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

<b>Agency name</b>	The Department (Board) of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation</b>	6VAC35-20
<b>Regulation title</b>	Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (the "Certification Regulation")
<b>Action title</b>	Comprehensive review of the Certification Regulation, including incorporating provisions proposed for deletion from the Board's residential regulations.
<b>Date this document prepared</b>	November 19, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (the "Certification Regulation") sets forth the process by which the Department and the Board monitor compliance with the regulatory provisions applicable to residential facilities, court service units, and nonresidential programs and services in Virginia's juvenile justice system. It establishes (i) how the Board will measure compliance with its regulations; (ii) thresholds for various regulatory actions available to the Board; and (iii) minimum requirements for the Department, as the Board's regulatory agent, to monitor programs and report its findings. The regulation also provides for scheduled audits and unscheduled visits to ensure compliance with applicable regulations; an administrative review of audits; an appeals process in cases of disagreement with audit findings; and the issuance of variances under certain conditions.

Per the requirements in §§ 2.2-4017 and 2-2-4007.1 of the Code of Virginia and Executive Order 36 (2006), the Department is required to conduct a "periodic review." The purpose of this review is to determine (1) whether the regulation is supported by statutory authority (as determined by the Office of

the Attorney General) and (2) that the regulation is (a) necessary for the protection of public health, safety, and welfare; and (b) clearly written and easily understandable.

This review must be completed every four years. The last comprehensive review of the Certification Regulation was completed in September 2003. Thus, the regulation must be reviewed in order to maintain compliance with the applicable statutes and Executive Order.

Additionally, the Board is currently revamping its regulatory scheme relating to the requirements for residential programs regulated by the Board (juvenile correctional centers, juvenile secure detention centers, and juvenile group homes and halfway houses). The primary intent of this regulatory overhaul is to reduce confusion in applying the regulatory requirements in each type of facility. The existing regulatory provisions have been examined to determine whether each was (1) appropriate for the type of facility; (2) clear in its intent and effect; and (3) necessary for the proper management of the facility. Amendments were recommended to accommodate the type of facility's specific needs and to enhance program and service requirements to best provide for the residents. These regulations (6VAC35-71 for juvenile correctional centers; 6VAC35-101 for secure juvenile detention centers; and 6VAC35-41 for juvenile group homes and halfway houses) are currently undergoing the Executive Branch review at the Proposed Stage of the regulatory process.

One of the changes approved by the Board was to draft each regulation (one for each "type" of facility regulated) with the requirements for each facility, facility administrator, provider, or governing authority. In so doing, any responsibilities of the Department, the regulatory authority, or the Board currently included in the existing regulatory scheme (the Standards for Juvenile Residential Facilities [6VAC35-140] and the Standards for the Interim Regulation of Children's Residential Facilities [6VAC35-51]) were removed (i.e., issuance of licenses/certification and sanction). It was determined that any appropriate provisions relating to the certification and licensure process should be contained in the Certification Regulation as it governs the process of regulating and certifying these facilities. Thus the Certification Regulation must be amended to incorporate the necessary provisions currently provided for in other regulations.

Since the Certification Regulation is (1) scheduled for its required periodic review and (2) should be amended to incorporate those provisions deleted from the residential regulations applicable to the Department and the Board, the regulation will undergo a comprehensive review of each provision for appropriateness, effectiveness, clarity in intent and effect, and will be modified to provide for all regulatory duties and responsibilities of the Department and the Board in the residential and nonresidential certification processes.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which states the Board may "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."

Additionally, the following sections of the Code of Virginia require the Board of Juvenile Justice to promulgate regulations for specific juvenile justice programs:

- § 16.1-233 requires the Board to regulate court service unit staff, including their appointment and function, with the goal of establishing, as much as practicable, uniform services for juvenile and domestic relations courts throughout the Commonwealth.
- § 16.1-234 requires the Director to ensure that the minimum standards established by the Board for court service units are adhered to by state-operated court service units.
- § 16.1-309.9 requires the Board to regulate the “development, implementation, operation, and evaluation of the range of community-based programs, services, and facilities authorized” by the Virginia Juvenile Community Crime Control Act (VJCCCA). This section also requires the Department to “periodically review all services established and annually review expenditures.”
- § 16.1-309.10 authorizes the Board to visit, inspect, and regulate detention centers, group homes, and other residential care facilities “for children in need of services or delinquent, or alleged delinquent established by a county, city, or any combination thereof.”
- § 16.1-322.7 requires the Board to “make, adopt and promulgate regulation” governing the operation of local or regional detention centers. This section also requires a regulation to cover the “methods of monitoring contractor-operated” facilities “by an appropriate state or local governmental entity or entities.”
- § 66-13 allows the Department “to establish, staff and maintain facilities for the rehabilitation, training and confinement” of juveniles committed to the Department. This section also requires the Board to set standards for boot camps.
- § 66-24 establishes the Board as the licensing agency for “group homes or residential facilities providing care of juveniles in direct state care” and requires the Board to “promulgate regulations for licensure or certification of community group homes or other residential care facilities that contract with or are rented for the care of juveniles in direct state care.”
- § 66-25.4 authorizes the Board to promulgate regulations governing privately operated juvenile correctional centers.

Several of the aforementioned regulations require the Board to promulgate specific regulations; however, none specifically require the Board to issue regulations governing the regulatory process generally. Thus, the enactment of the Certification Regulation is permissive. Nevertheless, the Board and the Department have followed a Certification Regulation since before DJJ separated from the Department of Corrections. While there is no specific requirement for a Certification Regulation, the Board and the Department have continued this regulatory Chapter as it is important to have clear, concise, and consistent rules, rights, and responsibilities for the involved parties throughout the Commonwealth. Having such a regulation is essential to protect the safety of juveniles participating in programs, receiving services from, and residing in juvenile residential facilities or nonresidential juvenile justice programs.

The Board of Juvenile Justice is the promulgating entity.

**Need**

*Please detail 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, delineate any potential issues that may need to be addressed as the regulation is developed.*

This regulation is essential to protect public safety by providing for a uniform process of evaluating residential facilities and nonresidential programs in the juvenile justice system. The regulation includes the process by which facilities and programs are monitored and evaluated, by which program or facility administrators may address or challenge any deficiencies in performance, and through which the Board and the Department may take action to address issues identified in the monitoring and evaluation processes.

Having clear, concise, and consistent requirements applied to facilities and programs subject to the regulation promotes the health, safety, and welfare of citizens by ensuring consistency in services throughout the Commonwealth and is essential to protect the safety of juveniles participating in programs, receiving services from, and residing in juvenile residential facilities or nonresidential juvenile justice programs.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

This regulatory action will involve a comprehensive review of the entire Certification Regulation. Each provision will be reviewed to determine if it is (1) appropriate; (2) adequate; (3) clear; (4) necessary for the protection of public health, safety, and welfare; and (4) the least burdensome option. The following changes are anticipated:

1. The revisions will continue to (1) specify the process by which the Board will certify facilities and programs and (2) give the Department flexibility in determining the appropriate procedures to govern the specifics of the process (including assigning personnel, scheduling audits, appointing teams, reviewing appeals, considering requests for variances and plans of action, and other administrative processes). It will also retain sufficient specificity to inform the regulated programs, service providers, and facilities of the intent and expectations of the Department during the certification process. The existing provisions will be clarified and streamlined as needed to ensure consistency and fairness in the audit process.
2. The Board has expressed an interest in examining whether a self-evaluation requirement for regulated facilities and programs should be included in the regulation. This review and revision process will examine the appropriateness of including such a requirement in the regulation.
3. The review process will examine the appropriateness of distinguishing between “mandatory” and “nonmandatory” standards and whether alternative classifications and compliance standards would be more appropriate. The review process will examine whether levels of deficiency should be assigned depending on whether the violated provision addresses life, health, or safety issues. The review will examine what constitutes a “life, health, or safety” provision and what level of deficiency would necessitate Board action (and what those actions should be, while still allowing appropriate levels of flexibility for special circumstances).

4. The review process will examine each provision to determine whether the regulation is (1) necessary for the protection of public health, safety, and welfare; and (2) clearly written and easily understandable.
5. The review process will examine provisions recommended for deletion in other Board regulations currently proceeding through the administrative process and incorporate into the Certification Regulation those provisions relating to the duties and responsibilities of the Board and the Department in the certification process.

The Department anticipates the following changes will be made at the proposed stage:

1. A comprehensive review of the regulation will be conducted to ensure the process is the most efficient and effective way to certify the programs and facilities regulated by the Board.
2. The Department will develop a guidance document to be incorporated by reference.
3. Definitions will be amended to conform to those adopted in other Board regulations, and those definitions not used in this Chapter will be removed.
4. The regulatory process will be streamlined, and sections will be moved into the order in which they occur in the regulatory process.
5. The number of required on-site auditing and monitoring visits that occur during the certification cycle will be reduced.
6. A self-assessment for facilities will be added to occur during non-audit years.
7. A separate section for audits of programs funded by the Virginia Juvenile Community Crime Control Act and Delinquency Prevention and Youth Development Act will be added.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

Initially, retaining the regulation in its current form was considered. However, given changes in terminology, the evolution of practices, and amendments in the supporting regulatory scheme since the last review of this Chapter, the Department determined that a comprehensive review and updating of the regulation is essential to improving the process.

The Department then considered whether the necessary revisions, changes, clarifications, or updates could be accomplished through procedures, guidance documents, or training rather than revising the regulatory provisions. However, this Chapter directly affects juvenile correctional centers, group homes and halfway houses, juvenile secure detention centers, court service units, and program and service providers under contract or funded through the Department. Because many of the affected facilities and programs are not directly operated by the Department or required to follow Department procedure, this option was eliminated.

Thus, the conclusion was reached that reviewing and amending the current Certification Regulation is the only practicable alternative for addressing certain issues relating to this regulation.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include 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 on this notice.*

The Department is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, and 3) 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: 1) projected reporting, recordkeeping, and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email, or fax to Ms. Patricia Rollston at (804) 786-4194; [patricia.rollston@djj.virginia.gov](mailto:patricia.rollston@djj.virginia.gov); or P.O. Box 1110, Richmond, VA 23218-1110. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, DJJ is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) 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.

A public hearing will not be held. Individuals wishing to comment may present any issues at the Board of Juvenile Justice's regularly scheduled meetings.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The Department will use a participatory approach to amend this regulation and has begun organizing an advisory committee. Individuals who will be invited to participate in the advisory committee will represent the Department of Juvenile Justice, facilities and programs subject to this regulation, and the Board of Juvenile Justice. On technical issues, the Department may consult with experts.

## Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The anticipated amendments are not expected to have a direct impact on the institution of the family and family stability. Although delinquent children and children in need of supervision may be (i) housed in facilities, (ii) under the supervision of court service units, or (iii) receive services from program or service providers certified by this regulation, the regulation itself governs the process of monitoring and certifying such programs. To the extent that this Chapter strengthens the integrity of programs and facilities, juveniles receiving services and their families may benefit from being served by programs and facilities with higher integrity.

It is not anticipated that this regulation would either (i) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (ii) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children or elderly parents; (iii) strengthen or erode the marital commitment; and (iv) increase or decrease disposable family income.