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## Periodic Review Report of Findings

<b>Agency name</b>	Virginia Department of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC35-20
<b>Regulation title</b>	Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities
<b>Date this document prepared</b>	May 8, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

No acronyms are used in this report.

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity's overall regulatory authority.*

The promulgating entity is the Board of Juvenile Justice (the board).

Several statutory provisions give the Department of Juvenile Justice (department) or the board oversight over juvenile residential facilities, programs, and similar entities. Section 66-24, for example, requires

residential facilities utilized for the care of juveniles in direct state care to be certified by the department. Similarly, § 16.1-309.9 of the Code of Virginia authorizes the board to “prohibit, by its order, the placement of juveniles in any place of residence which does not comply with minimum standards.” In addition to these requirements, § 16.1-309.10 requires certain locally-established detention homes, group homes, and other residential care facilities for children in need of services or children alleged or determined delinquent to be subject to visitation, inspection, and regulation by the board or its agents.

Despite these provisions, there are no statutory mandates directing the department to establish a process for determining whether and to what extent facilities and programs have complied with regulatory requirements. The board, however, is granted general authority to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth” pursuant to § 66-10 of the Code of Virginia.

## Alternatives

*Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

Pursuant to § 2.2-4007.1 of the Code of Virginia, the department considered three alternatives for accomplishing the purposes of the regulation: 1) repeal the regulation in its entirety; 2) retain the regulation as currently written and amend department procedures and other supplemental documents to accomplish any necessary changes; and 3) amend the regulation.

Repealing the regulation in its entirety would leave the department with fewer means to enforce effectively other existing regulatory chapters that are intended to protect the safety of juveniles under the department’s care and would impede the department in its efforts of ensuring that facilities and programs are compliant with applicable minimum standards. Retaining or amending existing procedures would not resolve this concern because many of the affected facilities and programs are not directly operated by the department or required to follow department procedures.

While the regulation is necessary, it contains provisions impacted by other board-issued regulations currently under review, as well as recent legislation, which likely will require updating to reflect these changes. Additionally, the regulation contains provisions that may violate the Virginia Code Commission’s 2016 standards governing the development of regulations. Finally, there are areas of the regulation that are vague and require clarification.

The only remaining viable alternative is to amend the regulation to address the issues raised in the preceding paragraph. Amending the regulation is the least burdensome alternative available for achieving the objective of providing a process by which the department is able to monitor, measure the compliance of, and certify facilities and programs subject to the board’s regulations.

## 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. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

The department did not receive any public comments regarding this regulation chapter.

## Effectiveness

*Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

This regulation meets the criteria set out in Executive Order 14, as amended July 16, 2018.

**Necessary for the protection of public health, safety, and welfare.** The regulation acts as a tool to enforce the board's existing regulatory provisions, which, in themselves, are intended to protect the health, safety, and welfare of residents, probationers, parolees, and other youth under the care or jurisdiction of the department and its regulated entities. In this way, the provisions of the chapter are necessary for the protection of public health, safety, and welfare.

**Necessary to interpret the law.** The regulation also is necessary to interpret the law. Numerous statutory provisions require board-regulated facilities and programs to be certified and give the board the authority to prohibit the placement of juveniles in residences that do not comply with the board's regulations. The Code of Virginia does not prescribe a process for measuring compliance with the regulations or for determining how frequently facilities and programs should be monitored. Nor are there provisions in place outside of these certification regulations that set maximum time frames for a program's certification. This regulation establishes a process that the department's certification unit can apply uniformly and upon which regulated entities can rely when seeking to comply with regulatory provisions and preparing for monitoring visits and audits.

**Designed to achieve intended objective in the most efficient, cost-effective manner.** The provisions in the regulation are designed to achieve their intended objective of encouraging, measuring, and enforcing compliance with the regulation in an efficient and cost-effective manner. Provisions delineating the monitoring and audit processes and requiring the publication of guidance documents to explain how compliance will be assessed ensure that regulated entities understand these processes and are better equipped to achieve compliance. Annual monitoring visits and directives for regulants to conduct self-audits ensure facilities and programs are able to evaluate their regulatory compliance and address and correct deficiencies between audit periods. Requiring the development of corrective action plans for each occasion of noncompliance gives facilities and programs opportunities independently to develop common-sense, cost-effective solutions that enhance compliance. Furthermore, allowing facilities to seek variances and waivers from regulatory requirements and to appeal audit determinations with which they disagree acts as a check on the agency's authority and allows for a process by which impossible or infeasible regulatory provisions can be revisited.

**Clearly written and easily understandable.** While some concepts in the regulation are vague and should be clarified, overall, the regulation is written clearly and is easy to understand.

## Decision

*Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

As part of the statutory mandate set out in Code of Virginia § 2.2-4007.1, the department considered whether this regulation should be amended, repealed, or retained as is. The department concluded that amending the regulation is the best means of promoting consistency in its application and encouraging compliance.

Repealing the chapter in its entirety would leave the department with fewer means to enforce effectively other existing regulatory chapters that are intended to protect the safety of juveniles under the department's care and would impede the department in its efforts to ensure that facilities and programs are compliant with applicable minimum standards. The department's process for certifying facilities and programs ensures that there is a means of monitoring and measuring compliance with regulatory requirements contained in other chapters of the department's regulations. The certification regulations enable the department to determine whether deficiencies are sufficiently detrimental to residents, program participants, probationers, or parolees to warrant further department action, including increased monitoring efforts, the development of corrective action plans, placing the facility or program on probationary certification status, or, in the most extreme cases, suspending the entity's certificate. For these reasons, repealing the regulation is not a viable alternative.

Similarly, retaining the regulation as is would not be preferable. The current regulation contains provisions that are impacted by other board-issued regulations currently under review, as well as recent legislation, which likely will require updating to reflect these changes. Additionally, the regulation contains provisions that may violate the Virginia Code Commission's 2016 regulations governing the development of regulations. Finally, there are areas of the regulation that are vague and require clarification.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, include 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, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.*

**Continued need for the regulation:** This regulation continues to be necessary to ensure a process by which the department can satisfy its statutory mandate to certify juvenile residential facilities and programs. The department must have a uniform process in place to evaluate and measure compliance with applicable board regulations and to address any deficiencies in performance.

**Nature of complaints or comments received concerning the regulation:** The department did not receive any public comments, either in support of or in opposition to the existing regulation.

**Complexity of the regulation:** Although the regulation is not complex, it contains some provisions that are vague and may require additional amendment for clarity.

**Extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation:** The regulation does not duplicate federal or state law. The regulation overlaps other regulatory chapters promulgated by the board only to the extent necessary to address certification of facilities that are subject to these external regulatory chapters. The regulation contains at least one provision that may exceed the scope of the board's authority.

**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.** The board last amended this chapter in 2013. The department has undergone numerous legislative, regulatory, and operational changes that are not anticipated to require amendments to the certification process or the regulations. The process may need to be adapted, however, to reflect changes in technology. As an example, conferencing capabilities have and continue to evolve and may warrant an amendment to the regulatory provisions addressing attendance at certification meetings.