Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation(s)	6VAC35-160
Regulation title(s)	REGULATIONS GOVERNING JUVENILE RECORD INFORMATION & THE VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM
Action title	Establish a process to submit, process, preserve, and disseminate juvenile record information in the Virginia Juvenile Justice Information System in accordance with Title 16.1 (§§ 16.1-222, 16.1-223, 16.1-224, 16.1-225 and 16.1-300) of the *Code of Virginia*.
Date this document prepared	March 18, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (JJIS) details the process for state-operated court services units, Department of Juvenile Justice (Department)-operated facilities, Department and locally-operated court services units, secure juvenile detention centers, and any other agency, organization, or individual eligible to access and receive juvenile record information from the Department's electronic data management system to submit, process, preserve, and disseminate juvenile record information. The regulation requires the Department to develop a written signed agreement delineating the participating agency's, organization's, or individual's access and responsibility

for the information contained the JJIS. Participating agencies are required to ensure information is disseminated in accordance with § 16.1-300 of the *Code of Virginia* and must verify the requestors identity and determine the requestor is eligible to receive the information and document in a dissemination log when all requests for juvenile record information. The process for an individual to challenge the accuracy of their own juvenile record of that of their child's is delineated in the regulation. The regulation also delineates the process for expunging and disposing of records authorizes the Department to conduct audits to ensure and verify compliance with the regulations.

- The regulation was last reviewed July 12, 2004. The proposed amendments to the regulation remove antiquated terms and requirements and provide clarifying language for processes that were previously vague. Additionally, the proposed amendments ensure Commonwealth Information Technology Resource Management (ITRM) Standards are met. Commonwealth ITRM Standards are the technology standards that apply to all state agencies.

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Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

The Board of Juvenile Justice (Board) is entrusted with general authority to promulgate regulations by § 66-10 of the *Code of Virginia* that 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."

The following statutes specifically address the establishment of the JJIS and the Board's related authority to promulgate regulations governing the security and confidentiality of the data submission.

§ 16.1-222 of the *Code of Virginia*

> A. There is hereby established within the Department of Juvenile Justice the Virginia Juvenile Justice Information System which shall operate separate and apart from the Central Criminal Records Exchange.

> B. The Director of the Department of Juvenile Justice is authorized to employ such personnel, establish such offices, acquire such equipment, and use such available equipment as shall be necessary to carry out the purpose of this chapter. He is further authorized to enter into agreements with other state agencies for services to be performed for the Virginia Juvenile Justice Information System by employees of such other agencies.

§ 16.1-223 of the *Code of Virginia*

> A. The Virginia Juvenile Justice Information System shall receive, classify and file data reported to it pursuant to § 16.1-224. The Director is authorized to prepare and furnish to all court service personnel automated data processing equipment, which shall be used for making the data submissions.

> B. Data stored in the Virginia Juvenile Justice Information System shall be confidential, and information from such data that may be used to identify a juvenile may be released only in accordance with § 16.1-300.

> The data submissions may be made available to the Central Criminal Records Exchange or any other automated data processing system, unless the data is identifiable with a particular juvenile. The State Board of Juvenile Justice shall promulgate regulations governing the security and confidentiality of the data submission.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

The regulation applies to the juvenile record information of all juveniles supervised by or in the care and custody of the Department. The purpose of the regulation is to maintain the confidentiality requirements of § 16.1-300 of the *Code of Virginia* and the security requirements of juvenile information in accordance with Commonwealth ITRM Standards. At this time, the Department is unaware of any potential issues that may need to be addressed as the regulation is developed outside of the proposed changes noted below.

Substance

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

The Department (Board) anticipates proposing the following general changes to the regulation.

- Replacing the term "Virginia Juvenile Justice Information System (VJJIS) Functional Administration" with the term "Data Owner" throughout the document to be consistent with terms used in Commonwealth ITRM Standards, which are the technology standards that apply to all state agencies.
- Clarifying calendar days versus business days.
- Clarifying when a statement, consent or an agreement must be in writing.

The Department (Board) anticipates proposing the following specific changes to the regulation.

6VAC35-160-10. Definitions.
- Adding a definition for the following terms:
  - Commonwealth ITRM Standards,
  - Data Owner, and
  - Remote Access.

6 VAC 35-160-40. Signed agreement required.
- Amending to require a nondisclosure agreement, in addition to the signed agreement to ensure protection of confidential juvenile information.

6VAC35-160-70 (B). Designation of authorized individuals.
- Amending the language to make background checks for individuals who will be given access to the VJJIS system mandatory. The language is anticipated to change from "may require" to "shall require" a background check.

6VAC35-160-100. Requirements when records are automated.
- Removing the requirement to maintain "backup" copies of juvenile record information and the requirement to develop a disaster recovery plan. The language is anticipated to clarify that all data must be erased or made unreadable when discarding computers.

6VAC35-160-130. Security of telecommunications.
- Removing language referencing dedicated telecommunications lines; adding the term network and the requirement to implement a screen saver lockout after a maximum of 30 minutes of computer inactivity.

6VAC35-160-170. Information to be disseminated only in accordance with law and regulation. And 6VAC35-160-210 Determining requestor's eligibility to receive the information.
- Removing the reference to the Health Insurance Portability and Accountability Act.

6 VAC 35-160-220. Responding to requests.
- Amending the language to require records containing sensitive data be encrypted prior to dissemination.
- Modifying the time to provide requested records from seven days to ten business days.

6 VAC 35-160-350. Expungement order received directly by participating agency.
- Requiring the data owner to contact the appropriate court and determine the validity of expungement order received directly from the court.

6VAC35-160-390. Annual report to the board.
- Removing the language requiring that the Department report annually to the Board on the status of the JJIS.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

As part of the decision to submit a NOIRA, the Department assessed whether any of the needed changes, clarifications, or updates can be accomplished through additional guidance documents or training rather than revising the regulatory provisions. The conclusion was reached that amending the current regulation is the only practicable alternative because the regulation applies not only to the Department but also to entities contracted to provide services to juvenile who are approved to have access to juvenile record information through the JJIS. The proposed revisions are not anticipated to have a significant impact on small businesses.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The Department is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the *Code of Virginia*. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to **Barbara Peterson-Wilson, 600 East Main Street, 20th Floor, Richmond, VA 23219, (804) 588-3902, FAX (804) 371-6490, or Barbara.peterson-wilson@djj.virginia.gov**]. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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.