



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	State Board of Social Services
VAC Chapter Number:	22 VAC 40-700
Regulation Title:	Child Protective Services Central Registry Information
Action Title:	Conforming Amendments
Date:	December 18, 2002

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Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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.

This final regulation is identical to the proposed regulation except for the technical amendment of conforming the definition of "Central Registry" to that definition in 22 VAC 40-705-10. Definitions, Child Protective Services. It establishes criteria for determining when identifying information on individuals involved in child abuse and neglect investigations should be entered into the Child Abuse and Neglect Central Registry (Central Registry) by local departments of social services and how long the information should be retained in the Central Registry by the state agency. The *Code of Virginia* requires that the State Board of Social Services prescribe by regulation what information shall be contained in the Central Registry.

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.

On December 18, 2002, the Virginia Department of Social Services approved final changes in the language of this regulation, 22 VAC 40-700-10 et seq., Child Protective Services Central Registry Information.

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.

This action is the result of an approved Executive Order 21 (2002) regulation review. The statutory authority for promulgating this regulation is found in Title 63.2 Welfare (Social Services) of the Code of Virginia. Chapter 15, Section 63.2-1501 et seq. of the Virginia Code places responsibility for providing protective services for children with the Department of Social Services. Chapter 2, Section 63.2-217 places authority with the Board of Social Services to make rules and regulations consistent with the Virginia Code Sections 2.2-4007 and 63.2-1501 et seq.

The Office of the Attorney General has reviewed these regulations and has certified that the agency has the statutory authority to promulgate regulations and that they comport with applicable state and federal laws. The authority is mandatory. With these amendments, this regulation will not exceed the scope of the mandate.

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.

Amendments are necessary to this regulation to ensure that this regulation is consistent with the regulation entitled Child Protective Services (22 VAC 40-705-10 et seq.), which requires “Preponderance of the Evidence” for Founded Disposition; and to ensure consistency with the Virginia Court of Appeals decision of *Jackson v. Marshall*. That court decision determined that only categories of “Founded” and “Unfounded” are allowed under *Code of Virginia* Section 63.2-1505. The Department officially ceased use of the “Reason to Suspect” category on March 9, 1995, as a result of this court decision, and purged all such findings from the Central Registry. In addition, amendments are necessary to this regulation to ensure that this regulation is consistent with the definition of “Central Registry” in the regulation entitled Child Protective Services (22 VAC 40-705-10 et seq.).

This regulation is essential to protect the health, safety or welfare of citizens. Inconsistencies can create confusion among individuals attempting to use these laws. Unless this regulation is consistent with the law and other regulations dealing with child protective services, individuals who have abused or neglected a child may not be adequately tracked, and abusers and neglectors could be hired in settings where they would have access to children.

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.

This regulation tracks individuals who have abused or neglected a child. Any person who is determined by child protective services (CPS) to have committed an act of child abuse or neglect in Virginia, and any child determined to be a victim of same, may have information about his identity and about the abuse/neglect maintained in the Central Registry for a time period established in the regulation. Such persons may include parents (birth, step, foster or adoptive), other family members, childcare providers, teachers and anyone else determined to have been acting in a caretaker role when the abuse/neglect occurred. Central Registry searches (for other than a CPS investigation) cannot be conducted unless the individual being searched has authorized the search or a court has ordered the search.

Persons whose names are in the Central Registry are not allowed to be employed for wage or as a volunteer in the day-to-day operations of any local public school board, state or state licensed mental health facility, child welfare agency or a children’s residential facility. Section 63.2-100 of the *Code of Virginia* defines child welfare agencies as a child day center, child day center system, child-placing agency, child caring institution, family day home, family day system, or independent foster home. It defines children’s residential facility as any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance.

Identification of individuals with a history of child abuse/neglect prior to employment in such settings would reduce the opportunities for such individuals to abuse additional children, and may make the children in Virginia’s families safer. When there is a history of child abuse or neglect for a given caretaker, or a given victim child, and that history is made known to child protective services workers when conducting future investigations involving the same individuals, more prudent decisions can be made to ensure the safety of all involved victim children.

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.

The primary advantage to the public with this regulation is the protection of children from abusers and neglectors. The primary advantage to local departments of social services and the Department of Social Services and the Commonwealth is the reduction of risk of liability if an abuser or neglector is hired and should further abuse or neglect children. There are no disadvantages to the public, to local departments, the Department of Social Services or to the Commonwealth with these amendments.

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.

This final regulation is identical to the proposed regulation except for the technical amendment of conforming the definition of “Central Registry” to that definition in 22 VAC 40-705-10. Definitions, Child Protective Services.

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 public comment was received.

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 changes to this regulation occur in Section 10, Definitions. The final regulation will conform the definitions of "founded" and of "Central Registry" in this regulation to the definitions of "founded" and "Central Registry" in the Child Protective Services regulation (22 VAC 40-705). That regulation requires "preponderance of the evidence" for a founded definition. The amended definition of "Central Registry" will conform, as :

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information of individuals named as an abuser and/or neglector in founded involved in child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the ~~Virginia D~~ department of ~~Social Services~~.

In addition, Title 63.2 of the Code of Virginia citation, § 63.2-1501 et seq. is updated to the latest cite of § 63.2-1501 et seq.