

Robert Vilchez, Chair  
Scott Kizner, Vice Chair  
Synethia White, Secretary  
Eric English  
Tyren Frazier  
William Johnson  
David Mick  
Laura F. O'Quinn



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## COMMONWEALTH of VIRGINIA *Board of Juvenile Justice*

# DRAFT Meeting Minutes

November 15, 2023

Virginia Public Safety Training Center, Smyth Hall, Room 401, 7093 Broad Neck Road, Hanover, VA 23069

**Board Members Present:** Tyren Frazier, William (Will) Johnson, Scott Kizner, David Mick, Laura O'Quinn, and Synethia White

**Board Members Absent:** Eric English and Robert (Tito) Vilchez

**Department of Juvenile Justice (Department) Staff:** Ken Bailey, Ken Davis, Mike Favale, Sharen Foxio, Amy Floriano, Wendy Hoffman, Dale Holden, Nikia Jones, Melodie Martin, Andrea McMahon, Ashaki McNeil, Linda McWilliams, Julie Norris, Stephanie Morton, Kristen Peterson, and James Towey

**Guests:** None

### CALL TO ORDER AND INTRODUCTIONS

Acting Chairperson Scott Kizner called the meeting to order at 9:31 a.m. Acting Chairperson Kizner welcomed those present and asked for introductions.

### BOARD ELECTIONS

James Towey, Legislative and Regulatory Affairs Manager, Department

The Board of Juvenile Justice elects officers from its membership at their first meeting of the fiscal year to include the Chairperson, Vice-chairperson, and Secretary. The officers can serve for a term of one year and are eligible for re-election each year. There are no term limits.

The Board discussed and nominated Robert "Tito" Vilchez as Chairperson. On motion duly made by Will Johnson and seconded by Tyren Frazier, the Board of Juvenile Justice approved the nomination of Robert "Tito" Vilchez as Chairperson. All Board members present declared "aye," and the motion carried.

The Board discussed and nominated Scott Kizner as Vice-chairperson. On motion duly made by Tyren Frazier and seconded by Will Johnson, the Board of Juvenile Justice approved the nomination of Scott Kizner as Vice-chairperson. All Board members present declared "aye," and the motion carried.

The Board discussed and nominated Synethia White as Secretary. On motion duly made by David Mick and seconded by Tyren Frazier, the Board of Juvenile Justice approved the nomination of Synethia White as Secretary. All Board members present declared "aye," and the motion carried.

The Board officers' terms take effect immediately.

## **CONSIDERATION OF THE JUNE 21, 2023, MINUTES**

The minutes of the June 21, 2023, Board meeting were provided for approval. On motion duly made by Tyren Frazier and seconded by Synethia White, the Board approved the minutes as presented. All Board members present declared "aye," and the motion carried.

## **PUBLIC COMMENT**

There was no public comment.

## **NEW BUSINESS**

### **Consideration of Policy for All-Virtual Public Meetings and Consideration of Policy for the Remote Participation of Members**

James Towey, Legislative and Regulatory Affairs Manager, Department

There are two new Board policies for consideration as a result of the General Assembly expanding the scope for public meetings to include all-virtual as well as in-person meetings where the quorum is assembled at one location and, if approved, individual members have the ability to participate virtually. The Board has met virtually before during the Covid pandemic. The Board packet includes the Virginia Freedom of Information Advisory Council-drafted model policies that will help facilitate state agencies having uniform policies.

From the pandemic, state Boards were allowed to have all-virtual public meetings by a declared state of emergency as well as in situations where there was not a declared state of emergency but there was a danger or hazard to having an in-person meeting. The new policy reflects the expanded statute to allow for virtual meetings when it is simply a convenience. The policy limits the Board to either two all-virtual meetings per calendar year or no more than 25% of its meetings being held as all-virtual per calendar year. The all-virtual meetings cannot be consecutive, meaning the Board cannot have one all-virtual meeting in December and then another in January or March. The next meeting will need to be in person. The all-virtual meetings should be spread out through the calendar year, and no more than two Board members may be present in the same location for the virtual meeting.

The Department is responsible for ensuring the following requirements are met for all-virtual meetings: the public meeting notice is properly posted, the public is provided with an opportunity to listen to the meeting, and the public has the opportunity to provide public comment. The all-virtual meetings can either be scheduled at the time all meetings are scheduled for the year or the Board can select the meeting dates for all-virtual meetings prior to the meeting. The Board can opt to select virtual means on a specific meeting but must comply with the public meeting notice requirements of three days before the meeting.

Board Member Johnson asked if this policy is approved by the Board, will it go into effect immediately? Mr. Towey responded yes. Mr. Towey added the Board could make the December meeting all-virtual; however, although the meetings reset in January, the Board cannot have consecutive all-virtual meetings. Therefore, the first meeting in 2024 will need to be in person.

Acting Chairperson Kizner asked about a weather situation like a snowstorm occurring on a Board meeting day. Mr. Towey responded that would fall under the existing statutory authorization of a danger or hazard to having an in-person meeting. This would not fall under the expanded policy which gives the Board the ability to hold the meeting virtually based on convenience.

On motion duly made by Will Johnson and seconded by Laura O'Quinn, the Board of Juvenile Justice approved a new Board policy providing for all-virtual public meetings, as proposed at the November 15, 2023, meeting, to take effect immediately. All Board members present declared "aye," and the motion carried.

The next policy pertains to an individual Board member participating through electronic means in a public meeting where a quorum of the Board is physically assembled. The statute already permitted remote participation of an individual member due to a temporary or permanent disability as well as a medical condition or family medical condition. It also allowed for participation by electronic means for up to two meetings a year due to a personal matter. This new policy allows for the remote participation of a Board member if their principal residence is located more than 60 miles from the meeting location. There is no limit on the number of times a Board member can participate remotely in meetings for this reason. The Board member will need to make the request to participate remotely to the Board chair or vice chair, who shall notify the member whether their request conforms to the policy and, therefore, is approved or denied. At the meeting, the Board will hold a vote to determine that the chair's decision to approve or disapprove the request to participate remotely was in conformance with the policy. The Board will also ensure the voice of the remote member can be heard by all persons at the meeting location.

For the Board member to participate remotely, a quorum of the Board must be physically assembled at the primary or central meeting location. The chair may deny a request if, for instance, multiple members request the virtual option and the number of Board members present does not meet a quorum. It would put the Board meeting in jeopardy of not being in conformance with the policy by not having a quorum present. The Board could not take any action at the meeting if there is no quorum. The chair could decide that requests are granted on a first come, first served basis, or based upon the travel distance of the member.

Acting Chairperson Kizner asked if the Department is confident in their technology capacity to hold these virtual meetings, and Mr. Towey responded yes.

Acting Chairperson Kizner asked if the request to participate remotely should go directly to the chairperson or the office. Mr. Towey responded based upon the statute and the policy, it would go to the chairperson unless the request is from the chair, and in that case, it would go to the vice-chair. The chair or vice-chair will approve or deny the request, keeping in mind the need for a quorum and not putting the meeting in jeopardy. At the meeting, the Board will have to vote to verify that they are in conformity with the statute.

Board Member White asked whether, when the Board's support staff emails to confirm attendance, she could also ask if any members want to participate remotely and that they then should advise the chair. Mr. Towey responded yes.

On motion duly made by Synethia White and seconded by Will Johnson, the Board of Juvenile Justice approved a new Board policy providing for the remote participation of members, as proposed at the November 15, 2023, meeting, to take effect immediately. All Board members present declared "aye," and the motion carried.

### **Consideration of Amendment of 20-105 Graduated Community Reentry**

Kristen Peterson, Regulatory Affairs Coordinator, Department

Ms. Peterson reminded the Board that in April 2022, the Department announced its intent to begin a comprehensive review of Board policies. The Board has policies in place from the early 1990s with several not undergoing significant reviews for a number of years. The Department thought it important to update the policies and conduct a comprehensive review so agency staff are aware of the changes to Board policies and could more effectively carry out their duties.

The Board has reviewed and taken a position on 14 Board policies. At this meeting, there are two additional Board policies for consideration, and the Department is recommending both policies be amended.

Ms. Peterson directed the Board to the packet on page 37 detailing 20-105 Graduated Community Reentry. At the June Board meeting, the Department asked the Board to rescind this policy. The language in the policy gave the Department the ability to promote activities which would ease residents' transition from a structured setting to less structured settings, give residents access to services and programs not otherwise available, and provide an incentive in behavior management programs. When the Department initially recommended rescinding the Board policy, there were concerns with the language being unclear and vague. The Department was not sure what activities the policy was trying to target. The other concern was the policy addressing furloughs, which are addressed comprehensively in regulatory and statutory provisions, so that there was no need for policy in that area. At the June meeting the Board declined to adopt the recommendation and asked the Department to review the policy.

The proposed amendments begin at the bottom of the packet on page 37. The policy's name has been changed to Programming Opportunities for Rehabilitation. The idea behind that change is to clarify that there are program opportunities available, and those program opportunities help rehabilitate the youth committed to the Department.

The most important change is to clearly announce the Department's intent to ensure residents who are committed to DJJ have meaningful opportunities to participate in job training, educational activities, and other activities and those activities could occur either within the facility or outside the facility in the community. The Department added language to make it clear, to the extent allowed for these activities, the policy is implemented in a manner consistent with the protection of public safety.

The Department believes the recommended changes are consistent with existing statutory provisions. In the paragraph on page 38 of the packet, there are a number of statutes that are addressed, and all give the Department some authority to establish these programs. For example, there is language in one statutory provision that allows for a work education release program so that residents can leave the facility and pursue work and education opportunities. The language in this policy is consistent and aligned with those statutes.

If the Board decided to adopt the recommendation to amend this policy, the policy changes will take effect immediately, unlike the regulatory process, where the action has to undergo executive branch review.

On motion duly made by Tyren Frazier and seconded by David Mick, the Board of Juvenile Justice approved the amendment of Board Policy 20-105 (Graduated Community Reentry), as proposed at the November 15, 2023, meeting to take effect immediately. All Board members present declared "aye," and the motion carried.

### **Consideration of Amendment of 02-004 Communication of Serious Incidents**

Kristen Peterson, Regulatory Affairs Coordinator, Department

Ms. Peterson directed the Board to the Board packet on page 38. The Department had concerns with the existing policy, mainly with two provisions. The first concerns the policy's second sentence, which requires that incidents affecting the health and safety of citizens, persons under the Department's supervision, and staff must be reported by the operational unit involved with such incidents to the highest appropriate organizational level of the Department and Board. The Department thinks the language is too broad, particularly the provision requiring that information be submitted to the Board. The language requires the Department to report incidents affecting health and safety, which is a broad category of information that

may include incidents where a resident is ill or may get assaulted. If the requirements of this policy are carried out, it would result in a voluminous number of reports provided to the Board. The Department believes the Board does not want all this information, nor is this amount of information necessary. The Department's recommendation is to remove the reference that requires those types of serious incidents be reported to the Board. On page 39 of the packet, in the second sentence, there is also language that requires the Director or designee to advise the Board at its next meeting of any serious incidents that may result in litigation against the Department. The Department believes this is a more appropriate level of information to provide the Board.

The Department is also recommending a change to the language to state that the Board should also be informed about litigation against the Department or any other entity the Board regulates, such as detention centers and group homes. There could be information or incidents that might potentially result in litigation against those entities, and the Board should be made aware of this information as well. The language has been modified to incorporate those other entities.

Acting Chairperson Kizner asked if an article mentioning the Department were to appear in the *Richmond Times-Dispatch* or *Washington Post* tomorrow about an incident, the suggested policy would be to inform the Board at their next meeting? Ms. Peterson responded that the Director would maintain discretion to provide that information to the Board at any time. The recommendation just removes the requirement that certain issues be reported to the Board. If there is something that will end up in the media or result in litigation that would fall under the policy.

Director Floriano noted that many times the Department does not know when it might be in the media, and sometimes the agency does know only because the media outlet has requested information. Director Floriano believes anything that would be a public embarrassment to the Department and the Board should initiate a notification to the Board.

Acting Chairperson Kizner asked how often that situation happens. Director Floriano stated that she receives hundreds of emails daily on assaults, serious incidents, and major arrests of juveniles. There are also notifications about health that include juveniles leaving the facility for physical therapy or to go to the doctor's office, and about fights in the facility or issues within Court Service Units with staff. At what level does the Board want to get notifications? As a professional, Director Floriano does not believe the Board wants all those emails in their mailbox each day. Deputy Director of Legislation and Policy Michael Favale agreed and added that former directors asked to be taken off the notification list for those types of incidents due to the amount of emails.

Acting Chairperson Kizner could not recall ever being informed about these types of incidents in the five years he has served on the Board. Director Floriano added that she asked the same question of why the former directors were not following this policy.

Board Member Frazier noted he may not have received notification of a previous escape and wants to make sure the Board policy speaks to those types of incidents. Litigation might not be sought, but if it is serious enough, the Board should be notified because our information is public. Board Member Frazier commented that his name has appeared in the media a few times regarding Board actions, and he wants the members and staff to be mindful that the Board should be notified on information that will eventually be in the public domain.

Director Floriano said it might be helpful to add clarifying language on what notifications the Board wants to receive and emphasized that the health category is broad. She questioned whether a youth running a fever should require Board notification. The agency is only allowed to send the juvenile number and not the name

because that is protected information. An escape or a major assault would be an identified risk but would also fall within the litigation category.

Board Member Frazier is not comfortable with waiting until the next Board meeting. The timeline of the notification should be sooner, whether it is within seven days or 72 hours.

Board Member O'Quinn believes the problem is the wording of the communication of serious incidents. Serious incidents are frequent, and maybe the Board only wants notice of incidents involving risk.

Ms. Peterson asked whether the Board wanted to modify the language to require the Director or the Director's designee to advise the Board within 72 hours of any serious incidents that may result in litigation against the Department or may present a serious identified risk against the Department, facility, or program regulated by the Board.

Board Member White wanted to ensure the policy noted that minor things, such as fevers, would be excluded.

Director Floriano asked if there are other incidents that should be excluded.

Board Member Frazier said he does not want to pigeonhole the agency with the types of incidents but would prefer examples of what the agency considers as serious incidents. Director Floriano identified escapes, suicides, or suicide attempts where a youth is removed from the facility, or a juvenile on probation committing murder as possible incidents. Board Member Frazier said if the language is broad, the Board can come back at any time and ask to tighten the language by adjusting the policy to add specifics.

Board Member White would like to see consideration for any type of communicable event or something that takes place requiring young people to be confined for their safety or in the event of a lockdown. It would be helpful to make the Board aware of these situations and why this was put in place.

Acting Chairperson Kizner said the term, 'serious,' is where delineation is needed. He does not want to be overly broad and likes the idea of having examples so he knows what kinds of notifications he can expect to receive. He does not want to lose sight of the Board's responsibilities and the level of accountability. If there are a significant number of assaults, Acting Chairperson Kizner believes the Board has the right to know about them and why it is happening to help support the staff to reduce it.

Board Member Frazier remembered only one closed session meeting of the Board regarding a suicide. The notifications have been limited. The Board has not received the number of notifications specified in the policy.

The Board agreed to add this policy to the agenda for the next meeting. In the meantime, Ms. Peterson will draft additional language to the policy to clarify the Board notifications and provide it to the Board before their next meeting so they can review. Ms. Peterson reminded the Board of the Freedom of Information meeting requirements and cautioned them not to reply all in any related emails.

Director Floriano told the Board to keep in mind the notifications may also include community incidents, such that a youth on probation or parole that assaults someone could fall under that definition and require Board notification. Director Floriano warned the Board that these notifications are voluminous, and the Board should think hard on what notifications they want.

## **DIRECTOR'S CERTIFICATION ACTIONS**

Ken Bailey, Certifications 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 August 2, 2023.

W.W. Moore, Jr. Juvenile Detention Center and Post-dispositional Program in Danville was certified by the Director to October 14, 2026, with a letter of congratulations for 100% compliance. This is the facility's second consecutive 100% compliance audit. Mr. Bailey said this facility has done a great job.

In 2020, the audit for Stepping Stones Group Home for Boys in Fairfax showed an unusually high number of deficiencies with 13. They submitted and implemented a corrective action plan. The new audit on May 9, 2023, found the facility to be in 100% compliance. New procedures and new administration took to heart those deficiencies. The Director certified the facility to July 14, 2025, with a letter of congratulations for 100% compliance.

Westhaven Group Home for Boys in Portsmouth serves as a long-term group home as well as a shelter care facility with temporary placements for up to 90 days. The audit for the facility showed two deficiencies with both being corrected. The Director certified the facility to July 10, 2026. The two deficiencies included serious incident reports; six of the six applicable cases reviewed did not report serious incidents to the director or designee within 24 hours, which is required by the regulation. The program indicated it was an oversight on the timeframe by the facility administrator. The follow-up review in June 2023 showed all serious incidents had been reported within the 24 hours. The second deficiency was on the tuberculosis screenings; three of five applicable cases did not have the screening within the seven days of admission. For the follow-up review in June, six applicable cases reviewed had the screening within the required seven days.

#### **DIRECTOR'S REMARKS**

Amy M. Floriano, Director

Director Floriano welcomed Judge O'Quinn to the Board.

Director Floriano recognized Dr. Kenneth Feng, who was also appointed to the Board by Governor Youngkin but recently passed away from a major medical issue. Dr. Feng was a much-loved and well-respected professional in state government who had been looking forward to serving on the Board. Director Floriano offered her condolences on behalf of the agency.

Director Floriano recognized Stephanie Morton as the new Superintendent of Bon Air Juvenile Correctional Center.

#### **NEXT MEETING**

The next meeting will be virtual on December 13, 2023.

#### **ADJOURNMENT**

Acting Chairperson Kizner adjourned the meeting at 10:30 a.m.