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Proposed Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) Chapter citation(s)	_6_ VAC_20-160_
VAC Chapter title(s)	Regulations Relating to the Court-Appointed Special Advocate Program (CASA)
Action title	Comprehensive Review and Update of CASA Requirements
Date this document prepared	06/13/2024

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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Department of Criminal Justice Services (DCJS) is amending 6 VAC 20-160 to modify and update the requirements for the Court-Appointed Special Advocate program. This regulatory action makes technical amendments to all regulatory sections, updates and clarifies language, eliminates unnecessary requirements, and adds additional responsibility under governing boards at the local level for CASA programs throughout the Commonwealth. This action will also serve as a periodic review of the regulation itself, as one has not been completed in some time.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DCJS: Department of Criminal Justice Services
 CJSB: Criminal Justice Services Board, DCJS' policy board
 Department: Department of Criminal Justice Services
 Board: Criminal Justice Services Board
 CASA: Court-Appointed Special Advocate
 CJA: Children's Justice 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."

The current regulation and requirements for the CASA program were last updated in 2013. Although no current mandate exists from legislation or otherwise to amend this particular regulation, DCJS contends that this action is necessary in order update and enhance language, eliminate redundancy and requirements that are no longer applicable, and make technical amendments throughout the existing regulatory sections within 6 VAC 20-160. DCJS sought and obtained formal Board approval from the CJSB to open this Notice of Intended Regulatory Action on October 12, 2023, and after working collaboratively with the State Network Leadership Team and the CASA CJA Advisory Committee, the revisions to the regulatory text were unanimously approved by the Board on June 13, 2024.

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.

Pursuant to § 9.1-151 of the *Code of Virginia*:

- A. There is established a Court-Appointed Special Advocate Program (the Program) that shall be administered by the Department. The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings (i) involving allegations that the child is abused, neglected, in need of services, or in need of supervision or (ii) for the restoration of parental rights pursuant to § [16.1-283.2](#) and for whom the juvenile and domestic relations district court judge determines such services are appropriate. Court-Appointed Special Advocate volunteer appointments may continue for youth 18 years of age and older who are in foster care if the court has retained jurisdiction pursuant to subsection Z of § [16.1-241](#) or § [16.1-242](#) and the juvenile and domestic relations district court judge determines such services are appropriate. The Department shall adopt regulations necessary and appropriate for the administration of the Program.
- B. The Board shall appoint an Advisory Committee to the Court-Appointed Special Advocate Program, consisting of 15 members, one of whom shall be a judge of the juvenile and domestic relations district court or circuit court, knowledgeable of court matters, child welfare, and juvenile

justice issues and representative of both state and local interests. The duties of the Advisory Committee shall be to advise the Board on all matters relating to the Program and the needs of the clients served by the Program, and to make such recommendations as it may deem desirable.

Additionally, The *Code of Virginia* states the following regarding the duties to Court Appointed Special Advocates (CASA) who have been appointed to a case:

§ 9.1-153. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training.

A. Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:

1. Investigating the case to which he is assigned to provide independent factual information to the court.
2. Submitting to the court of a written report of his investigation in compliance with the provisions of § 16.1-274. The report may, upon request of the court, include recommendations as to the child's welfare.
3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.
4. Assisting any appointed guardian ad litem to represent the child in providing effective representation of the child's needs and best interests.
5. Reporting a suspected abused or neglected child pursuant to § 63.1-248.3

The CJSB is the policy board for the Department of Criminal Justice Services, and in the October 12, 2023 meeting, DCJS obtained formal approval to move forward with the NOIRA for these revisions. DCJS staff worked collaboratively with the State Network Leadership Team and the CASA CJA Advisory Committee to make updates and revisions, which were ultimately approved by the CJSB on June 13, 2024.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The CASA program is essential in Commonwealth and serves many children and families every year. It is defined as any locally operated court-appointed special advocacy program that utilized court-appointed volunteers to assist in judicial proceedings involving allegations that a child is abused, neglected, in need of services, or in need of supervision and for whom a Juvenile and Domestic Relations District Court judge determines such services are appropriate. DCJS has determined that many technical amendments and updates are needed since the last comprehensive review and update was conducted approximately 15 years ago. Amendments and revisions to regulatory language were all made under the advisement of the Virginia CASA Program State Network Leadership Team and the CASA/CJA Advisory Committee. The purpose of this action is to ensure that language is statutorily correct and that unnecessary requirements are eliminated, and also utilize this time to conduct a comprehensive periodic review of the regulation in its entirety. DCJS has determined that the update of the regulation is essential to protect the safety and welfare of citizens in Virginia, as CASA volunteers represent some of our most vulnerable citizens—children.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Substantive changes to the regulation are the update and clarification of language to ensure continuity in training and volunteer requirements, as well as the elimination of unnecessary or overly burdensome requirements. DCJS' Programs and Services Division worked diligently with the State Network Leadership Team and the CASA CJA Advisory Committee and ultimately agreed upon all of the recommended updates and revisions. A thorough review and update to the provisions of this regulation last occurred approximately 15 years ago, so this is a welcomed update for CASA programs across the Commonwealth.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary 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, include a specific statement to that effect.

This regulation's primary advantage is to safety and well-being of the various citizens of the Commonwealth of Virginia, as well as the juveniles and special populations local CASA programs serve. It also provides additional efficiency for judges and courts throughout Virginia that employ such programs. The comprehensive review to this regulation is welcomed update for all parties involved in all jurisdictions. There are no known issues or disadvantages to the Commonwealth by implementing the proposed revisions to this regulation.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no known requirements of this proposed regulatory change that are more restrictive than applicable federal requirements, as there are none.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other known state agencies are particularly affected.

Localities Particularly Affected

There will be no direct affects on localities as a result of these regulatory changes.

Other Entities Particularly Affected

The revisions made to the regulatory text of 6 VAC 20-160 will only impact jurisdictions utilizing CASA programs within their court system(s).

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.	There are no projected costs, savings, fees, or revenues resulting from this regulatory change, as CASA programs already assume responsibilities for adhering to these requirements as independent organizations.
<i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	N/A
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	N/A

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	
Benefits the regulatory change is designed to produce.	

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	There is no additional impact on any individuals, businesses, or other entities as a result of this regulatory change.
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<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>N/A</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>N/A</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Although there are no monetary-associated benefits, this regulation's primary advantage is to safety and well-being of the various citizens of the Commonwealth of Virginia, as well as the juveniles and special populations local CASA programs serve. It also provides additional efficiency for judges and courts throughout Virginia that employ such programs. The comprehensive review to this regulation is welcomed update for all parties involved in all jurisdictions.</p>

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.

DCJS does not have any viable alternatives to the regulatory changes and updates being proposed. Updating language and requirements that have not been revised in approximately 15 years are neither burdensome nor intrusive and will not add any financial burden to small businesses, as defined in § 2.2-4007. On the contrary, it will make training and requirements for CASA volunteers across the Commonwealth more cohesive and efficient.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses, because they are not affected by this regulation. This is further detailed in Table 1.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This regulatory action is being used to conduct a comprehensive review and update, as well as a periodic review, as one has not been conducted in some time. This change meets the criteria set out in EO 19 and is necessary, for the aforementioned reasons, for the cohesiveness and efficiency of CASA programs, which ultimately leads to the protection of public health, safety and welfare. There is no economic impact on small businesses consistent with applicable law. The agency has demonstrated a clear continued need for the regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
N/A	N/A	N/A

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.

The Department of Criminal Justice Services 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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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, email or fax to Kristi Shalton, 1100 Bank St, Richmond, VA 23219, (804)786-7801, Kristi.shalton@dcjs.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 this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
6VAC20-160-10	N/A	Definitions	Expands definition section and adds "guardian ad litem."
6VAC20-160-20	N/A	CASA Program Governance	Adds that the training shall include information on the responsibilities of governing board members' primary

			duties known as the “duty of care,” “duty of loyalty,” and duty of obedience.”
6VAC20-160-30	N/A	Recordkeeping and monitoring	<p>Adds additional information to include:</p> <p>C. CASA programs shall develop policies on the maintenance of complete case records gathered about each child served by the CASA program according to guidelines established by DCJS.</p> <p>D. CASA programs shall develop record retention policies.</p> <p>E. CASA programs shall develop policies that require CASA volunteers to return all documents and information gathered during case assignment to the local CASA program office upon case closure.</p> <p>F. CASA programs shall develop policies that require CASA volunteers to destroy all forms of electronic communication and files gathered during the case.</p>
6VAC20-160-40	N/A	Program and Personnel Policies	Makes technical amendments, updates the number of volunteers to 25, and adds: that the CASA volunteer’s responsibility to visit the child of a minimum of once a month unless an exception is granted according to the CASA program’s exception policy.
6VAC20-160-50	N/A	Case assignment	Makes technical amendments and includes information related to potential conflict(s) of interest.
6VAC20-160-60	N/A	CASA Volunteer duties and responsibilities	<p>Makes technical amendments and revisions and adds: Pursuant to § 9.1-153 of the Code of Virginia, the duties of a CASA volunteer shall include:</p> <ol style="list-style-type: none"> 1. Investigating the case to which he is assigned to provide independent factual information to the court. 2. Submitting to the court of a written report of his investigation in compliance with the provisions of § 16.1-274. The report may, upon request of the court,

			<p>include recommendations as to the child's welfare.</p> <p>3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.</p> <p>4. Assisting the guardian ad litem appointed to represent the child in providing effective representation of the child's needs and best interests.</p> <p>5. Reporting a suspected abused or neglected child pursuant to the provisions of § 63.2-1509 of the Code of Virginia.</p>
6VAC20-160-70	N/A	Confidentiality	<p>Makes technical amendments and adds:</p> <p>B. CASA volunteers must share documents and information on the child with the guardian ad litem appointed to the case.</p> <p>C. CASA volunteers must share information with the guardian ad litem regarding parents, guardians or interested persons in the case but may not give copies of documents to the guardian ad litem.</p> <p>D. CASA volunteers may share information related to the child, but not documents at interdisciplinary team meetings identified in § 9.1-153(C) in the Code of Virginia. If a signed release of information from other interested persons has been obtained by the CASA program, the CASA volunteer may share information, but not documents at interdisciplinary team meetings.</p> <p>E. To access any documents or seek information on any other interested person involved in the case other than the child, CASA volunteers shall obtain a signed release of information.</p> <p>F. CASA volunteers shall only share information with the court and the guardian ad litem, unless the interested persons involved in the case sign a release of information.</p>

6VAC20-160-80	N/A	Changes Code of Ethics to Professional Conduct.	Makes technical amendments and clarifies verbiage.
6VAC20-160-90	N/A	Qualifications	Makes technical amendments to current regulatory section and changes several "shall" verbiage to "must."
6VAC20-160-100	N/A	Changes to Screening and Application Process for Volunteers	Clarifies and updates procedures for volunteer screening, to include: 1. Volunteer applicants shall successfully complete screening procedures which shall include a written application and personal interview.
6VAC20-160-110	N/A	N/A	Repeals previously redesignated section.
6VAC20-160-120	N/A	Pre-Service Training	Clarifies pre-service training requirements and amends previous language for clarity for volunteers.
6VAC20-160-130	N/A	Adds new section titled In-service Training	<p>Adds additional requirements for CASA volunteers to undergo in-service training to include:</p> <p>A. The CASA program shall make available a minimum of 12 hours of in-service training annually for volunteers who are accepted into the program. These in-service programs should be designed and presented to maintain and improve the volunteer's level of knowledge and skill. Special attention shall be given to informing volunteers of changes in the law, local court procedures, the practices of other agencies involved, CASA program policies and developments in the fields of child development, child abuse and child advocacy.</p> <p>B. CASA volunteers shall complete 12 hours of in-service training annually as approved by the director. Annual in-service hours are required to be completed beginning in the fiscal year after the volunteer completes pre-service training. These in-service hours may be training programs provided directly by the CASA program, or in conjunction with another agency or agencies, or may be through an outside agency, through print or electronic media, or from other sources. All training not conducted or sponsored by the CASA program must be reviewed and approved by the CASA director for its suitability for the</p>

			continuing education of CASA volunteers, and the amount of continuing education credit that is appropriate.
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage