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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation(s)	6 VAC35-101
Regulation title(s)	Regulation Governing Juvenile Secure Detention Centers
Action title	Amends the provisions applicable to juvenile secure detention centers as a result of a comprehensive review of the existing provisions.
Date this document prepared	August 4, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Regulation Governing Juvenile Secure Detention Centers establishes the minimum standards for juvenile secure detention centers (JDCs) with respect to program operations, health care, personnel, facility safety, residents' rights, and physical environment. The regulation seeks to promote the safety and security of residents, staff, volunteers, interns, and contractors, while protecting the rights of detained residents and preparing them for successful community reentry following their detention.

This regulatory action will involve a comprehensive overhaul of the Regulation Governing Juvenile Secure Detention Centers to ensure that the regulations reflect current practices within the JDCs. The Department of Juvenile Justice (Department) will also perform a comprehensive review to remove outdated provisions and clarify concepts for JDCs.

This regulatory action will enhance the clarity of the regulatory requirements and achieve improvements that are reasonable, prudent, and will not impose an unnecessary burden on JDCs, programs, or the public.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 16.1-309.9 of the *Code of Virginia* requires the Department to “approve minimum standards for the construction and equipment of detention homes or other facilities and for food, clothing, medical attention, and supervision of juveniles housed in these facilities and programs.” The Board of Juvenile Justice (Board) is entrusted with general authority to promulgate regulations by § 66-10 of the *Code of Virginia*, which gives the Board the authority to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department.”

The promulgating entity is the Board.

Purpose

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

The current regulation governing JDCs includes sections that address: 1) administration and personnel; 2) physical environment; 3) safety and security; 4) residents' rights; 5) program operation; 6) health care services; 7) behavior management; and 8) post-dispositional detention programs. The existing regulation contains provisions that ensure that JDCs have procedures in place to address unforeseen emergencies; protect residents, staff, and others who enter the facility; guarantee that the rights of detained juveniles are not violated; and ensure that rules, practices, and procedures are applied uniformly.

The Department partners with a number of JDCs to provide structured, disciplined residential alternative placements for qualifying DJJ-committed juveniles in order to promote a seamless transition from incarceration to community living in a location that is close to the resident's home community. JDCs that operate these community placement and detention reentry programs must comply with the provisions of a Memorandum of Understanding (MOU) entered into with the Department. The Department (Board) must determine whether regulations to supplement the MOU and set out the requirements for alternative placements are necessary, and if so, whether they should be contained in the Regulation Governing Juvenile Secure Detention Centers.

Additionally, in a 2015 letter, the Virginia Juvenile Detention Association (VJDA) requested that the Department specifically review the following areas in this regulation:

- Mandated amount of training for part-time direct care staff;
- Information contained on a juvenile's face sheet;
- Requirements related to toilet facilities;
- Requirements related to smoking;

- Requirements related to mental health screening;
- Work and employment issues for residents;
- Room confinement and isolation procedures;
- The use of mechanical and other restraints; and
- Individual service plans.

The Department plans to conduct a comprehensive review in order to address the concerns outlined in VJDA’s letter, as well as to remove any existing regulatory requirements that have been identified as unnecessary, impractical, or impossible for facilities to implement.

Maintaining clear, concise regulations is essential to protecting the health, safety, and welfare of residents in JDCs and citizens in the community. Administrators who have clear expectations will be able to run the facilities effectively and utilize any extra resources for supporting the needs of the residents, thereby maintaining the overall rehabilitation and community safety goals of the Department.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Department (Board) proposes to conduct a comprehensive review of the regulation through an interdisciplinary committee to include JDC administrators, DJJ Certification Unit members, and DJJ policy and planning professionals and, if appropriate, address any necessary changes identified through the review. The regulation will be reviewed and modifications proposed to ensure that it most effectively and efficiently supports its statutory purpose. The Department anticipates the following changes:

- Update the definitions section and terms used for clarity and consistency with other regulations promulgated by the Board.
- Remove references to obsolete regulations.
- Expand the smoking prohibitions to include newly recognized tobacco and vapor products.
- Amend the training requirements for part-time direct care staff and make additional amendments for staff related to work hours and rest days.
- Incorporate appropriate cross references to statutes, regulations, and guidance documents, amended, enacted, or promulgated since the last review.

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.

Retaining the current regulation was considered; however, the Department has determined that a comprehensive review and update of the regulation is essential for ensuring consistency and avoiding ambiguity in interpretation for existing and future JDCs.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The Department is seeking comments on this regulatory action, including but not limited to: (i) ideas to be considered in the development of this proposal, (ii) the costs and benefits of the alternatives stated in this background document or other alternatives, and (iii) the potential impacts of the regulation.

The Department is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: (i) projected reporting, recordkeeping, and other administrative costs; (ii) the probable effect of the regulation on affected small businesses; and (iii) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Kristen Peterson, Regulatory Coordinator; P.O. Box 1110, Richmond, VA 23219; (804) 588-3902 (office); (804) 371-6497 (fax); Kristen.Peterson@djj.virginia.gov. Written comments must include the name and contact information of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

Other than the interdisciplinary review committee, an external panel will not be used to assist in the development of this regulatory proposal, nor will any public hearing be held to receive comments regarding this regulatory proposal. However, public comments may be provided at the Board's regularly scheduled meetings.

Periodic review/small business impact review announcement

If you wish to use this NOIRA to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.

In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the *Code of Virginia*, the Department is conducting a periodic review and small business impact review of this regulation to determine whether it should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.