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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC 20-65
VAC Chapter title(s)	Professional Standards of Conduct Applicable to Certified Law Enforcement Officers and Certified Jail Officers; Due Process Procedures for Decertification Based on Serious Misconduct in Violation of Standards
Action title	New Regulation for Professional Standards of Conduct and Decertification of Law Enforcement Officers
Date this document prepared	6/16/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

SB5030, passed during the 2020 Special Session of the General Assembly, created several legislative mandates for DCJS. One of those was to adopt statewide professional standards of conduct applicable to all certified law enforcement officers and certified jail officers and appropriate due process procedures for decertification based on serious misconduct in violation of those standards. This regulatory action creates a new regulation establishing both the

standards of conduct, as well as the required procedures for the decertification for a law enforcement officer in violation of such standards. As of March 1, 2021, these have been added to Virginia Code § 9.1-102, thus creating the reason for the use of the Emergency regulatory process, pursuant to § 2.2-4011.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- DCJS - Department of Criminal Justice Services
- CJSB - Criminal Justice Services Board, DCJS’ policy board
- Department - Department of Criminal Justice Services
- Board - Criminal Justice Services Board

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) *Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

This rulemaking is an emergency situation in accordance with § 2.2-4011(B), Item 3 in Chapter 37 of the 2020 Special Session of the General Assembly, and the provisions are now listed in Virginia Code § 9.1-102(61), where the effective date is within 280 days. The Department of Criminal Justice Services hired additional personnel specifically for decertification processes and procedures, and worked to assemble and establish a workgroup comprised of individuals to begin the composition of professional standards of conduct. The Enactment clause established the need for this. Although mandated by the passing of SB5030 in 2020, DCJS sought and obtained formal Board approval to move forward with an Emergency regulatory action to establish a brand new regulation for both decertification procedures and professional standards of conduct for law enforcement officers throughout the Commonwealth on May 20, 2021. The workgroup met multiple times over the course of approximately nine months, and on June 1, 2022, voted to unanimously pass the standards and decertification procedures they had been working towards since 2021 when they first met. The COT was formally updated and presented these standards, and the CJSB voted to adopt the standards, as well as the regulation text and DC-1 form (that employing agencies will be required to utilize to notify DCJS and the Board) on June 16, 2022.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts and Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency for this regulation is the Department of Criminal Justice Services, which has the regulatory authority under § 9.1-102 to do so. As of March 1, 2021, and pursuant to § 9.1-102, the Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to adopt regulations, pursuant to the Administrative Process Act (§ [2.2-4000](#) et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof. Additionally, DCJS has the authority under § 9.1-102(36)(61) of the Code of Virginia, to certify and decertify law-enforcement officers in accordance with §§ [15.2-1706](#) and [15.2-1707](#), and to adopt statewide professional standards of conduct applicable to all certified law-enforcement officers and certified jail officers and appropriate due process procedures for decertification based on serious misconduct in violation of those standards.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

DCJS has determined that this regulation is essential to protect the safety and welfare of citizens in the Commonwealth, and it has already been codified, effective March 1, 2021, which the reason for utilizing the Emergency regulatory process, pursuant to § 2.2-4011 of the Code of Virginia. The purpose of the establishment of this new regulation is to adopt statewide professional standards of conduct applicable to all certified law enforcement officers and certified jail officers and to appropriate due process procedures for decertification based on serious misconduct in violation of those standards. This will ultimately be beneficial for both officer and public safety across Virginia.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

There are no substantive changes to existing sections of any chapter of any regulation because this will be a brand new regulation promulgated by DCJS. The Department has been mandated

through the passage of SB5030 during the 2020 Special Session of the General Assembly to adopt such standards and decertification procedures into regulation. The Standards of Conduct Workgroup was established in 2021 and is comprised of individuals within the criminal justice system, as well as citizens (such as defense attorneys, those representing human rights organizations, etc.). The workgroup met multiple times in 2021 and 2022, until language was developed and completed, and ultimately unanimously supported. The workgroup’s approval of the standards was obtained on June 1, 2022, with the regulatory text and DC-1 form approved by the Board on June 16, 2022.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

There are no foreseen disadvantages to the Department, the Commonwealth, or individual private citizens or businesses. In fact, an advantage of promulgating this regulation is not only enhanced oversight for law enforcement misconduct, but clear decertification procedures for officers engaged in unethical or criminal behavior. Adopting statewide professional standards of conduct will make expectations clear to current and future law enforcement officers, and assure citizens that there are set procedures for police officers that violate such standards. Establishing this regulation, in accordance with § 9.1-102 of the Code of Virginia, will enhance officer public safety throughout the Commonwealth.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no existing viable alternatives to the establishment of this regulation, nor does the Department believe it will prove burdensome or intrusive to any small businesses or other agencies in the Commonwealth. DCJS was mandated through the passage of SB5030 in the 2020 Special Session of the General Assembly to establish these statewide standards and decertification due process procedures, and there is currently no alternative to doing so.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16,

2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Department of Criminal Justice is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Kristi Shalton, 1100 Bank St, Richmond, VA 23219, Kristi.shalton@dcjs.virginia.gov, (804)786-0410. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
6VAC-20-65-10	Definitions	N/A	Defines relevant terms/acronyms
6VAC20-65-20	Professional Standards of Conduct Applicable to all Certified Law Enforcement Officers and Certified Jail Officers	§§ 15.2-1706 and 15.2-1707; § 9.1-102(36)(61) of the Code of Virginia	Establishes statewide professional standards of conduct for all law enforcement officers throughout the Commonwealth
6VAC20-65-30	Designation of Serious Misconduct Warranting Officer Decertification	§§ 15.2-1706 and 15.2-1707; § 9.1-102(36)(61) of the Code of Virginia	Establishes due process procedures for the decertification of law enforcement officers based on serious misconduct in violation of the professional standards of conduct
6VAC20-65-40	Due Process Procedures for Decertification Resulting from Serious Misconduct	§§ 15.2-1707 and 15.2-1708	Reiterates due process procedures already listed in Code of Virginia; makes reference to DC-1 form that employing agencies will utilize to report decertification-eligible officers
FORMS	Forms	N/A	Intent is to include DC-1 form that agencies will submit to the Department within 48-hours of learning of an officer's eligibility for decertification