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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC35-200
VAC Chapter title(s)	Regulations Governing Youth Detained Pursuant to Federal Contracts
Action title	Establish new regulations for youth detained in juvenile correctional facilities pursuant to federal contracts
Date this document prepared	September 23, 2020

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).

This action seeks to establish a new set of regulatory provisions that will apply to programs for youth detained in juvenile correctional facilities pursuant to contracts with federal governmental entities. The legislation is intended to apply to locally operated juvenile detention centers that enter into contractual arrangements with federal entities to house and provide 24-hour supervision to youth under federal legal custody. In addition, the legislation applies to any state-operated juvenile correctional centers that adopt such programs. The mandated regulatory provisions will impose minimum, enhanced standards for facilities that operate programs housing youth under federal legal custody and will act to ensure additional protections for this vulnerable population of youth.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“DBHDS” means Department of Behavioral Health and Developmental Services

“JCC” means juvenile correctional center

“JDC” means juvenile detention center

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The proposed regulatory action is a product of a legislative mandate enacted during the 2020 Virginia General Assembly Session (Chapter 599 of the 2020 Acts of Assembly) that directs the Board of Juvenile Justice (the Board) in collaboration with DBHDS, to promulgate regulations governing the housing of youth who are detained in a juvenile correctional facility pursuant to a contract with the federal government and not committed to such juvenile correctional facility by a court of the Commonwealth.

On September 16, 2020 pursuant to this legislative mandate, the Board of Juvenile Justice voted unanimously to allow the department to proceed with the first stage of the standard regulatory process for this action.

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 and Acts of 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 entity is the board. Section 66-10.2 of the *Code of Virginia* directs the board to promulgate regulations governing the housing of youth who are detained in a juvenile correctional facility pursuant to a contract with the federal government and not committed to such juvenile correctional facility by a court of the Commonwealth.”

Additionally, the board is entrusted with general discretionary authority to adopt regulations by § 66-10 of the *Code*, which authorizes the board to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.

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.

The proposed regulatory action is a product of a legislative mandate enacted during the 2020 legislative session that directs the board to establish regulations governing state-regulated programs housing youth pursuant to federal contracts. By virtue of this legislative mandate, the General Assembly has declared this regulation essential to protect the health, safety, or welfare of the youth under federal legal custody and placed in these state-licensed residential facilities.

Substance

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

Pursuant to § 66-10.2 of the *Code of Virginia*, the regulations shall establish the following:

- ***Standards that govern the use of physical force, mechanical restraints, and spit guards:*** Currently, the board has regulations in place governing both juvenile correctional and juvenile detention centers that address physical force and mechanical restraints. Proposed amendments to impose additional restrictions on the use of force in these facilities are moving through the regulatory process. The department is considering whether enhanced provisions or additional restrictions are necessary to ensure the life, health, and safety of youth in these federal programs.
- ***Standards that avoid the use of isolation:*** While proposed amendments to prohibit the use of disciplinary room confinement are underway for juvenile correctional centers, these prohibitions will not apply in juvenile detention centers. The department is considering additional provisions that will place further restrictions on the use of room confinement on federal residents in juvenile detention centers.
- ***Requirements for an appropriate number of bilingual staff and culturally relevant programs:*** Neither the JDC nor JCC regulation establishes requirements for bilingual staff or culturally relevant programming. The department is considering imposing an express requirement directing these facilities to have either a specified number or a specified percentage of bilingual staff, as well as setting out a clear requirement for culturally relevant programming.
- ***Methods to ensure that federal detained youth understand their rights and responsibilities:*** Both the existing JDC and JCC regulations require staff to provide certain information to residents during orientation. This includes information regarding the grievance process, the facility's disciplinary process, the resident's responsibilities in implementing emergency procedures, and the resident's rights. The department is considering enhancing these provisions to require coverage of these topics throughout the resident's length of stay, rather than limiting coverage to orientation. The department also recommends focusing on those rights that are specific to immigrant minors, such as rights regarding contact with law enforcement, rights as provided in the *Flores Agreement*, and rights regarding education.
- ***Standards to ensure the provision of necessary physical and mental health care:*** The existing JCC and JDC regulations contain numerous provisions intended to ensure that residents have access to and receive necessary medical and mental health care. Provisions requiring the arrangement of medical and dental services for residents, imposing requirements for various medical and mental health screenings at admission, and requiring residents to receive a physical

soon after arriving at the applicable facility are but a few examples of the provisions currently in place. The department is considering whether additional provisions are necessary.

- **Requirement that such contractual arrangements between the facility and the federal government provide staff of the department with the same level of access to the federal youth as the department has with other committed or detained youth.** The JDC regulations contain a broader provision that applies to all contracts, rather than limiting the application to contracts with the federal government. The department is considering adding separate language that imposes this requirement specifically for contractual arrangements between the juvenile correctional facility and the federal government.
- **Standards for recordkeeping:** While both the existing JDC and JCC regulations have provisions in place addressing collection, maintenance, storage, and retention of case records, currently, neither regulation requires video documentation for any serious incidents, nor do the regulations expressly address how video documents should be retained. The department is considering imposing more stringent recordkeeping requirements, including mandating that more incidents be captured on video and extending the requirements for retention of manual and video records.

Additionally, the department is considering incorporating the remaining existing requirements governing juvenile correctional centers and juvenile detention centers, as set out in chapters 71 and 101, into this new chapter, provided the existing provisions are not in conflict with the requirements addressed above.

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.

The department is not aware of any viable alternatives to the regulatory change. This regulation is mandated by statute, and the board and department are bound to comply with this legislative mandate.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this 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."

As this regulatory action will create a new regulation, 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 Board of Juvenile 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 Kristen Peterson, Regulatory Coordinator at the Department of Juvenile Justice, PO Box 1110, Richmond, Virginia 23218-11110; (804) 588-3902 (phone) 804-371-6497 (fax) and Kristen.Peterson@djj.virginia.gov. 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.