



Virginia
Regulatory
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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) 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 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.
Document preparation date	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

Chapter 648 of the 2005 Acts of the General Assembly, which mandates this regulation, also specifies that “the Board of Juvenile Justice shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

The regulation must be in place as soon as practicable, since Chapter 648 also specifies that “the Board of Juvenile Justice is authorized to operate a pilot program in conformity with this act beginning July 1, 2005, and ending July 1, 2006, at one juvenile correctional center site.”

Finally, Chapter 648 requires the Department of Juvenile Justice to submit a report on the implementation of the pilot program and this act to the House Committee on Militia, Police and Public Safety, and the Senate Committee on Rehabilitation and Social Services by November 15, 2005.”

Legal basis

Other than the emergency authority described above, 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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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

Two new sections of the Code of Virginia (66-25.1:3 and 66-25.1:4, both of which become effective July 1, 2006) specifically refer to “rules and regulations” to be issued by the Board of Juvenile Justice governing juvenile work release programs.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

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.

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

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

For changes to existing regulations, use this chart:

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 written procedures, consistent with the Code of Virginia § 66-25.1:3 . governing wards' earnings through release programs.
	110		Requires written procedures for removing a ward from a program.
	120		Requires an annual evaluation of work release, educational release and other rehabilitative programs, and an annual report to the Board summarizing the results of this evaluation.,

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

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 us.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

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 shall 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.