



Virginia Department of Planning and Budget **Economic Impact Analysis**

6 VAC 35-150 Regulation for Nonresidential Services
Department of Juvenile Justice
Town Hall Action/Stage: 5612 / 9082
July 2, 2021

Summary of the Proposed Amendments to Regulation

The Board of Juvenile Justice (Board) proposes to remove the 90-day deadline currently imposed on truancy diversion plans.

Background

Code of Virginia § 16.1-260¹ states that if a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258² and the school division's attendance officer has provided documentation to the intake officer, i.e. juvenile probation officer, that the relevant school division has complied with specified provisions, then the intake officer shall file a petition with the court.

The intake officer may defer filing the petition and proceed informally by developing a truancy diversion plan, provided that (1) the juvenile has not previously been proceeded against informally or adjudicated in need of supervision on more than two occasions for failure to comply with compulsory school attendance as provided in § 22.1-254³ and (2) the immediately previous informal action or adjudication occurred at least three calendar years prior to the current complaint.

The truancy diversion plan may include requirements that the juvenile and his parent or guardian participate in programs, cooperate in treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance.

¹ See <https://law.lis.virginia.gov/vacode/title16.1/chapter11/section16.1-260/>

² See <https://law.lis.virginia.gov/vacode/22.1-258/>

³ See <https://law.lis.virginia.gov/vacode/22.1-254/>

In practice, the intake officer may ensure that the youth has an alarm clock or a phone with an alarm, make sure that a school bus is stopping where the juvenile is currently residing, or arrange for virtual instruction when appropriate, etc.⁴ If at the end of the deferral period the juvenile has not successfully completed the truancy plan or the truancy program by regularly attending school, then the intake officer shall file the petition with the court, and the juvenile goes before a judge.

Prior to July 1, 2020, § 16.1-260 established a 90-day deadline for completing the diversion plans for eligible truancy offenses, but did not impose any deadlines for other eligible offense diversions. Based on the statutory language, 6 VAC 35-150 *Regulation for Nonresidential Services* (regulation) sets a 90-day cap on truancy diversion plans and a 120-day cap for all other offenses eligible for diversion.

During the 2020 legislative session, the Department of Juvenile Justice (DJJ) lobbied for legislation that would remove the 90-day statutory cap for completing the truancy diversion plan to enable the Board to align its truancy diversion cap with the 120-day regulatory cap already in place for other diversions. The General Assembly voted unanimously in support of striking the statutory 90-day limitation, effective July 1, 2020.⁵

The current regulation states that when an intake officer diverts an eligible juvenile offense, the maximum diversion period shall not exceed 120 days, with the exception that for juveniles alleged to be truant the maximum diversion period is 90 days. Now that the statutory cap of 90 days has been removed, the Board proposes to repeal the 90-day diversion maximum for truancy. Consequently, truancy would have a 120-day diversion maximum along with the other juvenile offenses.

Estimated Benefits and Costs

According to data maintained by DJJ, of the 2,872 truancy complaints that were assigned a diversion plan between Fiscal Year 2017 and Fiscal Year 2019, only 66.7% were completed successfully, compared to the 84.7% success rate for all other diverted complaints. DJJ believes the shorter diversion period contributes to the lower success rate for truancy diversions compared to other diversions. Extending the time period for truancy diversions would give intake officers

⁴ Source: Department of Juvenile Justice

⁵ See <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1324>

additional time to monitor the child and family's progress toward completing the plan and the youth additional time to meet the plan's requirements.

Successful completion of diversion programs reduces the number of petitions that must be filed, and therefore, reduces the likelihood of a youth getting further entrenched in the juvenile justice system. This can be beneficial for the child and reduce court costs and other costs associated with the juvenile justice system. Successful completion of truancy diversion also means the youth is regularly attending school, which is also beneficial.

Businesses and Other Entities Affected

The proposal potentially affects intake officers, who work for court service units in the 32 judicial districts in the Commonwealth. The intake officers are DJJ employees in all judicial districts, except for Fairfax and Arlington where they are local employees. The proposal may also affect juvenile and domestic relations district courts by moderately reducing their receipt of petitions. To the extent that the proposal may moderately reduce truancy, it may also affect the 132 public school divisions in the Commonwealth. The proposal does not appear to have an adverse economic impact.⁶

Small Businesses⁷ Affected:

The proposal does not appear to adversely affect small businesses.

Localities⁸ Affected⁹

The proposal applies statewide and may particularly affect those localities with relatively high rates of truancy. The proposal does not require additional expenditures for localities.

Projected Impact on Employment

The proposal does not appear to affect total employment.

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.

Effects on the Use and Value of Private Property

The proposal does not appear to affect the use and value of private property or real estate development costs.

Legal Mandates

General: The Department of Planning and Budget 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). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report 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.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.