



Proposed Regulation Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC 35-190
Regulation title	Regulations Governing Juvenile Work Release Programs
Action title	This new regulation, mandated by Chapter 648 of the 2005 Acts of the General Assembly, sets forth the rules and criteria by which the Department of Juvenile Justice (DJJ) may operate work release programs whereby committed juveniles (i) may be employed by private individuals, corporations, or state agencies at places of business; or (ii) may attend educational or other related community activity programs outside of a juvenile correctional facility. Chapter 648 requires the Department to provide juveniles committed to the Department with opportunities to work and participate in career training or technical education programs as operated by DJJ or by the Department of Correctional Education (DCE) and sets forth requirements to be included in the regulation, including eligibility for work release, compensation, custody, and penalties for violating the terms of work release.
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Chapter 648 of the 2005 Acts of the General Assembly required the State Board of Juvenile Justice to promulgate emergency regulations for the purpose of implementing the Pilot Work/Educational Release Program. The emergency regulation became effective on December 14, 2005.

In accordance with criteria established pursuant to Virginia Code § 66-25.1:3, the proposed regulations provide the framework for assessing each juvenile committed to DJJ for participation in a work release program, apprenticeship program, job enterprise program, or any other work experience opportunity located at or through the juvenile correctional center (JCC) where the juvenile is placed. As required by the Virginia Code, the juveniles participating in these offsite work and educational opportunities will be those who have made significant rehabilitative progress and have demonstrated their capacity to meet the challenges presented by these opportunities.

A juvenile who is proficient in a trade or occupation and who meets the work release criteria established by the Director may be approved for employment outside of the JCC. A juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational and other related community activity programs that are not available within a JCC may attend such programs outside of the juvenile correctional facility.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

2005 Legislation Required Regulatory Action

Chapter 648 of the 2005 Acts of the General Assembly requires the Department to provide juveniles committed to the Department with opportunities to work and participate in career training or technical education programs. In implementing such programs, Chapter 648 of the 2005 Acts of the General Assembly requires the State Board of Juvenile Justice to develop regulations setting forth the rules and criteria by which DJJ may operate work release programs whereby committed juveniles may be employed by private individuals, corporations, or state agencies at places of business. The new regulation will also allow a committed juvenile to attend educational or other related community activity programs outside of a juvenile correctional facility. Chapter 648 sets forth the requirements to be included in the regulations, including eligibility for work release, compensation, custody, and penalties for violating the terms of work release.

2005 Legislation Required Emergency Regulations

Chapter 648 of the 2005 Acts of the General Assembly further required the State Board of Juvenile Justice to promulgate emergency regulations for the purpose of implementing a Pilot Work/Educational Release Program. The emergency regulation became effective on December 14, 2005.

Virginia Code § 66-10 establishes the general authority of the Board of Juvenile Justice to promulgate regulations.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The goal of the career training and technical education programs authorized by Virginia Code § 66-25.1:2 is “to assist juveniles in acquiring necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities and mentoring and apprenticeship programs.”

The goals of the work release provisions of Virginia Code § 66-25.1:3 are (i) to allow a juvenile who is proficient in any trade or occupation and who meets the work release criteria established by the Director to be approved for employment by private individuals, corporations, or state agencies at places of business; and (ii) to permit a juvenile who meets the work release criteria and is capable of receiving substantial benefit from educational and other related community activity programs that are not available within a juvenile correctional center to attend such programs outside of the juvenile correctional facility.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	10		Definitions are given for significant terms used in the regulation, including educational release program, furlough, job enterprise program, and work release program.
	20		States the policy of the Commonwealth in establishing this regulation, and the purpose of career-related programs, training, and services.
	30		Provides for an assessment of wards’ suitability to participate in work release or similar programs, based on the enabling

			statute.
	40		Specifies criteria that wards must meet to be considered for participation in a work release, educational release, job enterprise, or other rehabilitative program in the community.
	50		Requires written procedures to ensure accountability of participating wards.
	60		Specifies conditions wards must meet to participate in a work release program.
	70		Specifies the conditions that must be met by an employing, supervising, or training entity.
	80		Establishes conditions for ward participation in educational or rehabilitative release program.
	90		Requires written procedures, consistent with the Code of Virginia, governing ward furloughs.
	100		Requires that a ward’s earnings shall be disbursed in accordance with § 66-25.1:3 of the Virginia Code.
	110		Requires written procedures for removing a ward from a program.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The proposed regulations will strengthen DJJ’s ability to help develop a committed juvenile’s educational and career skills needed to successfully transition back into the community from which the ward was committed. Providing the opportunity to participate in educational and career training programs and jobs to wards between the ages of 16 and 21 will increase that ward’s potential for obtaining meaningful employment upon release from the juvenile correctional center. Ensuring that a ward is participating in educational and career programs during his commitment will increase the likelihood of a successful transition back into the community and lessen the possibility of recidivism. Reducing recidivism and providing juveniles with better possibilities for career development will benefit all Virginia families.

The Department may develop appropriate interagency linkages with state and local agencies, public and private institutions of education and of higher education, labor and industry councils,

the business community, rehabilitative services providers, and employment and guidance services.

The regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements or no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Chapter 648 of the 2005 Acts of the General Assembly authorized the State Board of Juvenile Justice to operate a pilot program beginning July 1, 2005, and ending July 1, 2006, at one juvenile correctional center site. The Pilot Work/Educational Release Program was instituted at Natural Bridge JCC. Chapter 648 further required DJJ to submit a report on the implementation of the pilot program to the House Committee on Militia, Police, and Public Safety and the Senate Committee on Rehabilitation and Social Services by November 15, 2005. The report provided an assessment on the implementation of the pilot program permitting a work and educational release program involving the temporary release of juveniles into the community in preparation for their transition from the Department of Juvenile Justice's direct care to their home community. The report submitted to the General Assembly committees found that the Pilot Work/Education Release Program was successfully implemented in Natural Bridge JCC. The businesses involved thus far have indicated satisfaction with this endeavor and are looking forward to its continuation and expansion. Juveniles have been employed at: Country Cooking, Advance Auto, and Burger King. One juvenile attended a community college (Dabney-Lancaster Community College).

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to **Deron M. Phipps, O. O. Box 1110, Richmond, VA 23219-1110. Telephone: (804) 786-6407. FAX: (804) 371-0773. Email: Deron.Phipps@djj.virginia.gov.** Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The Department acquired grant funding through the U.S. Department of Labor (DOL) to initiate this program. Funding provided allowed DJJ to hire the staff required to operate the program, to purchase a vehicle to use for transporting wards to their places of employment/education, to purchase electronic monitoring equipment for the wards, and also to provide transitional services upon release.</p>
<p>Projected cost of the regulation on localities</p>	<p>The proposed regulations do not mandate localities or any juvenile detention facility to provide custody supervision, programming, or services that are not currently available and not without the prior mutual agreement between the appropriate parties.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The businesses involved thus far have indicated satisfaction with this endeavor and are looking forward to its continuation and expansion. Juveniles have been employed at: Country Cooking, Advance Auto, and Burger King. One juvenile attended a community college (Dabney-Lancaster Community College).</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses</p>	<p>The businesses involved thus far have indicated satisfaction with this endeavor and are looking forward to its continuation and expansion.</p>

<p>affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Juveniles have been employed at: Country Cooking, Advance Auto, and Burger King. One juvenile attended a community college (Dabney-Lancaster Community College).</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Minimal. See below.</p>

The regulations provide the framework for the Department to develop appropriate interagency linkages with state and local agencies, public and private institutions of education and of higher education, labor and industry councils, the business community, rehabilitative services providers, and employment and guidance services to assist wards in acquiring the necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities and mentoring and apprenticeship programs. In providing career-related programs, training, and services, the Department may consult and cooperate with the Virginia Employment Commission and the Department of Labor and Industry. Work training opportunities may include business, industrial, agricultural, highway maintenance and construction, and work release programs as hereafter specified in this article. In addition, wards may be employed to improve, repair, work on, or cultivate public property or buildings.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Prior to the enactment of Chapter 648 of the 2005 Acts of the General Assembly, the Department lacked the clear statutory authority to develop work release and educational release programs for committed juveniles. Chapter 648 establishes the legal basis for such programs and also requires the Board to promulgate regulations governing such programs. So, while it might be possible for the Department to develop policies and procedures short of regulation to guide work release and educational release programs, or to enter into contracts or agreements with potential employers to operate such programs, these alternatives are not available to the Department.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for

small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Enter statement here

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Department received no public comments following the publication of the NOIRA.

Commenter	Comment	Agency response

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action will have no impact on the authority and rights of parents, economic self-sufficiency, marital commitment, or family income.

The legislation mandating this regulation includes specific provisions that should support the institution of the family and enhance family stability. Moneys earned by a ward in a work release program shall first be used to meet the obligation of any administrative or judicial order to provide support; after fines and restitution are paid, any balance will be credited to the juvenile's account or sent to his family in an amount the juvenile chooses.

In addition, Virginia Code § 66-25.1:4. authorized the Director to extend the limits of confinement of any offender participating in a work release program to permit the offender a furlough for the purpose of visiting his home or family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

The proposed regulations incorporate the emergency regulations to a significant degree. Those changes made to the emergency regulations in order to conform with the stylistic or formatting requirements of the *Virginia Register Form, Style, and Procedure Manual* are not included in the summary below. Following is a summary of the substantive changes made to the emergency regulations and currently included in the draft proposed regulations.

- Subsection 6 of 6 VAC 35-190-40 (Eligibility Criteria):** The list of serious offenses requiring the Director’s approval before a ward may participate in the program is expanded from murder and manslaughter to include all violent juvenile felonies as defined in Virginia Code § 16.1-228. The definition of a violent juvenile felony captures those offenses for which a juvenile 14 years of age or older may be certified to circuit court and tried as an adult. Given the seriousness of such offenses, requiring the Director’s approval seemed appropriate.
- Subsection 7 of 6 VAC 35-190-40 (Eligibility Criteria):** Specifically stating “Classification IV” was removed from the regulation. The current classification system utilizes four levels of supervision. This amendment allows the Department to amend the numbering system for the classification system without amending these regulations. As drafted, a ward requiring the highest level of supervision according to the Department’s classification system will not be eligible to participate in a release program.
- Subsection 8 of 6 VAC 35-190-40 (Eligibility Criteria):** Requiring the Deputy Director for Community Programs and the Deputy Director for Institutional Services to recommend a juvenile with a risk assessment score indicating a high risk of re-offending for participation in a release program seemed unnecessary. Current procedures provide the process for recommending such a juvenile to the Director for approval. The emergency regulations and the proposed regulations bar participation of such a juvenile in the program without the approval of the Director.
- Subsection 1 of 6 VAC 35-190-70 (Conditions for Employing, Supervising, or Training Entity):** Language was removed from the regulation requiring the employment entity to ensure that the employment of a committed juvenile (a) would not result in the displacement of employed workers; (b) be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or (c) impair existing contracts. Such a requirement is not mandated by the Virginia Code. Moreover, it is unlikely that this provision is necessary given the size and scope of the Department’s work release program and the employment areas utilized.

- **Subsection 3 of 6 VAC 35-190-70 (Conditions for Employing, Supervising, or Training Entity):** Language was removed that prohibited the off-campus work or education placement from offering work or education training similar to that available at the juvenile correctional center. Although the juvenile correctional center may be able to offer similar work or educational experiences as a placement at an off-campus site; there may be more benefits associated with the off-campus site.
- **6 VAC 35-190-100 (Earnings):** Language requiring written procedures for receiving and distributing employment earnings is not necessary. Subsection C of Virginia Code § 66-25.1:3 is very specific concerning the distribution of earnings. Therefore, the regulation only needs to state that earnings will be received and disbursed in accordance with subsection C § 66-25.1:3 of the Code of Virginia.
- **6 VAC 35-190-120 (Annual Evaluation and Report):** Language requiring the Department to annually evaluate the Pilot Work/Educational Release Program was removed. There is no statutory requirement for an annual evaluation. The Department may elect to conduct an annual evaluation on its own accord.