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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC35-190
Regulation title	Regulations Governing Juvenile Work and Education Release Programs
Date	June 25, 2015

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

The *Code of Virginia* authorizes the Director of the Department of Juvenile Justice (Department) to enter into agreements with public or private entities to operate work programs for juveniles committed to the Department. The work programs are subject to the rules and regulations prescribed by the Board. Additionally, the Director is authorized to enter into such agreements with private entities, nonprofit civic organizations, school divisions, and public and private two-year and four-year institutions of higher education as it may deem necessary to provide age-appropriate educational programs and training.

The *Code of Virginia* authorizes the Board to promulgate regulations governing the form and review process of agreements entered into by the Director or his designee with a public or private entity for the operation of work programs for juveniles committed to the Department. Additionally, the Board is required to establish rules and regulations for work release programs established by the Director. Finally, the Board is authorized to promulgate regulations as may be necessary to carry out the provisions of Title 66 and other laws of the Commonwealth.

§ 66-3. Powers of the Director.

A. The Director of the Department shall have the following general powers:

1. To employ such personnel as may be required to carry out the purposes of this title.
 2. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers under this title, including, but not limited to, contracts and agreements with the United States, other states, and agencies and governmental subdivisions of the Commonwealth.
 3. With the prior approval of the Governor, to enter into agreements with a public or private entity to operate a work program for children committed to the Department.
 4. With the prior approval of the Governor, to acquire real property, by purchase or gift, needed for new or existing state juvenile correctional facilities and for administrative and other facilities necessary to the operations of the Department, pursuant to regulations promulgated by the Board to ensure adequate public notice and local hearing.
 5. To establish and maintain schools of the appropriate grades, levels, and types in the institutions for persons committed to juvenile correctional centers.
 6. To enter into such agreements with private entities, nonprofit civic organizations, school divisions, and public and private two-year and four-year institutions of higher education as it may deem necessary to provide age-appropriate educational programs and training, including career and technical education; career development opportunities; public service projects; restricted Internet access to online courses of institutions of higher education and approved or accredited online secondary education or adult education and literacy programs leading to a diploma or achieving a passing score on a high school equivalency examination approved by the Board of Education; access to postsecondary education that includes college credit, certification through an accredited vocational training program, or other accredited continuing education program using videoconferencing technology; and other learning experiences in the furtherance of its duties and responsibilities under this chapter for persons committed to the institutions comprising the Department.
 7. To designate employees of the Department with internal investigations authority to have the same power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior affecting the operations of the Department. Such employees shall be subject to any minimum training standards established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision. Nothing in this section shall be construed to grant the Department any authority over the operation and security of detention homes not specified in any other provision of law. The Department shall investigate allegations of criminal behavior in accordance with a written agreement entered into with the Department of State Police. The Department shall not investigate any action falling within the authority vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2 unless specifically authorized by the Office of the State Inspector General.
 8. To do all acts necessary or convenient to carry out the purposes of this title.
- B. The Director shall comply with and require all school facilities within the Department to comply with applicable regulations and statutes, both state and federal.

§ 66-10. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To establish and monitor policies for the programs and facilities for which the Department is responsible under this law.
2. To ensure the development of a long-range youth services policy.
3. To monitor the activities of the Department and its effectiveness in implementing the policies developed by the Board.
4. To advise the Governor and Director on matters relating to youth services.

5. To promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.
6. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department.
7. To establish length-of-stay guidelines for juveniles indeterminately committed to the Department and to make such guidelines available for public comment.
8. To adopt all necessary regulations for the management and operation of the schools in the Department except that the regulations adopted hereunder shall not conflict with regulations relating to security of the institutions in which the juveniles are committed.

§ 66-25.1. Work programs.

- A. The Director or his designee may enter into an agreement with a public or private entity for the operation of a work program for juveniles committed to the Department.
- B. The primary purpose of such work program shall be the training of such juveniles, not the production of goods or the rendering of service by juveniles committed to the Department. Such work programs also shall not interfere with or impact a juvenile's education program where the goal is achieving a high school diploma or its equivalent. The Board shall promulgate regulations governing the form and review process for proposed agreements.
- C. Articles produced or manufactured and services provided by juveniles participating in such a work program may be purchased by any county, district of any county, city or town and by any nonprofit organization, including volunteer lifesaving or first aid crews, rescue squads, fire departments, sheltered workshops and community service organizations. Such articles and services may also be bought, sold or acquired by exchange on the open market through the participating public or private entity.
- D. Revenues received from the sale of articles, as provided in subsection C, shall be deposited into a special fund established in the state treasury. Such funds shall be expended to support work programs for juveniles committed to the Department.

§ 66-25.1:1. Juvenile academic and career training.

The Director or his designee shall assess, in accordance with criteria established pursuant to § 66-25.1:3, whether a juvenile committed to the Department is an appropriate candidate for participation in a work release program, apprenticeship program, job enterprise program, or any other work experience opportunity located at or through the juvenile correctional center where the juvenile is placed.

§ 66-25.1:3. Extending limits of confinement of state wards for work and educational programs; disposition of wages; penalties for violations.

- A. The Director is authorized to establish work release programs, subject to such rules and regulations as the Board may prescribe, whereby (i) a juvenile who is proficient in any trade or occupation and who meets the work release criteria established by the Director, may be approved for employment by private individuals, corporations, or state agencies at places of business, or (ii) a juvenile who the Director is satisfied 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 may attend such programs outside of the juvenile correctional facility.
- B. The Director may contract with the superintendent of a local detention facility or home for the temporary placement of a committed juvenile who is deemed appropriate for participation in the programs or services provided by or through a certified post-dispositional program in that local detention facility or home. A juvenile who the Director is satisfied meets the work release criteria and is capable of receiving substantial benefit from educational programs, employment or other related community activity programs

available at or through the local detention facility or home is eligible for placement in such local detention facility or home.

C. The compensation for such employment shall be arranged by the Director and shall be the same as that of regular employees in similar occupations. Any wages earned shall be paid to the Director. The Director shall, in accordance with regulations promulgated by the Board, deduct from such wages, in the following order of priority, an amount to:

1. Meet the obligation of any judicial or administrative order to provide support, and such funds shall be disbursed according to the terms of such order;
2. Pay any fines, restitution, or costs as ordered by the court; and
3. Pay travel and other such expenses made necessary by his work release employment or participation in an educational or rehabilitative program.

The balance shall be credited to the juvenile's account or sent to his family in an amount the juvenile chooses.

D. Any juvenile who has been placed in any of the programs authorized herein shall, while outside the juvenile correctional center or juvenile detention facility to which he is assigned, be deemed to be in custody whether or not he is under the supervision of a juvenile correctional officer. If the juvenile, without proper authority or without just cause, leaves the area in which he has been directed to work or to attend educational or community activity programs, or the vehicle or route involved in his traveling to or from such place or program, he may be found guilty of escape as provided for in § 18.2-477 as though he had left the secure facility as defined in § 16.1-228; or, if there are mitigating circumstances or the culpability of the juvenile is minimal, he may be found guilty of a Class 2 misdemeanor.

E. The Director and any superintendent or other administrative head of any local detention facility are authorized to enter into agreements whereby persons committed to the Department, whether such persons are housed in a juvenile correctional center or a local detention facility, and who meet the Department's standards for such release, may participate in local work release programs or in educational or other rehabilitative programs operating pursuant to this section. Any person so placed shall be governed by the rules and regulations applicable to local work release programs.

F. In the event that the juvenile is committed to the Department as a serious offender pursuant to § 16.1-285.1, the juvenile shall not be approved for placement in a work release program located outside of the juvenile correctional facility without written approval of the committing court.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

A viable alternative to promulgating regulations to address work and education release programs included permitting the Department to rely solely on standard operating procedures to establish the requirements and criteria for these types of programs. This alternative was rejected because procedures can be changed without notice to detained juveniles and without notice to the public. Allowing committed juveniles to work in communities during their commitment is intended to benefit the juvenile and the community by facilitating the juvenile's successful reintegration into society. The *Code of Virginia* authorizes the Board to establish rules and regulations for work release programs and for the agreements entered into to establish the programs.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
NA	NA	NA

No comments were received during the public comment period which ran from May 4, 2015 through May 29, 2015. An informal advisory group was not formed for purposes of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The Regulations Governing Juvenile Work and Educational Release Programs are clearly written and easily understandable. The regulations are necessary for the protection of public health, safety, and welfare. The regulation is essential to protect the community and ensure juveniles have been assessed and meets the criteria for participating in programs and that the appropriate supervision is in place when juveniles are working or participating in education programs in the community. Additionally, the regulations provides clear, concise, and consistent rules for work and education release programs for Department staff and committed juveniles.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

As part of the review process, the Department assessed whether any changes or clarifications were needed. The conclusion was reached that no revisions to the regulation were necessary at this time. The Regulations Governing Juvenile Work and Educational Release Programs require juveniles to be assessed and meet the designated criteria prior to being approved to participate in a work or education release program to minimize the risk to public safety when juveniles are selected to participate in the programs. The Department is in the process of implementing the Community Model with the juveniles in the juvenile correctional centers. Additionally, the Board in the process of reviewing the Length of Stay Guidelines. Once the Community Model has been fully implemented within the facilities and if the revised Length of Stay Guidelines are adopted by the Board it may be necessary to review and amend 6VAC35-190 at a later date.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: 1) the continued need for the regulation; 2) the nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation is intended to have a positive impact on juveniles, communities, and small businesses. Allowing juveniles to work in communities during their commitment is intended to benefit the juvenile and the community by facilitating the juvenile's successful reintegration into society. The regulation does not place any undue burden on businesses. The only regulatory requirement related to businesses is the requirement that all federal and state laws and regulations including but not limited to those related to employment and child labor be followed. All other requirements of the regulation are requirements for juveniles and Department staff.

1. The regulation is still necessary. The *Code of Virginia* authorizes the Board to promulgate regulations governing the form and review process of agreements entered into by the Director or his designee with a public or private entity for the operation of work programs for juveniles committed to the Department. Additionally, the Board is required to establish rules and regulations for work release programs established by the Director.
2. No comments or complaints have been received regarding this regulation.
3. The regulation is not complex and clearly outlines the eligibility criteria and the requirement for procedures to ensure adequate supervision is provided to juveniles participating in work and education release programs.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. The regulation was last reviewed in September of 2008. As part of the review process, the Department assessed whether any changes or clarifications were needed. The conclusion was reached that no revisions to the regulation were necessary at this time. Maintaining this regulation is important because it provides clear, concise, and consistent requirements for work and education release programs for Department staff and committed juveniles.