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Barbara J. Myers, Vice Chairperson
Tamara Neo, Secretary
Anthony W. Bailey
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COMMONWEALTH
of
VIRGINIA

Board of Juvenile Justice

MINUTES
Board of Juvenile Justice Meeting
Cedar Lodge
1701 Old Bon Air Road
Richmond, Virginia

September 27, 2011

Board Members Present: Barbara Myers, Heidi Abbott, Anthony Bailey, Kecia Brothers, Tamara Neo, Kenneth Stolle, and Justin Wilson

DJJ Staff Present: Helivi Holland, Mark Gooch, Ralph Thomas, Ed Holmes, Robin Farmer, Ken Bailey, Peggy Parrish, Regina Hurt, Ed Holmes, Steve Peed, Joy Lugar, Carolyn Stewart, Constance Townes, Koshie France, Susan Heck, Deron Phipps, Janet Van Cuyk and Deborah Hayes

Others Present: Lara Jacobs-Assistant Attorney General, Jeree Harris, Kate Duvall, Howard Flexon, Geneva Flexon-JustChildren, Roy Bryant-NAACP, Steven C. VanVoorhees-Don't Throw Away the Key, Liane Rozelle-FAVY, and Barry Green

I. CALL TO ORDER

Chairperson Myers called the meeting to order at 9:45 am.

II. INTRODUCTIONS

Chairperson Myers welcomed everyone and asked the individuals present to introduce themselves. She extended a special welcome to Tamara Neo, one of the newest board members.

IV. APPROVAL of June 29, 2011 MINUTES

The minutes of the June 29, 2011 Board meeting were presented for approval. On MOTION duly made by Mr. Wilson and seconded by Ms. Abbott, the minutes were approved as presented. Motion carried.

V. PUBLIC COMMENT

Kate Duvall-JustChildren spoke on the petition to amend 6VAC35-140-440, the regulation pertaining to the classification plan utilized in the juvenile correctional centers (JCCs). She stated that DJJ's Board policy 19-002 regarding the classification plan used in the JCCs requires that it be objective, individualized, and provide for meaningful reclassification and movement between custody levels. Ms. Duvall submitted proposed amended regulatory language that JustChildren and FAVY believe will provide the protection as outlined in her

statement (see attached proposed language). Ms. Duvall's comments will be added as a part of the September 27, 2011, minutes and will be available upon request.

Liane Rozzell-FAVY stated that the Board has a petition to amend the regulation regarding resident classification plans (6VAC35-140-440) in secure residential facilities. She said that FAVY supports amending this regulation in a way that implements the policies of this Board and is consistent with the rehabilitative goals of the juvenile justice system. Ms. Rozzell said that FAVY submitted an amended regulation along with JustChildren that they believe will meet these goals. She asked the Board to reaffirm their commitment to the policies that were previously adopted and to amend the regulation to clarify the intent of the policies and ensure that they are implemented. Ms. Rozzell's comments will be added as a part of the September 27, 2011, minutes and will be available upon request.

VI. COMMITTEE REPORTS

A. Secure Services Committee

1. Certifications

On MOTION duly made by Mr. Wilson and seconded by Ms. Abbott to certify the Hanover Juvenile Correctional Center for three years. Motion carried.

On MOTION duly made by Mr. Wilson and seconded by Ms. Brothers to certify W. W. Moore, Jr. Detention Home and Post-dispositional Detention Program for three years. Motion carried.

2. Issues

Northern Virginia Juvenile Detention Home: At the June 8, 2011 Board meeting, the certification status of the Northern Virginia Juvenile Detention Home and Post-dispositional Program was continued to September 14, 2011, with a status report on compliance with the corrective action plan for 6VAC35-51-810E (medication administration—medication prescribed by a person authorized by law shall be administered as prescribed). The audit finding was that medication was not administered as prescribed in one out of 18 medication administration records reviewed. On August 2, 2011, a review was conducted to assess compliance. Medication administration records of ten residents were reviewed and were fully compliant.

On MOTION duly made by Mr. Wilson and seconded by Ms. Abbott to certify the Northern Virginia Juvenile Detention Home and Post-dispositional Detention Program for three years. Motion carried.

Richmond Juvenile Detention Center: Superintendent Gadow updated Mr. Ken Bailey on the progress of replacing the intercom system. There is no target date as to when it will be completed. Mr. Bailey advised the Board that monies are available to complete the project; however, there have been delays due to a change in the leadership in handling the project. He will continue to update the Board on the replacement of the intercom system. No motion required on this report.

B. Non-Secure Services Committee:

1. Certifications

On MOTION duly made by Ms. Abbott and seconded by Mr. Wilson to certify the 15th District Court Service Unit for three years. Motion carried.

On MOTION duly made by Ms. Abbott and seconded by Mr. Wilson to certify the 20-L District Court Service Unit for three years. Motion carried.

On MOTION duly made by Ms. Abbott and seconded by Ms. Brothers to certify the 23-A District Court Service Unit for three years. Motion carried.

On MOTION duly made by Ms. Abbott and seconded by Ms. Neo to certify the 29th District Court Service Unit for three years. Motion carried.

On MOTION duly made by Ms. Abbott and seconded by Ms. Brothers to certify the Andrew B. Ferrari Argus House for three years. Motion carried.

On MOTION duly made by Ms. Abbott and seconded by Mr. Wilson to certify the Fairfax Boys' Probation House for three years. Motion carried.

VII. OTHER BUSINESS

A. Classification System Update

Peggy Parrish, Operations Program Manager, provided the following update. Since the first report regarding the revised classification system was presented to the Board on May 27, 2011, all resident transfers were completed on August 23, 2011. All residents were assigned their classification/custody level based on the revised numbers by the end of April, 2011. Three facilities have been designated Custody Level III's and IV's (Beaumont, Bon Air, and Culpeper). Their populations are separated by age. Hanover JCC houses custody levels I and II and includes all ages.

There was one move in May for those residents who were not actively involved in an academic curriculum; however, the majority of the moves revolved around the end of the school year and the beginning of summer school and then at the end of summer school, but prior to the beginning of the new school year.

Twenty-six residents were transferred into Hanover as a result of their custody levels decreasing. Twelve residents were moved out of Hanover as a result of their custody levels increasing. There will be approximately 29 residents at Hanover who remain Custody Levels III and IV due to being actively involved in JROTC and/or sex offender treatment. Sex offenders coming into the system will no longer be placed at Hanover. There will be two additional 12-bed programs opening at Beaumont and Culpeper that will accommodate the beds needed as Hanover's program closes by attrition. Other resident moves during this period were for behavior issues or age, not reclassification.

There were several issues that resulted in some transfers not being made to avoid adversely affecting residents' treatment and school:

- The decision was made **not** to transfer residents who were actively involved in high school or treatment programs regardless of classification/custody levels and ages.
- Residents are **not moved** if they are being released within ninety days, or if they had Serious Offender Judicial reviews within a ninety day period. However, those moves will be made based on the decision made at the judicial review.
- Residents who by age would go to Culpeper have been sent to Beaumont if they were actively involved in high school. Culpeper does not currently have a high school program.
- Those residents, who were actively involved in **JROTC** at Hanover and maintained appropriate behavior and progress, would be permitted to remain at Hanover.
- Residents who are actively involved in treatment at the other facilities will not be moved based on their ages until they have completed treatment.

- There was an increase in Bon Air's population that resulted in other moves having to be held up. The population at Bon Air has been adjusted.

All moves to date have gone smoothly and the JCC's have done well accommodating the fluctuation in their populations and coordinating moves with each other. Other than costs associated with transportation, there have not been any other costs. Chairman Myers asked if size is considered when placing youth.

In response to questions from Board members, Ms. Parrish shared the following information: as it relates to a resident's size, each institution makes that assessment on an individual basis at intake; children receive the same services regardless of classification; staff involved in the resident's evaluation process include BSU, caseworkers, Assistant Superintendent for Treatment, and the DCE principal meet on each case; exceptions are made when a decision is made on an individual case but do not change the resident's level; override means that the actual classification level is changed; residents are reassessed every 90 days; the forms made be found with reports and publications which are on DJJ's website, however, no personal classification information is available on the website.

- B. VJCCCA Special Presentation:** Presentation on VJCCCA entitled "A Frame of Reference." A history of the Virginia Juvenile Community Crime Control Act, which began as a result of the Commission on Youth Detention Study that pointed out that juvenile detention facilities were over-crowded, that some localities had little or no access to juvenile detention beds, and localities had few if any alternatives to secure detention. The Act was passed in 1995. A history of the funding for the program was given. The population to be served was identified (juveniles before intake on complaints and juveniles before the court on petitions (children in need of services, supervision, and delinquent). The board was advised that services offered were based on the Balanced Approach and evidenced based programs. The types of services offered were identified (chart in handout). The board was advised that each locality developed its own plan with input from the judge, the court services unit director, the CPMT, and the Office on Youth. Data for FY10 was presented, specifically program admission, expenditures, and recidivism. It was at that point that recidivism rates were presented that discussion ensued from the board. Because of the length of the discussion, the report was not completed, and the floor was yielded for a presentation of a VJCCCA funded program in Hopewell.

Hopewell VJCCCA Program: The Family and Youth Intervention program is an intensive family – and community-based treatment that addresses the multiple determinants of negative behavior in juvenile offenders. The multi-system approach views individuals as being nested within a complex network of interconnected systems that encompass individual, family, and extra familial (peer, school, neighborhood) factors. Intervention may be necessary in any one or a combination of these systems. Ms. Connie Townes' stated that her program receive youth from the courts and court services unit. The goal of the program is to build a repoire with the youth, determine how families interact with the community; and identify the underlying cause of the behavior. Ms. Townes said they depend on community teams to make the program successful.

- C. Psychological Evaluations Fee Schedule—**Angela Valentine presented the request to increase the fee for psychological evaluations. The rate was last reviewed in 2008. The field staff has voiced a concern that they are finding it hard to hire qualified psychologists who are willing to accept the current rates. Medicaid and insurance rates were researched for the revision of rates. After an extensive discussion on this issue, Sheriff Stolle requested that no further action be taken today. Mr. Wilson requested an activity report of how the waiver process proceeds over the next two months. Director Holland asked permission to have Ms.

Valentine present the analysis regarding providers' current rate at the January 10, 2012, meeting.

D. Regulatory Update

(1) Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (6VAC35-20): Ms. Van Cuyk shared the following: this regulation is in the proposed (standard regulatory process) stage. The last comprehensive review of this regulation was completed in September 2003. The Board approved a NOIRA for the initiation of the regulatory process on November 18, 2009s. The NOIRA was published in *The Virginia Register* on August 2, 2010. No comments were received. The Department convened a multi-disciplinary committee to conduct the comprehensive review of the regulation in its entirety. The proposed draft regulation was approved by the Board at its April 13, 2011, meeting. The regulation is currently undergoing the Executive Branch Review at the Proposed Stage. If approved by the Executive Branch, the regulation will be subject to a 60-day public comment period. Thereafter, the multi-disciplinary committee will review the public comments.

(2) Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41; Regulations Governing Juvenile Correctional Centers (6VAC35-71; Regulation Governing Juvenile Secure Detention Centers (6VAC35-101). Regulations are in the final stage (Standard Regulatory Process). The Board is in the process of overhauling its residential regulations. The Board regulates three types of facilities (juvenile correctional centers, juvenile secure detention centers, and juvenile group homes) that are governed by two sets of regulations (6VAC35-140 and 6VAC35-51). The proposed regulations (1) separate and consolidate the provisions for each type of facility and (2) reflect changes recommended through a comprehensive review of the applicable provisions by multidisciplinary committees. NOIRAs on these regulations were published on May 11, 2009. No public comments were received on the NOIRAs relating to juvenile detention centers and juvenile group homes; comments were submitted on the NOIRA relating to juvenile correctional centers. The Board approved proposed drafts at its September 9, 2009, meeting. All three regulations were published in the *Virginia Register* on February 2, 2010, and a 65-day public comment period was open through April 7, 2010, during which a public hearing was held. Comments were received on all three proposed regulations during the public comment period and were reviewed by the applicable committees. At its June 9, 2010, meeting, the Board approved all three regulations, with amendments, for advancement to the Final Stage of the regulatory process. In the Executive Branch Review, one change to each regulation was recommended. The Board, at its June 29, 2011 special meeting, insisted on the language as approved in June 2010. The next steps (1) Agreement must be reached in the Board and the Executive Branch review for the regulations to move forward in the regulatory process; (2) The regulation will be published in *The Virginia Register* and will be subject to a 30-day comment period; and (3) If there are no objections (from the Governor or 25 citizens), the final regulation becomes effective.

On MOTION duly made by Sheriff Stolle and seconded by Ms. Neo to discuss Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41; Regulations Governing Juvenile Correctional Centers (6VAC35-71; Regulation Governing Juvenile Secure Detention Centers (6VAC35-101) at the November 9, 2011, meeting. Motion carried. Mr. Wilson opposed the action. If the Board has any questions regarding these regulations, they are to contact Ms. VanCuyk or Ms. Jacobs.

(3) Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs (6VAC35-60). This regulation is in the final stage. The last

comprehensive review was completed on August 26, 2002. The proposed regulation was published in *The Virginia Register* on August 3, 2009. The public comment period closed on October 2, 2009. No comments were received. At its November 18, 2009, meeting, the Board approved advancement of the regulation, with no changes, to the Final Stage of the regulatory process. During the Executive Branch review at the Proposed Stage, no change was recommended and adopted. The final regulation was published in *The Virginia Register* on August 1, 2011 and open for a 30-day public comment period. No comments were received. The final regulation becomes effective on October 1, 2011.

E. Petition for Rulemaking 6VAC35-140-440 (classification plan)

Ms. Van Cuyk shared the background for this action. The Board of Juvenile Justice (Board) promulgated regulations governing state-operated juvenile correctional centers; locally-operated and regionally-operated juvenile secure detention centers; group homes funded, at least in part, through the Virginia Community Crime Control Act; and state-operated juvenile halfway houses. These regulations are (1) the Standards for Juvenile Residential Facilities (6VAC35-140) and (2) the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51).

The Administrative Process Act (APA) allows any person to petition an "agency" develop or amend a regulation. Agency is defined in the APA as the final rulemaking authority which, for the Department of Juvenile Justice (DJJ), is the Board of Juvenile Justice (Board).

At the June 8, 2011 Board meeting, Kate Duvall of the JustChildren Program, in her verbal and written public comments, submitted a petition for rulemaking relating to the classification system used in juvenile correctional centers. Ms. Duvall requested the Board of Juvenile Justice to amend its regulation regarding resident classification plans (6VAC35-140-440) in secure residential facilities to provide for a process that implements the policies of the Board and is consistent with the goals of the juvenile justice system. She requested the amended regulation to create a classification plan that has due process safeguards, provides for a meaningful ability for a resident's classification level to be lowered, takes into account and gives appropriate weight to factors other than the committing offense(s), and is derived from evidence-based and outcome driven research.

Current Language in the Regulation:

- A. Residents of the secure facility shall be assigned to sleeping rooms and living units according to a written plan that takes into consideration facility design, staffing levels, and the behavior and characteristics of individual residents.
- B. When the department places wards in residential facilities according to custody or security level, department procedure and practice shall provide for a systematic decrease in supervision and a corresponding increase in juvenile responsibility as the ward moves to a less secure placement in preparation for the ward's ultimate release from direct care.

Language Proposed in the Pending Residential Regulatory Action:

- A. A JCC shall utilize an objective classification system for determining appropriate security levels, the needs, and the most appropriate services of the residents and for assigning them to living units according to their needs and existing resources.
- B. Residents shall be placed according to their classification levels. Such classification shall be reviewed as necessary in light of (i) the facility's safety and security and (ii) the resident's needs and progress.

Petition for Rulemaking:

The petition for rulemaking process is provided for in § 2.2- 4007 of the Code of Virginia. These requirements are summarized in this section and the statutory language is provided below.

After receiving the petition for rulemaking, Department staff completed the required process for publication in the *Virginia Register of Regulations*. The notice appeared on the Virginia Regulatory Town Hall (Town Hall), with e-mail notification to all registered Town Hall users, and indicated the Board of Juvenile Justice will consider the petition at “its next scheduled meeting after the public has had sufficient time to comment.” The notice was published in the *Virginia Register of Regulations* on July 18, 2011 and was open for public comment from July 18, 2011 through August 9, 2011.

The Department reviewed and compiled all public comments received. These are provided in or attached to the memorandum. Upon consideration of the petition and comments, the Board must decide whether to grant or deny the petitioner’s request to amend 6VAC35-140-440. If the Board votes to grant the request to amend, a new regulatory action (using the standard regulatory process) will be initiated (the Board in granting the request also would authorize a Notice of Intended Regulatory Action, NOIRA). If the Board votes to deny the request, no action will be taken on the regulation.

After the Board’s action, a written statement of the Board’s decision and reasons for taking action or not taking action must be posted on the Town Hall (which will send automatic notice to all registered users) and published in the *Virginia Register of Regulations*. The written statement must be issued within 90 days of the close of the comment period.

Finally, Kate Duvall of JustChildren and Liane Rozzell of Family and Allies of Virginia’s Youth provided joint public comments. These comments provided proposed regulatory language. A copy of these comments is provided at the end of this memorandum. Ms. Neo and Sheriff Stolle asked whether the decision on whether to grant or deny the petition could be delayed. In reviewing the statutory language, it was agreed that action should be taken at this meeting. The Board members discussed the pros and cons of granting or denying the petition.

On Motion duly made by Mr. Bailey and seconded by Sheriff Stolle, the Board voted to deny the action. Mr. Wilson voted no. When asked for the rationale for denying the motion, the Board stated that it did not want to initiate the rulemaking process for a change to 6VAC35-140-440 when there are three pending regulatory actions involving that regulatory Chapter (proposed 6VAC35-41, 6VAC35-71, and 6VAC35-101). Since these proposed chapters are currently going through the regulatory process, the Board expressed a desire to not create confusion by amending the existing regulation when those actions are not final.

- F. Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice (6VAC35-170).** This is a Request for NOIRA. The last comprehensive review of this regulation was completed on February 9, 2005. As required by statute and Executive Order, this regulation is currently subject to a periodic review. This regulation was open for public comment through July 8, 2011. Eight public comments were received. The Department convened a multi-disciplinary committee to review the regulations. Amendments were recommended by the committee. The Department recommends proceeding through the regulatory process to amend the regulation and requests the Board to determine whether a NOIRA should be initiated. The next steps are (1) No later than 60 days after the close of the public comment period/forum, the agency

posts a periodic review result to appear in *The Virginia Register* and on the Virginia Regulatory Town Hall. The report must indicate whether (1) the regulation will be amended or repealed or (2) the regulation will be retained as is; and (2) If it is decided that the regulation will be amended, a NOIRA will be submitted to initiate the regulatory process.

On MOTION duly made by Mr. Bailey and seconded by Ms. Brothers to authorize the submission of a Notice of Intended Regulatory Action (NOIRA) for initiation of the regulatory process for the Minimum Standards for Research Involving Human Subjects or Records of the Department of Juvenile Justice. Motion carried.

G. Internal Audit Function: Policy 03-007

This policy relates to the Internal Audit function within the Department. Director Holland asked that action be suspended due to the fact that there was a bill introduced in the 2011 General Assembly which addressed the Inspector General as a state position. The bill was passed and will go into effect July 1, 2012. However, within that legislation, it did not address the duties and staff that relate to every department. Included in the bill was DJJ, DOC and other agencies. DJJ had to present all funding and positions in the Department's IG office to the Department of Planning and Budget. The Department is in limbo and unable to make any personnel decisions as it relate to the IG's office at this time. At this time, the Department does not have an internal audit function and because it is a policy that the Board made that the Department has an internal audit function, the Department is requesting a suspension until it is clear what the state IG will do and whether or not the Department will have an internal audit function.

On MOTION duly made by Sheriff Stolle and seconded by Mr. Bailey to suspend the Department of Juvenile Justice's internal audit function. Motion carried. Mr. Wilson asked if suspending this function would cause a problem for the PREA hotline. Director Holland stated that the PREA hotline is monitored through the Ombudsman Office.

H. Hunting Policy

Director Holland shared with the Board information contained in a letter of complaint from a retired state employee about the number of hunting passes that were allotted. There needs to be a consistent decision from the Board whether or not to allow hunting on DJJ facilities property. In this instance, it is Hanover JCC in question. The Board members had many questions and shared suggestions as to how to keep the hunting policy and provide safeguards for the residents and staff. Sheriff Stolle asked DJJ staff to work with the Department of Game and Inland Fisheries to establish guidelines and get a hold-harmless agreement.

I. Legislative Update

Ms. Van Cuyk distributed an updated listing of legislative actions taken during the 2011 General Assembly session.

J. Overview/Planning/Impact of Hurricane Irene

Director Holland stated that on August 24, 2011, there was an earthquake. The Main Street Center does not have an evacuation plan other than for fire. Department staff has been designated to be responsible for evacuation of staff on the 14th and 20th floors.

On August 27, 2011, Hurricane Irene hit the area. Hanover and Bon Air JCCs lost power which was restored on September 1. Generators were in place; however the generators did not support air conditioning. Other arrangements were made for fresh air. Communicating with the facilities was difficult and Central Office served as a back-up administrative center

for facility employees. DCE school closings did not correspond with school closings in the localities. Visitation and volunteers were cancelled and transfers and intakes were ceased.

VIII. Director's Comments

Director Holland shared the following:

- Board orientation for Ms. Neo and Mr. Bailey were held on September 7. The orientation was very productive and insightful.
- Director Holland attended the state DUI Drug Treatment Court conference which was held September 19-20, 2011 in Roanoke. The Governor fully supports the state drug courts.
- Director Holland was invited to accompany the Loudoun County delegation JDAI site visit in Albuquerque, New Mexico September 13-16, 2011.
- Agency staff will participate in PREA training sponsored by Richmond Juvenile Detention Center on October 5-7, 2011.
- Norfolk will host the national Interstate Compact for Juveniles conference October 24-27, 2011. The director, chief deputy director, Community Programs Manager and Interstate Compact Coordinator will attend the conference.
- The Virginia Correctional Association invited the director and other DJJ staff to participate in a conference on re-entry held in Richmond, VA September 29-30, 2011. Director Holland participated on a panel of Public Safety agency heads.
- Staff will attend the Virginia Juvenile Justice Association's annual fall training November 2-3, 2011.
- On October 16-20, 2011 the director and chief deputy director will attend the 17th National Symposium on Juvenile Services to be held in Indianapolis, Indiana.
- On September 29, 2011, DJJ held its second meeting with the advocacy group.
- On September 1, 2011, an employee appreciation luncheon was held to thank the employees for their assistance during the agency's move.

IX. Board Comments

Election of Officers:

On MOTION duly made by Ms. Myers and seconded by Mr. Wilson to nominate Ms. Abbott as the Board of Juvenile Justice chair. Motion carried.

On MOTION duly made by Sheriff Stolle and seconded by Ms. Abbott to nominate Ms. Myers as the Board of Juvenile Justice vice chair. Motion carried.

On MOTION duly made by Ms. Brothers and seconded by Mr. Bailey to nominate Ms. Neo as the Board of Juvenile Justice secretary. Motion carried.

XI. NEXT MEETING

The next meeting will be held on Wednesday, November 9, 2011 at the Department of Juvenile Justice Central Office.

XI. ADJOURN

Having no other business, the meeting adjourned at 1:10 pm without objection.

Respectfully submitted,

Deborah Canada Hayes
DJJ Board Secretary