



Virginia Department of Planning and Budget **Economic Impact Analysis [Revised Proposed]**

6 VAC 35-71 Regulation Governing Juvenile Correctional Centers

6 VAC 35-75 Regulation Governing Juvenile Boot Camps

Department of Juvenile Justice

Town Hall Action/Stage: 4608 / 9319

November 10, 2021

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.¹

Summary of the Proposed Amendments to Regulation

On September 30, 2019, amendments to 6 VAC 35-71 *Regulation Governing Juvenile Correctional Centers* proposed by the Board of Juvenile Justice (Board) were published in the Virginia Register of Regulations. The Board's proposed amendments reflected the Department of Juvenile Justice's (DJJ) continued efforts to transform its approach to juvenile justice, including implementing the community treatment model in its housing units, abolishing the use of segregation as a disciplinary measure in any existing and future juvenile correctional centers (JCCs), requiring additional monitoring of confined residents, enhancing training for DJJ personnel and staff, and increasing required staff-to-resident ratios in order to comply with federal law. An economic impact analysis of that proposal was published in the Virginia Regulatory Town Hall on August 18, 2018.²

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² See https://townhall.virginia.gov/L/GetFile.cfm?File=44\4608\8208\EIA_DJJ_8208_v2.pdf

The Board has now submitted a revised proposed stage with additional amendments. Among the numerous additional amendments are additional restrictions on the use of mechanical restraints and protective devices and removing the boot camp provisions from 6 VAC 35-71 *Regulation Governing Juvenile Correctional Centers*, and placing those provisions into their own new regulation called 6 VAC 35-75 *Regulation Governing Juvenile Boot Camps*.

Background

The *Regulation Governing Juvenile Correctional Centers* establishes the minimum standards to which staff in the JCCs must comply. The existing regulation addresses program operations, health care, personnel and staffing requirements, facility safety, residents' rights, and the physical environment. It contains additional provisions for boot camps and privately operated JCCs. According to DJJ, the regulation seeks to promote the safety and security of residents, staff, volunteers, interns, and contractors, while protecting the rights of youth committed to DJJ and preparing them for successful re-entry into the community following their commitment.

Estimated Benefits and Costs

Proposed Stage Proposals

For the most part, the proposed amendments at the proposed stage reflected current practice, conformed regulatory language to federal or Virginia statutes, or were clarifications. Proposals that would have an impact in practice included: 1) narrowing authority to apply physical restraints, 2) reducing the length of time a resident may be restrained mechanically before a consult with a QMHP is necessary, 3) expanding the tuberculosis screening requirement to contractors, 4) adding "health-trained professionals" as individuals authorized to clear staff to return to work once they are suspected of having tuberculosis, 5) increasing the frequency of the required checks of residents under room confinement from every 30 minutes to every 15 minutes, 6) removing the requirement that animals be housed a reasonable distance from sleeping, living, and eating areas, 7) reducing restrictions on telephone calls, and 8) narrowing the category of individuals who must review and be prepared to implement the resident's behavior support contract.

Some of the proposals would require extra staff time. Examples of these are an expansion of the tuberculosis screening requirement to contractors, and increasing the frequency of the required checks of residents under room confinement from every 30 minutes to every 15

minutes. Other proposals would reduce needed staff time. Adding “health-trained professionals” as individuals authorized to clear staff to return to work once they are suspected of having tuberculosis, and narrowing the category of individuals who must review and be prepared to implement the resident’s behavior support contract fall into this category. Reducing restrictions on telephone calls and removing the requirement that animals be housed a distance from sleeping, living, and eating areas are both beneficial for residents without significantly affecting costs.

Revised Proposed Stage Proposals

Additional proposed amendments here at the revised proposed stage that would likely have some impact include:

- Limiting the scope of *Regulation Governing Juvenile Correctional Centers* to apply solely to state-operated JCCs and privately operated JCCs governed by the Juvenile Corrections Private Management Act (Act).³ Currently there is only one state-operated JCC and no privately operated JCCs in the Commonwealth.
- Establishing a new regulation called 6 VAC 35-75 *Regulation Governing Juvenile Boot Camps* that would consist of the current provisions applicable to juvenile boot camps in *Regulation Governing Juvenile Correctional Centers* unchanged.
- Narrowing the classes of incidents subject to reporting requirements to exclude incidents identified by written procedures, expanding the class of incidents subject to reporting requirements to include mechanical restraint chair use, and directing the department to establish written procedures to address additional reportable incidents.
- Establishing a deadline for reviewing and resolving non-emergency grievances within 30 business days and clarifying what constitutes a resolution.
- Expanding the smoking prohibitions to include additional items and the category of individuals precluded from using these products on the JCC premises.
- Requiring that emergencies that may jeopardize the health, safety, and welfare of residents be reported to the parents or legal guardians of all residents, the director of DJJ,

³ This Act is found at Virginia Code § 66-25.3 et seq.

or the director's designee, and the Board within 24 hours. The current requirement is that it be reported within 72 hours.

- Requiring that documentation of the discussion with the parent/guardian at discharge and a comprehensive discharge summary be retained for determinate commitments as well as indeterminate commitments.
- Extending the documentation retention period for records of disciplinary hearings from 6 months to three years.
- Limiting permissible purposes of mechanical restraints to the following: (i) to control residents whose behavior imminently risks their own safety or that of staff or others; (ii) for controlled movement, or (iii) in emergencies.
- Stating that a mental health clinician or other qualifying licensed medical professional may order termination of a mechanical restraint or protective device at any time upon determining that the item poses a health risk.
- Expressly allowing JCC staff to use spit guards⁴ on residents provided the guard's design does not inhibit the resident's ability to breathe, allows for visibility, and the device is sold specifically to prevent biting or spitting. Such use would only be permitted on residents who previously bit or spat on someone at the current facility or threaten, attempt to, or actually spit on a resident or staff in the course of a current restraint.
- Require that if a resident remains in a mechanical restraint for a period of two hours or more, the resident shall be permitted to exercise the his or her limbs for a minimum of 10 minutes every two hours in order to prevent blood clots.
- Excluding restraint chairs from the definition of mechanical restraint.⁵ Separate requirements are proposed for restraint chairs.
- Defining "mechanical restraint chair" as an approved chair used to restrict the freedom of movement or voluntary functioning of a portion of an individual's body as a means of

⁴ "Spit guard" is defined as "a protective device designed for the purpose of preventing the spread of communicable diseases as a result of spitting or biting."

⁵ In the revised proposed regulation, "mechanical restraint" is defined as "an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this chapter mechanical restraints shall include flex-cuffs, handcuffs, leather restraints, leg irons, restraining belts and straps, and waist chains."

controlling his physical activities while the individual is seated and either stationary or being transported.

- Greatly restricting the circumstances when and how a restraint chair may be used.
- Requiring that a video recording be produced and retained for a minimum of three years when a resident is placed in a restraint chair until the resident's release, when restrained in the chair for purposes other than controlled movement.

According to DJJ, the proposed and revised proposed changes are designed to enhance the safety of residents and staff in JCCs, reduce injuries, ensure the involvement of families in the committed youth's rehabilitation, and help DJJ better monitor the value and effectiveness of existing regulations, thereby promoting public safety. To the extent the proposed and revised proposed amendments are effective in achieving these goals, they would be beneficial.

With one possible exception, the revised proposed amendments are unlikely to require that any additional items be purchased, or otherwise substantively affect (either upward or downward) the need for any particular expenditures. According to DJJ, the one existing JCC has not used the restraint chair at that facility since 2015. If the agency resumes use of the restraint chair at the one JCC facility, or permits its use in any future facilities, DJJ may need to update or expand its stock of video cameras to meet the video recording requirement.

Some of the revised proposed amendments may require a modest increase in staff time, for example, requiring that emergencies that may jeopardize the health, safety, and welfare of residents be reported to the parents or legal guardians of all residents, the director of DJJ, or the director's designee, and the Board within 24 hours. Some of the revised proposed amendments, may moderately reduce required staff time, for example, narrowing the classes of incidents subject to reporting requirements to exclude incidents identified by written procedures. DJJ does not believe that any additional staff would need to be hired.

Businesses and Other Entities Affected

Currently, the regulation affects the one state-operated JCC. Proposed revisions to this regulation would affect the facility's administration, staff, and any contract service providers, in

addition to the residents in the facility and their families. The revised proposal does not appear to have an adverse economic impact.⁶

Small Businesses⁷ Affected:

The revised proposed regulation is unlikely to substantively affect costs for small businesses.

Localities⁸ Affected⁹

Currently, the regulation affects the one state-operated JCC, which is located in Chesterfield County. The proposal does not require additional expenditures for localities.

Projected Impact on Employment

The revised proposed regulation is unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property

The revised proposed regulation is unlikely to substantively affect the use and value of private property or real estate development costs.

⁶ Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁸ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁹ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.