Toomer and Kathleen Samuelson, UVA Law Students speaking on behalf of the Youth Justice Program, Legal Aid Justice Center
Working under the supervision of Amy Walters, Esq.

I. Introduction

Good morning, members of the Board. I am Delaney Toomer, and I am presenting today with Kathleen Samuelson. We are law students at the University of Virginia working in the Legal Aid Justice Center's Youth Advocacy Clinic.

II. Context

Today we would like to follow up on our office's previous comments to the Board in May regarding our concerns related to the harmful conditions youth at Bon Air are experiencing and our continued concerns regarding staff vacancies. We are pleased that the certification audit is on the agenda.

III. General Audit Summary

On a positive note, we are glad to see high marks overall for Bon Air, reflected in the 98.00% compliance rating as of the January 2024 audit, and additional measures of compliance as of August 1.

That being said, personal accounts from youth interviewed during the audit are alarming and do not match the standards that such a rating suggests are being upheld, as we will discuss in a moment.

IV. Staff Vacancies

Turning to staffing, the last publicly reported staff vacancy rate for Bon Air, about one year ago, was 53%. Based on our conversations with defense attorneys, staff exit surveys, and youth and family interviews, including those in the audit, there has not been improvement.

In these conversations, staff was described as "ever declining" and a "skeleton crew." Reports also reflect all units being on single coverage, staff frequently "on splits," staff

being drafted for longer shifts much more often, and staff having limited training prior to being drafted.

It appears that DJJ will not publicize the current vacancy rate, but given these accounts, we caution the Board to critically examine the workforce challenges. Restructuring and using wage staff may decrease the vacancy rate but is not improving the conditions for youth or the direct care staff at Bon Air.

We recognize that the staff vacancies align with national trends in both juvenile and adult corrections, but it has disastrous effects on conditions, rehabilitative impact, and morale. The audit highlights the inadequate oversight and supervision of youth, undoubtedly impacted by lack of staffing, including repeated lockdowns, failure to visually check on kids every 30 minutes during confinement, and failure to document medical incidents, serious incidents, and grievance reports. Moreover, the audit contains youth reports of mistreatment by staff, which can be expected amidst the current staffing troubles.

The bottom line is people no longer want to work in large congregate carceral settings. We will hear more on this shortly from our partners at RISE for Youth. We stand by their comments and urge the Board to proactively invest in alternatives.

V. First-Hand Accounts of Youth and Staff

We are here today to caution you not to be distracted by the positive findings from the January 2024 audit, given the gravity of harm youth are experiencing and are at risk of experiencing in the future.

A. Reading and listening to the experiences of staff and youth currently incarcerated at Bon Air paints a picture of Bon Air that is almost diametrically opposed to the high scores and checkmarks that the facility has received on paper.

i. Youth interviewed during the audit expressed concerns about limited enrichment opportunities, excessive room confinement, inappropriate delegation of supervisory powers, and lockdowns during which they were denied necessities of daily life. For instance, residents reported not receiving at least one hour of physical activity per day outside of their cells, and they expressed concern about the amount of time they were spending in their rooms. Significantly, youth reported that staff members at Bon Air delegated authority to certain residents to exercise control over other residents. Finally, during lockdowns, residents reported being denied showers for up to 4 days.

ii. Staff exit surveys from 2022 to 2024, which we received through a FOIA request, substantiate our serious concerns about staff vacancies and the current climate at Bon Air.

5 out of 6 employees surveyed in 2024 cited safety as a factor influencing their decision to leave Bon Air.

In an exit survey dated March 11, 2024, a Juvenile Correctional Specialist (JCS) wrote:

- "JCS's are working on single coverage almost everyday which is a HIGH security risk. Residents on the existing side of campus are constantly locked down due to staff shortage which is completely inhumane. If my child were locked up at this facility, as a parent, I would be extremely upset about the dynamic."

In an exit survey dated February 22, 2024, one JCS remarked:

- "Y'all ask for too much being that we're ALWAYS on single coverage. TIRED of getting drafted everyday...this shows that y'all don't care about our outside and family lives. This was the WORST work environment that I've ever been in due to staff not being happy and complaining 24/7."
- "This facility is so easy for a lawsuit due to how often their policies are broken by NOT staff but shift commanders and administration. How ABUSED the staff is on an everyday basis is out of control."

In an exit survey dated March 8, 2024, another JCS described how they felt DJJ had been deceitful in hiring them to work eight-hour shifts, because as soon as they started working, they were required to work 12-13-hour shifts, multiple times per week, on single coverage. The JCS wrote, "I feel very vulnerable and unsafe working in these conditions . . . for my mental, physical, family life and safety, I can no longer continue to work in these conditions."

iii. Additionally, through defense attorneys, we were able to survey residents and their families about conditions at Bon Air as recently as September of this year.

- As you heard earlier from Delaney, when we asked the youth about staff vacancies, their responses corroborated what we learned from the staff exit surveys.

- With regard to education, in late summer and early fall, youth reported attending school for three hours per day on the units, for three to four days per week.
- With regard to treatment and enrichment, youth reported very few structured activities. Older youth reported being let out onto the floor for approximately two hours after school ends and being permitted outside for one hour twice per week.
- This means, on any given day, youth are spending 17 to 19 hours inside their cells.
- With regard to lockdowns, youth and their families reported:
    - It feels like lockdowns occur on a weekly basis; youth reported being on lockdown every weekend due to staffing.
    - Staff will not just lock down the facility because of a violent or security-related incident, but also because they are tired and overwhelmed.
    - There is no school, counseling services, or training of any kind during lockdowns.
    - This past summer, there was a week-long lockdown, a three-day lockdown, and a two-day lockdown.
    - In late September, there was a lockdown that lasted at least one week.
    - As of this past Tuesday, it is our understanding that the facility was still in a 24/7 lockdown, which began around Sunday, October 27. Visitation was also canceled on October 27.

B. If our shared goal is youth safety, we must acknowledge that we are being presented with two different storylines about Bon Air. The first-hand accounts of staff and youth incarcerated at Bon Air indisputably clash with DJJ's self-reporting and July circuit court filing. As the Board of the Department of Juvenile Justice, it is your responsibility to investigate these discrepancies and ensure the safety and well-being of children at Bon Air who have no one else to protect them. VA Code § 66-10.

i. What is happening with education? During the January 2024 audit, the auditors noted that Bon Air's "school areas looked good" but there were "no students in several months." Yet, in the same audit, Bon Air self-reported that students have returned to classroom instruction since July 2021. This contrasts with youth reports of three hours of school on the units when they are not on lockdown.

ii. What is happening with enrichment? DJJ's self-report is that it offers a plethora of workforce training and apprenticeship opportunities in addition to high school and GED classes as well as college programming. Meanwhile, the youth we have

spoken to who have completed high school report having, at most, one hour of enrichment per week. The findings from the January 2024 audit do not help us figure out the truth about enrichment opportunities at Bon Air. The audit is full of recycled information from the 2021 audit and uses outdated language that seems to align, temporally, with the middle of the pandemic, not January 2024.

iii. What is happening with lockdowns? DJJ minimizes these which contradicts the perceptions and reports of resident youth and their families.

VI. Final Remarks

As noted, a lockdown began on Sunday, October 27 and still persisted through Tuesday if not longer. The perception among youth and their families, whether it is true or not, is that the canceled visitation last weekend and most recent extended lockdown are forms of retaliation for the recent news report about Bon Air and youth speaking out against the facility. Youth choosing to report without being named does not make the reports unfounded but rather underscores the very real fear of retaliation. We must credit these first-hand accounts of what is happening at Bon Air and acknowledge they are corroborated by the findings from the January 2024 audit and the staff exit surveys from February and March 2024.

In summary, we ask that you, the Board Members, take the first-hand accounts of staff and youth seriously and that you investigate them immediately. We must resolve the conflicting information across the audit findings, exit surveys, and interviews with clients and their families about (1) what Bon Air is currently offering youth in terms of education, enrichment, and isolation (2) the number of children who actually participate in these programs, and (3) how frequently these programs occur.

The accounts we shared with you today are real voices that should be valued. Your employees and your residents are hurting and desperate. These voices deserve your undivided attention and support a shift away from large-scale carceral settings.

Thank you.