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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6VAC35-20
VAC Chapter title(s)	Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities
Action title	Periodic Review of Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities
Date this document prepared	December 20, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The provisions in 6VAC35-20 establish the department's responsibility to monitor and audit juvenile residential facilities and programs, VJCCCA programs, and offices on youth and certify residential facilities and state-operated and local court service units that are part of Virginia's juvenile justice system. It also describes the various methods by which the department measures and enforces compliance with its regulations governing those facilities and programs.

In 2019, the department conducted a periodic review of 6VAC35-20. The Periodic Review Report stated in part that "the regulation contains provisions that may violate the Virginia Code Commission's 2016 standards governing the development of regulations," and that, "there are areas of the regulation that are vague and require clarification." The report concluded that the regulation should be amended to address those issues as well as provisions impacted by board-issued regulations then under review. Competing

priorities, the challenges of the COVID-19 pandemic, and staff changes conspired to delay the work recommended in the report. This action seeks to make those amendments and other changes identified by the work group assembled to complete a comprehensive review of this chapter.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“VJCCCA” means Virginia Community Crime Control Act

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

On December 6, 2024, the Board of Juvenile Justice (board) authorized the department to initiate a Notice of Intended Regulatory Action to begin the first stage of the standard regulatory process to perform a comprehensive review of 6VAC35-20 and propose amendments as recommended in the 2019 Periodic Review Report.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The board is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which gives the board the authority to “promulgate such regulations as may be necessary to carry out the provisions of [these titles] and other laws of the Commonwealth” Further, § 16.1-233 requires, in part, that the State Board of Juvenile Justice “promulgate regulations pertaining to [court service staff] appointment and function.” Section 16.1-309.10 gives the board or its agents the authority to visit, inspect, and regulate detention homes, group homes, and other residential care facilities. Finally, Section 16.1-309.9 of the Code of Virginia requires that the “State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation, operation and evaluation of the range of community-based programs, services and facilities authorized by [Article 12.1 Virginia Juvenile Community Crime Control Act].”

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulation is a tool to enforce the board's existing regulatory provisions, which themselves are intended to protect the health, safety, and welfare of residents, probationers, parolees, and other youth under the care or jurisdiction of the department and its regulated entities. In this way, the provisions of the chapter are necessary for the protection of public health, safety, and welfare.

The regulation also is necessary to interpret the law. Numerous statutory provisions require board-regulated facilities and programs to be certified and give the board the authority to prohibit the placement of youth in residences that do not comply with the board's regulations. The Code of Virginia does not prescribe a process for measuring compliance with the regulations or for determining how frequently facilities and programs should be monitored. Nor are there provisions in place outside of these certification regulations that set minimum or maximum time frames for a program's or facility's certification. This regulation establishes a process that the department's certification unit can apply uniformly, and upon which regulated entities can rely when seeking to comply with regulatory provisions and prepare for audits.

Substance

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 has six primary goals in amending this chapter:

1. **Amend the definitions in Section 10.** Several of the definitions need to be rewritten for clarity, while others do not accurately describe terms as they are commonly understood by the Certification team. Some entries may have to be replaced with new terminology to align with department practice.
2. **Repeal Section 30.** Section 30 is a purpose statement and should be removed from the regulation pursuant to 1VAC7-10-40.
3. **Add a new section pertaining to department responsibility.** The department recommends adding a new section to capture a portion of the language in Section 30, which is proposed for repeal, regarding the department's responsibility in auditing and certifying programs and facilities.
4. **Amend numerous sections.** Numerous sections of the regulation are vaguely or unclearly written, have provisions that are more appropriate to department procedures, or contain improper incorporations by reference. In addition, some sections contain unnecessary provisions (e.g. provisions already set out in the Code of Virginia). Finally, many sections require changes in grammar and style to bring them into compliance with the Registrar's style requirements. The department recommends revising all of these sections accordingly, including rewriting entire provisions when necessary.
5. **Repeal procedural sections.** The department recommends repealing one or more sections which are procedural in nature and do not belong in the regulation. This will assist in the department's efforts to achieve its regulatory reduction targets.
6. **Eliminate DIBR.** This chapter currently incorporates a document entitled Guidance Document: Self Audits/Evaluations, September 2013, Department of Juvenile Justice. Because this document was created by the department, its incorporation is prohibited by the Virginia Code Commission's regulation 1VAC7-10-140. In addition, the document itself will be repealed, achieving additional reductions in the department's regulatory counts.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The department considered the only two plausible alternatives to amending this regulation: repealing the chapter in its entirety or retaining the current regulation.

Repealing the chapter would leave the department with fewer means to monitor and effectively enforce other existing regulatory chapters intended to protect the safety of youth under the department’s care and would impede the department in its efforts to ensure that facilities and programs are compliant with applicable regulations. The department’s process for certifying facilities and programs provides a means for monitoring and measuring compliance with regulatory requirements in other chapters of the department’s regulations. The certification regulation enables the department to determine whether compliance deficiencies exist and whether they are sufficiently harmful to residents, program participants, probationers, or parolees to warrant further department action, including increased monitoring, the development of corrective action plans, placing the program or facility on probationary certification status, or, in the most extreme cases, suspending the program’s or facility’s certificate. For these reasons, repeal is not a viable alternative.

Similarly, retaining the existing regulation is not an acceptable option. The current regulation contains vague and confusing provisions and may violate the Virginia Code Commission’s 2016 regulations governing the development of regulations. Further, it contains provisions better addressed outside the regulatory process as agency procedures; removing these provisions lessens the regulatory burden and allows the department to make progress against its regulatory reduction targets. Likewise, removing the outdated guidance document as an incorporated document and repealing it in its entirety will achieve similar aims.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the

Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Juvenile Justice is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Ken Davis, P.O. Box 1110, Richmond, VA 23218, e-mail kenneth.davis@dji.virginia.gov. In order to be considered, comments must be received by 11:59 pm 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.