



Virginia  
Regulatory  
Town Hall

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Board of Juvenile Justice
<b>VAC Chapter Number:</b>	6 VAC 35 180
<b>Regulation Title:</b>	Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles.
<b>Action Title:</b>	NOIRA
<b>Date:</b>	9/15/2005

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The regulation is intended to ensure the planning and provision of post-release services addressing the mental health, substance abuse or other therapeutic treatment needs of incarcerated juveniles as they transition back into their communities. The goal is to ensure continuity of necessary treatment and services. Appropriate treatment providers and other persons from state and local agencies or entities, appropriate family members, caregivers and appropriate other persons will be involved in the development of the person's plan.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

The basis for this regulation is Virginia Code § 16.1-293.1, which provides that:

"A. The Board of Juvenile Justice, after consultation with the Department of Mental Health, Mental Retardation and Substance Abuse Services, shall promulgate regulations for the planning and provision of post-release services for persons committed to the Department of Juvenile Justice pursuant to subdivision A 14 of § 16.1-278.8 or placed in a postdispositional detention program pursuant to subsection B of § 16.1-284.1 and identified as having a recognized mental health, substance abuse, or other therapeutic treatment need." Section 16.1-293.1 also specifies certain elements that must be included in the transitional treatment plan, which therefore will be addressed in the regulation.

**Substance**

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

Summary of Regulatory Action.

This regulation is being promulgated in response to the enactment of SB 843 and HB 2245 by the 2005 General Assembly. Those bills require the Board of Juvenile Justice, after consultation with the Board of Mental Health, Mental Retardation, and Substance Abuse Services and other related agencies, to promulgate regulations for the planning and provision of mental health, substance abuse, or other therapeutic treatment services for persons returning to the community following commitment to a juvenile correctional center (JCC) or postdispositional detention.

The regulation enhances the public safety because the services mandated therein should reduce recidivism by juveniles who have been incarcerated and identified with a mental health treatment need. About 1,000 juveniles are released each year from a JCC. Of those juveniles, 60% of the males and 90% of the females have diagnosed mental health treatment needs (41% of males and 59% of females have severe emotional disturbances). Half of the youth have taken psychotropic medications prior to commitment; 25% have been hospitalized in mental hospitals prior to commitment; and approximately 70% of all wards are identified as having a "High Treatment Need" for substance abuse services. 75% of the wards were committed for non-violent offenses. These figures do not include juveniles who are incarcerated in local post-dispositional programs.

Substance of Regulation.

As mandated by Subsection A, Virginia Code § 16.1-293.1, the regulation will specify how individuals will be identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The regulation will require that the transitional services plan be in writing, be completed prior to the person's release, and be designed to ensure continuity of necessary treatment and services.

As mandated by Subsection B, Virginia Code § 16.1-293.1, the regulation will require that:

- (i) the mental health services transition plan identify the mental health, substance abuse, or other therapeutic needs of the person being released;

(ii) appropriate treatment providers and other persons from state and local agencies or entities, as defined by the Board, participate in the development of the plan

In addition, the regulation will provide that appropriate family members, caregivers, or other persons, as defined by the Board, shall be invited to participate in the development of the person's plan.

As mandated by Subsection C, Virginia Code § 16.1-293.1, the regulation will require that, prior to the person's release from incarceration, the identified agency or agencies responsible for the case management of the mental health services transition plan:

- (i) make the necessary referrals specified in the plan and
- (ii) assist the person in applying for insurance and other services identified in the plan, including completing and submitting applications that may only be submitted upon release.

Issues to be addressed.

Virginia Code § 16.1-293.1 mandates that "the identified agency or agencies responsible for the case management of the mental health services transition plan shall make the necessary referrals specified in the plan and assist the person in applying for insurance and other services identified in the plan." Experience suggests that whenever an agency refers for services, rather than provides services directly, there may be issues of funding and payment, responsibility for treatment decisions, and communication between provider and case manager. It is anticipated that some of these issues will be to be addressed at least to some degree in the regulation.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

Although the Department of Juvenile Justice has done planning for transition services as part of its parole planning for many years, the General Assembly has indicated that the process should be uniform from locality to locality, and therefore should be established in regulation. Given that the Department's policies have no controlling authority outside the agency, the most realistic alternative (to plan and provide for mental health transition services "in accordance with written policies and procedures of the Department") is not a viable alternative to the regulation.

## Family Impact Statement

*Please provide a preliminary analysis of the potential 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.*

The statute mandating the regulation specify that appropriate family members, caregivers, or other persons shall be invited to participate in the development of the person's plan. The

regulation should therefore strengthen parents' involvement in the process of transitioning their incarcerated child back into the community, and in their plan for treatment.