



Virginia Department of Planning and Budget **Economic Impact Analysis**

6 VAC 35-101 Regulation Governing Juvenile Secure Detention Centers
Department of Juvenile Justice
Town Hall Action/Stage: 4617 / 8738
August 7, 2020

Summary of the Proposed Amendments to Regulation

The Board of Juvenile Justice (Board) proposes to: 1) adopt additional safeguards for the use of mechanical restraints and mechanical restraint chairs and new requirements for spit guards, 2) adopt additional safeguards for room confinement, 3) incorporate in the regulation staffing ratios of the federal 2003 Prison Rape Elimination Act, 4) reduce the number of showers or bathtubs required for residents, 5) exclude certain types of medication incidents from documentation requirements, 6) incorporate current guidance on transportation of juveniles in detention into the regulation, 7) require that a first-aid kit be maintained in facility and in transport vehicles, 8) clarify that facilities serving residents under custody of separate entities have contracts in writing and that this be communicated to the Department of Juvenile Justice (DJJ), and 9) streamline many existing requirements and clarify regulatory language.

Background

This regulation establishes the minimum standards with which staff in secure juvenile detention centers must comply. These facilities are operated by local governments or group thereof (commissions), but are subject to certification by the Board. The primary purpose of the regulation is to ensure safety and security within these facilities. The regulation addresses personnel and staffing requirements, physical environment, facility safety and security, residents' rights, program operations, health care, and behavior management for juvenile detention centers operating pre-dispositional programs solely or both pre-dispositional and post-dispositional programs.

This regulatory action includes comprehensive amendments. The proposed amendments are the result of a review of this chapter conducted by DJJ staff, representatives from the Virginia Juvenile Detention Association, various state agencies, and several juvenile justice advocates.

Estimated Benefits and Costs

This action contains proposals for numerous changes. Some of the changes are intended to limit the use of various types of restraints; many are intended to eliminate requirements that the Board either believes are impractical or that impose small but undue burdens on regulated facilities; remaining changes would improve the clarity of the language. The changes that appear to be substantive are discussed below.

Mechanical restraints & chairs

The proposal amends the language regarding the use of mechanical restraints¹ and mechanical restraint chairs,² and adds new language allowing the use of spit guards³ so long as certain precautions are taken. According to DJJ, the use of mechanical restraints, and more specifically, the mechanical restraint chair in secure juvenile facilities has generated significant controversy in recent years. When the proper approvals, restrictions, and monitoring controls are not in place or when staff utilize these devices negligently, they can be dangerous to residents in secure facilities. In addition, this regulation currently is silent with respect to rules governing the use of spit guards used to curtail spitting and biting, as well as other protective devices. The current regulation imposes few restrictions on the use of mechanical restraints and the restraint chair.

The proposal places additional restrictions on the purposes for which mechanical restraints and the mechanical restraint chair may be used, and imposes other restrictions and

¹ "Mechanical restraint" is defined as an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this chapter, mechanical restraints shall include flex cuffs, handcuffs, leather restraints, leg irons, restraining belts and straps, waist chains, and anti-mutilation gloves. For purposes of this chapter, mechanical restraints shall not include mechanical restraint chairs.

² "Mechanical restraint chair" is defined as an approved chair used to restrict the freedom of movement or voluntary functioning of a portion of an individual's body as a means of controlling his physical activities while the individual is seated and either stationary or being transported.

³ "Spit guard" is defined as a device designed for the purpose of preventing the spread of communicable diseases as a result of spitting or biting.

controls on the use of mechanical restraints and restraint chairs, including, for example: training, limiting the duration of use, requiring certain medical staff to be notified at various stages of the process, imposing various additional documentation requirements, requiring staff to film use of the chair, requiring DJJ monitoring visits for each restraint chair use, and requiring annual reporting to and review by the board. DJJ reports that these provisions are consistent with the National Commission on Correctional Health Care's Standards for Health Services in Juvenile Detention and Confinement Facilities.

The proposed amendments are expected to impose additional administrative costs for those detention centers that opt to utilize the mechanical restraints/restraint chair and do not have the video equipment, sufficient staff, trained staff, or adequate electronic or other storage space to meet the new requirements. DJJ indicates that there are 12 or 13 facilities that currently utilize or have the mechanical restraint chair. An estimate of the cost cannot be provided at this time, as it is not clear which facilities would continue utilizing the mechanical restraint chair and the extent to what additional equipment or staff would be necessary. These changes however would also help ensure their proper use, enable the department to assess whether the facility has complied with the new regulatory requirements, and that residents who are restrained due to behavior that threatens themselves or others or impedes critical facility operations are restrained in a manner that ensures their safety.

The proposal also adds new language regarding the use of spit guards to control the transmission of communicable diseases and prevent other injuries to staff and residents. The proposed language limits the types of spit guards that may be used and the manner in which they may be applied. Staff must be trained and documentation must be maintained whenever spit guards are utilized. Compliance with the new requirements when utilizing spit guards would introduce additional costs associated with training and documentation of procedures followed and should help ensure their proper use. To the degree that the effectiveness of spit guards improves with their use as prescribed leads to a decrease in the spread of communicable diseases, a benefit would be conferred upon the individuals who would otherwise contract the disease and any costs that may result.

Room confinement

The Board proposes to introduce additional restrictions for room confinement to ensure: adequate monitoring protocols are in place, restriction periods are approved through proper channels, and medical and mental health professionals are assessing the impact on residents who are on room restriction for extended periods.⁴ The board proposes relevant amendments that include, but are not limited to: increasing the frequency of required room checks during room restriction from 30-minute intervals to 15-minute intervals, requiring the facility administrator or his designee to provide written approval for any room restriction beyond 24 hours, and requiring a qualified medical professional to conduct an assessment of a resident's mental health and medical status if the room restriction is anticipated to exceed 72 hours. According to DJJ, these changes reflect the national trend towards more monitoring protocols and additional opportunities for resident/staff interaction.

The enhanced mental and medical health assessment requirements for residents restricted in excess of 72 hours constitutes a mandate for detention centers and Community Service Boards (CSBs) that would create additional administrative costs for CSBs responsible for conducting mental health assessments and addressing residents' mental health needs. DJJ notes that very few detention centers have mental health clinicians on their staff and must rely primarily on local CSBs to provide these services. To the extent such services are not subsidized by the Commonwealth, they must be funded by localities.

These new, more specific directives may create additional monitoring, data-gathering and analysis responsibilities for staff in detention centers, which may require additional positions or an update to existing systems or software and may result in an increased workload for existing staff. DJJ indicates that vast majority of facilities utilize room confinement. While these changes are anticipated to impose significant additional administrative responsibilities on detention center staff that may necessitate hiring additional personnel, the changes would help ensure that room restriction is administered in a manner that is safe for both residents and staff and produces the most positive outcome for residents.

Federal Prison Rape Elimination Act

⁴ DJJ notes that Senate Bill 215 introduced during the 2016 Virginia General Assembly session would have required promulgation of regulations that specified the parameters for imposing room confinement in juvenile correctional centers and juvenile detention centers. Although the legislation ultimately failed, it prompted DJJ to make room confinement a focal point for examination during the comprehensive review of this chapter.

In 2003, Congress enacted the Prison Rape Elimination Act (PREA) to “provide for the analysis of the incidence and effects of prison rape in federal, state, and local institutions and to provide information, resources, recommendations, and funding to protect individuals from prison rape.” The act created a commission charged with developing standards for the elimination of prison rape. The final rule for these standards became effective in 2012; however, juvenile correctional facilities had until October 2017 to comply with the standards related to staffing requirements and staffing ratios. According to DJJ the staffing ratios in the PREA provide a safe and reasonable benchmark for ensuring the safety of residents.

The proposal would modify the direct care employee to resident staffing ratio from 1:10 to 1:8 during waking hours on the premises, or during participation in off-campus, facility sponsored activities, in order to comply with the standards applicable to juvenile residential facilities under PREA. DJJ reports that many detention centers have adopted written procedures or are employing practices that align with PREA’s mandates. In the event that a specific detention center does not meet the proposed ratio currently, this proposed change may result in additional personnel costs. If additional personnel are needed, such additional costs would be borne by the locality or commission responsible for the facility’s operation. On the other hand, an increased staffing ratio would help ensure that residents are accounted for and properly monitored, which may reduce the likelihood of injuries or other incidents.

Ratio of showers or bathtubs to residents

The proposal amends the ratio of showers or bathtubs to residents in new facilities that may be constructed to require one shower or tub for every five, rather than four, residents. This proposal would give localities seeking to construct new detention centers or renovate existing facilities additional space for programming and may decrease construction or facility operational costs. According to DJJ, two detention centers are currently in the planning phase for a new or renovated facility.

Medication incidents

The proposal changes the definition of medication incidents to exclude a detention center’s unsuccessful attempts to obtain medication. This change would reduce some of the administrative burden associated with documentation of these specific incidents.

Information to external parties

Detention centers are responsible for transporting their residents to local medical and dental appointments and local psychological and psychiatric evaluations, but are not required to transport them to appointments outside Virginia's geographical boundaries or more than 25 miles, one way, from the facility. The proposal incorporates requirements from the Guidelines for Transporting Juveniles in Detention, which were issued by the Board in 2004 to establish administrative and safety guidelines local detention center staff must follow when transporting or allowing others to transport residents outside the facility. As these changes are part of existing guidelines that have been incorporated by reference into the regulation and have been in place for detention centers since 2004, this proposed amendment would have no additional impact on residents, staff, or facility operations.

First-aid kits

The proposal adds language requiring that a first-aid kit be maintained within the facility and in facility vehicles used to transport residents. This amendment is intended to help staff of facilities respond to minor resident injuries while on premises and in transporting residents off-site. According to DJJ, most facilities have a fleet of vehicles for these purposes, and many already maintain first aid kits in their vehicles to comply with local ordinances. Thus, facilities are not expected to incur significant additional expenses because most already meet this requirement.

Residents under custody of separate entities⁵

According to DJJ, at least one juvenile detention center currently contracts with the federal government to house residents under the federal government's custody. This program operates separately from the facility's pre-dispositional and post-dispositional programs. DJJ recently identified a gap in its certification authority that prevented the certification unit from inspecting and reviewing files of and interviewing residents under the federal government's

⁵ DJJ notes that during the 2020 legislative session the General Assembly enacted legislation (2020 Acts of Assembly, Chapter 599) directing the Board, in collaboration with the Department of Behavioral Health and Developmental Services to establish regulations governing the housing of such youth who are detained in a juvenile correctional facility pursuant to contracts with the federal government. In order to carry out this directive, DJJ has convened a committee of representatives from juvenile detention centers, DJJ staff, the Office of Refugee Resettlement, and the Department of Behavioral Health and Developmental Services. DJJ anticipates filing a separate regulatory action once this committee completes its work.

custody. This gap had prevented DJJ from verifying such facilities' compliance with its regulations and from ensuring the safety of the program participants. DJJ previously addressed this issue in 2019 through a fast-track regulatory action⁶ requiring these contracts to include provisions that bind the program to the department's certification regulations and that give the department access to residents within the program. This proposal includes additional amendments to the regulatory requirements adopted as part of the previous fast-track change. These proposed changes would clarify that such contracts must be in writing and communicated to the department, which would not introduce any additional significant costs.

Businesses and Other Entities Affected

The Board currently regulates 24 detention centers operated by local governments or local commissions.⁷ The average daily population statewide was 521 in fiscal year 2019 and 452 in fiscal year 2020. The proposed changes to the regulatory provisions would affect these facilities as well as their staff and residents.

As discussed, detention centers that have been utilizing or opt to use mechanical restraints, mechanical restraint chair, spit guards, and room confinement would be most significantly affected due to added costs in terms of training, staffing, and equipment to comply with the proposed requirements. DJJ indicates that there are 12 or 13 facilities that currently utilize or have a mechanical restraint chair and that vast majority of facilities utilize room confinement. An adverse economic impact⁸ is indicated on those affected facilities. The proposals for reduced shower or bathtub ratio and excluding certain medication incidents from reporting should reduce compliance costs. The remaining changes do not appear to have a significant economic impact.

Local CSBs may also be affected due to the enhanced mental and medical health assessment requirements for residents placed in room confinement. No data are current available to assess any potential costs that may result.

⁶ <https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8371>

⁷ Data source: DJJ

⁸ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

Small Businesses⁹ Affected:

The proposed regulation may indirectly affect small businesses only insofar as a small business provides a program or service subject to this regulation. Some of these businesses may meet the definition of a small business and may be publicly or privately operated. DJJ does not have sufficient information to determine the number of businesses that contract with local detention centers, the number of such businesses that meet the definition of small businesses, or the extent to which such businesses would be impacted by the proposed amendments. Also, none of the proposed changes appears to have a direct economic impact on businesses. Thus, no adverse impact on small business is indicated.

Localities¹⁰ Affected¹¹

As stated above, the 24 juvenile detention centers are operated by local governments or local commissions. These facilities are located in City of Charlottesville, City of Chesapeake, Chesterfield County, Prince George County, County of Fairfax, Henrico County, City of Bristol/Highland County, Powhatan County, Leesburg/Loudoun County, City of Lynchburg, James City County, City of Newport News, Christiansburg/Montgomery County, City of Norfolk, City of Alexandria, City of Winchester, Prince Edward County, Prince William County, City of Fredericksburg, City of Richmond, City of Roanoke, Staunton County, City of Virginia Beach, and City of Danville.

To the extent the proposed additional training, monitoring, and documentation requirements are applicable, they are anticipated to result in additional costs for local juvenile detention centers, which would be borne by the locality or commissions responsible for their operation. The proposed amendments regarding mechanical restraints, restraint chairs, spit guards, and room confinement would impact only those detention centers that utilize them. DJJ indicates that there are 12 or 13 facilities that currently utilize or have a mechanical restraint chair and that vast majority of facilities utilize room confinement. There are two detention centers currently in the planning phase for a new or renovated facility and may benefit from the

⁹ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

¹⁰ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹¹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

reduced shower or bathtub ratio. The juvenile detention center located in Staunton County currently contracts with the federal government to house residents under the federal government's custody, which would be particularly affected by the changes discussed under the heading "*Residents under custody of separate entities.*" Consequently, an adverse economic impact on localities is indicated.

Projected Impact on Employment

The proposed additional training, monitoring, and documentation requirements would add to the demand for labor by the affected facilities. Consequently, there may be a moderate increase in employment.

Effects on the Use and Value of Private Property

The proposed amendments do not affect private property or real estate development costs.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.