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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Criminal Justice Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	_6_ VAC_20_-_105__
<b>VAC Chapter title(s)</b>	Rules Relating to the Compulsory Minimum Training Standards for Detector Canine Handlers Employed by the Department of Corrections; Standards for the Training and Retention of Detector Canines used by the Department of Corrections
<b>Action title</b>	New Regulation for the Establishment of Compulsory Minimum Training Standards for Detector Canine Handlers and Standards for Detector Canines Employed by the Department of Corrections
<b>Date this document prepared</b>	02/25/2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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).*

Many bills passed during the 2020 Special Session of the General Assembly created legislative mandates for DCJS. One of these was to establish compulsory minimum training standards for detector canine handlers employed by the Department of Corrections, standards for the training and retention of detector canines used by the Department of Corrections, and a central database

on the performance and effectiveness of such detector canines that requires the Department of Corrections to submit comprehensive information on each canine handler and detector canine. As of March 1, 2021, these were added to Virginia Code § 9.1-102 in subsection 56. DCJS initially began promulgating this as an Emergency action, but after consulting with the Attorney General's Office in early 2023, the agency thought it best to move forward with a NOIRA and thus began a new action.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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Board – Criminal Justice Services Board

CJSB - Criminal Justice Services Board, DCJS' policy board

DCJS - Department of Criminal Justice Services

Department - Department of Criminal Justice Services

DOC – Department of Corrections

SME - Subject Matter Expert

## 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 the ORM procedures, "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."*

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The Governor's Office has approved SB5030 during the 2020 Special Session of the General Assembly, and the provisions are now listed in Virginia Code § 9.1-102, subsection 56. The Department of Criminal Justice Services completed its work with SMEs and DOC personnel, and the compulsory minimum training standards for detector canines and their handlers have been developed and approved by the Board. Although mandated by the passing of SB5030, DCJS sought and obtained formal Board approval to move forward with this regulatory action to establish a brand new regulation for such standards on May 20, 2021. The training standards themselves were approved in December of 2021 by the COT and the CJSB, and the regulatory text that will be listed in 6VAC20-105 was approved on March 17, 2022.

## 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.*

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The promulgating agency for this regulation is the Department of Criminal Justice Services, which has the regulatory authority under § 9.1-102 to do so. Pursuant to § 9.1-102, the Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof. Additionally, as of March 1, 2021, the Department has the authority to establish compulsory minimum training standards for detector canine handlers employed by the Department of Corrections, standards for the training and retention of detector canines used by the Department of Corrections, and a central database on the performance and effectiveness of such detector canines that requires the Department of Corrections to submit comprehensive information on each canine handler and detector canine, including the number and types of calls and searches, substances searched for and whether or not detected, and the number of false positives, false negatives, true positives, and true negatives.

**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.*

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DCJS has determined that this regulation is essential to protect the safety and welfare of citizens in the Commonwealth, and, as of March 1, 2021, has already been codified in the Code of Virginia. The purpose of this new regulation is to establish and adopt compulsory minimum training standards for detector canine handlers employed by the Department of Corrections, and standards for the training and retention of detector canines used by DOC. While detector canines currently utilized by DOC are already protecting the health, safety, and welfare of citizens, this will ensure that the all parties involved will meet the same standards and receive the same minimum training, no matter which facility the canine and its handler will work at.

**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.*

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There are no substantive changes to existing sections of any chapter of any regulation because this will be a brand new regulation promulgated by DCJS. The Department has been mandated

through the passage of SB5030 during the 2020 Special Session of the General Assembly to adopt such standards into regulation.

### 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.*

There are no existing viable alternatives to the establishment of this regulation, nor does the Department believe it will prove burdensome or intrusive to any small businesses or other agencies in the Commonwealth. DCJS was mandated by legislation in the 2020 Special Session of the General Assembly to establish these compulsory minimum training standards, and there is currently no alternative to doing so.

### 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 the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it 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."*

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 Department of Criminal Justice Services 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 Kristi Shalton, 1100 Bank St, Richmond, Virginia, (804) 786-7801, or

[Kristi.shalton@dcjs.virginia.gov](mailto:Kristi.shalton@dcjs.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.