



Final Regulation Agency Background Document

Agency Name:	Department (Board) of Juvenile Justice
VAC Chapter Number:	6 VAC 35-150
Regulation Title:	Standards for Non-residential Services Available to Juvenile and Domestic Relations District Courts
Action Title:	Amend
Date:	

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The proposed amendments encourage uniform practices by state and local court service units by requiring compliance with standard operating procedures adopted by the Department or the sponsoring locality.

The regulation also establishes standards for the development, implementation, operation and evaluation of the nonresidential community-based programs and services such as those established by the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 *et seq.* of the Code of Virginia).

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Juvenile Justice adopted the final revisions to the **Standards for Non-residential Services Available to Juvenile and Domestic Relations District Courts** on July 10, 2002.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Code of Virginia § 66-10 (6) gives the State Board of Juvenile Justice the power and duty "[t]o 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."

Code of Virginia § 16.1-233. C. specifically mandates that "The State Board shall establish minimum standards for court service staffs and related support personnel and promulgate regulations pertaining to their appointment and function to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth." Thus, the regulation establishing minimum standards for court service units is not discretionary.

Also, Code of Virginia § 16.1-309.9.A. directs that "The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation and evaluation of the range of community-based programs, services and facilities authorized by this article." Again, the regulation establishing standards for community-based programs is not discretionary.

Combining two mandated regulations into one document is discretionary, and is premised on the fact that community-based programs may be operated by or contracted for by court service units, and the fact that juveniles under supervision by court service units are often the primary service populations for these community-based programs.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulation is intended to fulfill the goal stated in Code of Virginia § 16.1-233. C., “that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth.” The amendments adopted during this regulatory action establish minimum service levels for court service unit operations and for non-residential programs serving the juvenile justice system.

The regulation is essential to protect the safety of the public by establishing minimum requirements for juvenile probation and parole supervision, juvenile intake and diversion, and referral of juveniles who are delinquent or in need of supervision to community programs and services.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action’s detail.

In many sections throughout the regulation, the requirement for "written policy, procedure and practice" is deleted and the language is reworded to focus on the desired outcome.

6 VAC 35-150-10 includes a definition of “approved procedures” to guide the operations of court service units.

6 VAC 35-150-35 states that this regulation establishes “programmatic and fiscal policies” required by Code of Virginia § 66-10.

6 VAC 35-150-55 amends the way probation officers’ caseloads will be determined.

6 VAC 35-150-70 restates certain requirements of court service unit directors.

6 VAC 35-150-90 clarifies who is included as “staff” and specifies that training must be juvenile justice-related.

6 VAC 35-150-100 simplifies the requirements governing personnel policies and procedures.

6 VAC 35-150-110 makes volunteers subject to approved procedures as well as to the board’s policy and regulatory requirements.

6 VAC 35-150-130 requires that human research be approved in accordance with approved procedures as well as with statutory and regulatory requirements.

6 VAC 35-150-140 adds a requirement to comply with Library of Virginia document retention schedules and specifically identifies disclosure restrictions included in Federal Regulations (42 CFR governing substance abuse records).

6 VAC 35-150-150 requires that reports for the court be prepared in accordance with approved procedures.

6 VAC 35-150-160 modifies procedural requirements surrounding preparation of a social history, but does not amend the substantive content requirements of the social history.

The final regulation repeals 6 VAC 35-150-170, since court service units do not generally provide services to cases in which support has been ordered. This change was not contemplated in the proposed regulation.

In the final regulation, 6 VAC 35-150-190 is amended to require compliance with the Commonwealth’s procurement rules whenever state funds are spent. This change was not contemplated in the proposed regulation.

6 VAC 35-150-200 requires that security and emergency precautions be developed in accordance with approved procedures.

In the final regulation, 6 VAC 35-150-210 adds a requirement to report the use of physical force in accordance with the department’s policies for reporting serious incidents. This change was not contemplated in the proposed regulation.

6 VAC 35-150-220 is simplified to make searches of individuals subject to approved procedures.

6 VAC 35-150-230 is reworded to more directly state the requirements of a probation who seeks authorization to carry a weapon. The final regulation clarifies that the supervisor of the court service unit director must approve a probation officer’s request to carry a weapon in the performance of official duties.

6 VAC 35-150-240 is simplified to make arrests of individuals subject to approved procedures.

At 6 VAC 35-150-270, a new item A.2 requires that information be entered into the Department's Juvenile Tracking System. In the final regulation, a new paragraph B is added to require use of a uniform risk assessment instrument in making detention decisions and recommendations to the court. This change was not contemplated in the proposed regulation.

New requirements at 6 VAC 35-150-290 take into account the development of the Department's statewide data base, commonly referred to as the Juvenile Tracking System.

6 VAC 35-150-300 allows videoconferencing as a means of making contact with juveniles in predispositional detention. In the final regulation, paragraph C is amended to clarify that staff of the court service unit are intended.

6 VAC 35-150-310 is reworded for clarity. In the final regulation a requirement is added that the court service unit shall provide a copy of a post-dispositionally detained juvenile's social history upon request of the detention home. This requirement had not been contemplated in the proposed regulation.

6 VAC 35-150-335 requires that informal supervision be conducted only in accordance with approved procedures.

6 VAC 35-150-340 allows greater flexibility in the timeframes for certain contacts with individuals under supervision, subject to approved procedures. Also, documentation of the contacts in the case record is required.

6 VAC 35-150-350 allows greater flexibility in developing supervision plans, subject to approved procedures and consistent with the requirements stated in 6 VAC 35-150-420. However, old paragraphs (B) and (G) are amended to require that a supervision plan be completed within 30 days following disposition. Also, in the final regulation, a new paragraph C governs family progress plans when a juvenile is in direct state care.

6 VAC 35-150-360 is deleted, but its provisions are re-written into a new paragraph that is incorporated into 6 VAC 35-150-350.

6 VAC 35-150-380, 6 VAC 35-150-390 and 6 VAC 35-150-400 are re-written to permit flexibility within the framework of approved procedures.

6 VAC 35-150-420 requires that certain contacts made during a youth's commitment must be in accordance with approved procedures, but permits video conferencing and telephone contacts.

In the final regulation, 6 VAC 35-150-427 is added to require non-residential programs to have written policies and procedures necessary to implement the requirements of 6 VAC 35-150-430 through 6 VAC 35-150-740. This specific change was not contemplated in the proposed regulation, and was adopted in response to concerns voiced during the comment period that “policies, procedure and practice” continue to be required of community programs in certain cases.

In the final regulation, 6 VAC 35-150-430 A.3 is amended to clarify that “consequences” should be expressed in terms of “incentives and sanctions.” This clarification, which was not included in the proposed regulation, is viewed as technical.

In the final regulation, 6 VAC 35-150-435 B is amended to clarify that “service” providers are intended. This clarification, which was not included in the proposed regulation, is viewed as technical.

6 VAC 35-150-440 is amended to clarify and simplify the requirements for a background check of personnel in programs to which a juvenile might be referred for services that do not include treatment or legal supervision (for example, community service programs). The final regulation enumerates the elements that must be included in the background checks; item #2 recognizes that the Virginia Department of State Police may determine whether a requesting agency is a qualified entity to receive certain criminal background information. Also in the final regulation, new paragraph C provides an alternative means for checking the licensure status of a licensed professional in private practice.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1) The primary advantage to the public associated with the final regulatory action is that the processes for dealing with juvenile delinquency will be more uniform across the Commonwealth. There are no known disadvantages to the public resulting from this regulatory action.

2) The amended regulation will tighten requirements for state operated court service units to comply with standard procedures approved by the Department. Some may view this as

a reduction in local autonomy; others may see it as encouraging consistency throughout the juvenile justice system.

3) The primary advantages to the agency will be (a) greater consistency on a statewide basis for certain services made available to the Juvenile and Domestic Relations District Courts of the Commonwealth and (b) enhanced ability to monitor compliance with requirements and better manage resources.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The definition of “approved procedures” at 6 VAC 35-150-10 is amended to provide that “approved procedures” of locally operated court service units be reviewed by the Director or his designee.

6 VAC 25-150-55 was amended to delete the reference to “geographical dispersion of cases.”

6 VAC 35-150-70 (B) was amended, removing the requirement for performance planning and performance evaluation if local or state policy does not support this activity. Paragraph C restores a requirement in item 4 of the current standard that was proposed to be deleted.

6 VAC 35-150-90 was amended to clarify that training must be related to the job or to the field of juvenile justice, and that clerical staff training must be designed to upgrade skills.

6 VAC 35-150-140 specifies that the applicable record retention schedules of The Library of Virginia must be observed.

6 VAC 35-150-170 was deleted; support enforcement is not a responsibility of the court service unit.

6 VAC 35-150-190 requires that all court service units, including those that are locally-operated, must adhere to all Commonwealth procurement rules when spending state funds.

6 VAC 35-150-210 is amended to clarify that instances in which physical force is used are to be reported in accordance with the department’s policies for reporting serious incidents.

6 VAC 35-150-230 is amended to clarify that the court service unit director’s supervisor must also approve a probation officer’s request to carry a weapon.

A new paragraph B is added at 6 VAC 35-150-270 to require use of a uniform risk assessment instrument in making detention decisions and recommendations to the court.

6 VAC 35-150-300 was amended to permit probation officers' contact with detained juveniles to take place via videoconferencing. A minor change at paragraph C clarifies that designated staff "of the court service unit" must be available to residential facility staff in event of an emergency.

6 VAC 35-150-310 was changed clarifying the requirement for the court service unit to share social history information with post-dispositional detention programs upon request when a juvenile is placed in the program.

6 VAC 35-150-350, at new paragraph C, allows more flexibility in the timeframes for reporting on the progress of a youth's family, in accordance with approved procedures and 6 VAC 150-420.

6 VAC 35-150-410 is expanded to require that when a juvenile is committed to state custody, information is communicated to the Department as required by statute, policy, or "approved procedures."

6 VAC 35-150-427 is added to require written policies and procedures necessary to implement the requirements of the regulation.

6 VAC 35-150-430 is amended to clarify that "consequences" should be expressed in terms of incentives and sanctions. At paragraph B, the phrase "policy, procedure and practice" is deleted, consistent with similar changes made throughout the regulation. However, in view of new section 6 VAC 35-150-427, programs must still adopt appropriate policies and procedures to ensure that the department administration is notified of any change.

6 VAC 35-150-435.B. is amended to clarify that the "providers" covered by the standard are service providers.

6 VAC 35-150-440 was changed clarifying the requirements for background investigations. Community programs that are not law enforcement agencies cannot meet some of the requirements in current regulation. Also, the amendments recognize that the Virginia Department of State Police may make a determination that a requesting agency is or is not a qualified entity to receive certain criminal background information. Also, the requirements for complete background checks are waived for community programs that provide community service opportunities and to licensed service providers who are otherwise not part of the juvenile justice system. Paragraph C provides an alternate means for satisfying the requirement for a background check of licensed serviced providers.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No comments were received from the general public. A number of comments were offered by field and central office staff, who may have been reflecting concerns expressed by community programs and service providers with whom they work.

Most of these staff comments centered on the appropriate level of background checks. On the one hand, there is consensus that a certain minimum “due diligence” background check should be required of all programs and services. However, not all programs can obtain the same information, and some programs cannot afford the financial cost of some of the checks. Many concerns were expressed that the more stringent requirements for background checks would have an adverse impact on community service programs. Typically, such programs (which might include municipal parks and recreation agencies, nursing homes, etc.) do not have service to juveniles as their primary focus, and thus have no provisions for conducting background investigations on their personnel. Many commenters felt that community service programs would stop supervising juveniles if they were required to conduct or certify background investigations. Similarly, some commenters expressed concern that professionals in private practice might simply stop accepting referrals from juvenile justice agencies if they were required to provide background investigation information. It was felt that the regulatory oversight by licensing agencies provides adequate “due diligence” that a professional does not have criminal or other adverse circumstances in his or her background that might pose a danger to juveniles. The final regulation takes into account both the need for a due diligence background check on persons working with juveniles, and the practical limitations of cost and accessibility of programs to criminal background information.

Other comments from staff and administrators had to do with striking the appropriate balance between approved procedures and local flexibility, ensuring that mandated services are provided, and minimizing requirements for services that are not mandated by statute. These general concerns are addressed specifically in the summary of changes for each individual section of the regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

The definition of “approved procedures” at 6 VAC 35-150-10 is amended to provide that “approved procedures” of locally operated court service units be reviewed by the Director or his designee. The intent of the change is to ensure that those local procedures will be consistent with the statewide procedures approved for state-operated court service units.

6 VAC 25-150-55 was amended to delete the reference to “geographical dispersion of cases.” Some research has found that geographic dispersion of cases in rural courts is more than offset by generally easier access to the courts in rural jurisdictions, making the geographic dispersion of cases a less relevant consideration than one might expect. While the revised standard does not prohibit consideration of distances involved in supervising cases, the new language does not establish geography as a normative consideration.

6 VAC 35-150-70 (B) was amended in recognition that localities operating local court service units may not have a process for performance planning and performance evaluation. Also, state policy may change for reasons unrelated to this regulation. Paragraph C restores a requirement in item 4 of the current standard that was proposed to be deleted.

6 VAC 35-150-90 was amended to clarify that training must be related to the job or to the field of juvenile justice, and that clerical staff training must be designed to upgrade skills.

6 VAC 35-150-140 specifies that the applicable record retention schedules of The Library of Virginia must be observed.

6 VAC 35-150-170 was deleted; support enforcement is not a responsibility of the court service unit. Overall, the regulation and the Department’s standard operating procedures for court service units emphasize the delivery of services that are mandated by the Code of Virginia.

6 VAC 35-150-190 requires that all court service units, including those that are locally-operated, must adhere to all Commonwealth procurement rules when spending state funds.

6 VAC 35-150-210 is amended to clarify that instances in which physical force is used are to be reported in accordance with the department’s policies for reporting serious incidents.

6 VAC 35-150-230 is amended to clarify that the court service unit director’s supervisor must also approve a probation officer’s request to carry a weapon.

A new paragraph B is added at 6 VAC 35-150-270 to require use of a uniform risk assessment instrument in making detention decisions and recommendations to the court. Use of the instrument and related procedures is mandated by Chapter 648 of the 2002 Acts of Assembly.

6 VAC 35-150-300, paragraph A, was amended to permit probation officers' contact with detained juveniles to take place via videoconferencing. Approved procedures must guide the determination as to when, where and why videoconferencing is an acceptable alternative to face-to-face contact or contact by telephone. Paragraph C was amended to make clear that "designated staff" must be staff of the court service unit.

6 VAC 35-150-310 was changed clarifying the requirement for the court service unit to share social history information with post-dispositional detention programs upon placement of a juvenile in the program. Court service units and detention homes sometimes had differing expectations of what information could be shared, and how.

6 VAC 35-150-350 allows greater flexibility in developing supervision plans, subject to approved procedures and consistent with the requirements stated in 6 VAC 35-150-420. However, old paragraphs (B) and (G) are amended to require that a supervision plan be completed within 30 days following disposition. Also, in the final regulation, a new paragraph C governs family progress plans when a juvenile is in direct state care.

6 VAC 35-150-410 is expanded to require that when a juvenile is committed to state custody, information is communicated to the Department as required by statute, policy, or "approved procedures."

6 VAC 35-150-427 is added to require written policies and procedures necessary to implement the requirements of the regulation. Comments received from Department staff who monitor and audit programs indicated that written policies and procedures are necessary to determine the appropriateness of practices found in the program.

6 VAC 35-150-430 is amended to clarify that "consequences" should be expressed in terms of incentives and sanctions.

6 VAC 35-150-435.B. is amended to clarify that the "providers" covered by the standard are service providers. In the language of procurement regulations, the unmodified term could refer to providers of goods or other contractors.

6 VAC 35-150-440 is amended to clarify the background checks required of community service providers. The requirements reflect current understanding of what information is available to different kinds of agencies, which often depends on a determination by the Virginia State Police as to whether a requesting entity is a "qualified entity" to receive certain criminal background information. The final requirement is that all employees and volunteers who provide direct service or supervision shall undergo a thorough background check. However, community service programs and professionals in private practice are exempted from the specific requirements. When a juvenile is referred to a professional in private practice, the referring agency must verify that the professional's license is in good standing. There is no requirement to verify a background check when juveniles are referred to programs whose main focus is other than juvenile treatment (for example, to various agencies to do community service).

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

Many juveniles who come into contact with the juvenile justice system lack strong, healthy family support systems. On the other hand, the parents of many other juveniles who come into contact with this system are deeply involved with their children. This regulation encourages cooperation between probation officers and parents whenever practical, without constraining probation officer's authority when parental cooperation is absent. The proposed amendments in no way alter the Commonwealth's commitment to involve parents and family to the greatest extent possible when a juvenile comes into contact with the juvenile justice system. The regulation specifically requires that a juvenile's family be involved in the preparation and review of supervision plans, and requires completion of a family involvement plan when a juvenile is committed to the Department (see, for example, 6 VAC 35-150-10).

In itself, however, this regulation neither strengthens nor erodes the authority and rights of parents in the education, nurturing, and supervision of their children; neither encourages nor discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children or elderly parents; neither strengthens nor erodes the marital commitment; and neither increases nor decreases disposable family income.