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COMMONWEALTH of VIRGINIA
Board of Juvenile Justice

BOARD AGENDA

December 6, 2024
All-Virtual Public Meeting

9:30 a.m. Board Meeting

1. Call To Order and Introductions

2. Public Comment

3. New Business

I. Consideration of Request to Initiate the Notice of Intended Regulatory Action (NOIRA) to amend the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20) PAGES 3-5

Ken Davis, Regulatory Coordinator, Department of Juvenile Justice

II. Consideration of Request for Action on Board Policies PAGES 6-9

Ken Davis, Regulatory Coordinator, Department of Juvenile Justice

- 20-002 Alternatives to Incarceration
- 20-504 Termination of Probation
- 17-003 Due Process in Transfer to More Restrictive Program or Facility

4. Director Remarks and Board Comments

5. Next Meetings 2025: January 7 and May 14 at 9:30 a.m. at Virginia Public Safety Training Center, Smyth Hall, Room 401

6. Adjournment

Motions

December 6, 2024

Certification Regulation Motion (6VAC35-20)

PROPOSED Motion: The Board of Juvenile Justice authorizes the Department of Juvenile Justice to proceed with the filing of a Notice of Intended Regulatory Action, pursuant to §2.2-4007.01 of the Code of Virginia, to initiate the process for amending 6VAC35-20, Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities.

Motion By:

Seconded By:

Board Policy (20-002)

PROPOSED Motion: The Board of Juvenile Justice approves the amendment of Board Policy 20-002 as proposed at the December 6, 2024, meeting, to take effect immediately.

Motion By:

Seconded By:

Board Policy (20-504)

PROPOSED Motion: The Board of Juvenile Justice approves the amendment of Board Policy 20-504 as proposed at the December 6, 2024, meeting, to take effect immediately.

Motion By:

Seconded By:

Board Policy (17-003)

PROPOSED Motion: The Board of Juvenile Justice approves retaining Board Policy 17-003 as proposed at the December 6, 2024, meeting, to take effect immediately.

Motion By:

Seconded By:



Amy M. Floriano
Director

COMMONWEALTH OF VIRGINIA
Department of Juvenile Justice

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TO: State Board of Juvenile Justice

FROM: Virginia Department of Juvenile Justice

SUBJECT: Request Authorization to Initiate NOIRA to Conduct a Comprehensive Review of 6VAC35-20 (Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities).

DATE December 6, 2024

I. SUMMARY OF ACTION REQUESTED

The Department of Juvenile Justice (the department) respectfully requests that the State Board of Juvenile Justice (the board) authorize the initiation of a Notice of Intended Regulatory Action (NOIRA) to begin the first stage of the standard regulatory process to conduct a comprehensive review of 6VAC35-20, the Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities. The department has convened a work group comprised of the Certification Unit manager, the VJCCCA manager, the detention specialist, a representative from Compliance and Legal Support, and the Legislative and Regulatory Affairs manager. Work on the regulation is under way.

II. BACKGROUND

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. In addition, the department is now past due for a subsequent periodic review. With all of that in mind, the department identified the resources necessary to conduct a comprehensive review of the regulation, and the workgroup held its first meeting in May.

III. RECOMMENDED AMENDMENTS

The workgroup met eight times during the spring and summer and developed its preliminary recommendations for amendments to the regulation. There are six primary recommendations:

- 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.
- Repeal Section 30. Section 30 is a purpose statement and should be removed from the regulation pursuant to 1VAC7-10-40, which is part of the Virginia Code Commission's Regulations for Filing and Publishing Agency Regulations.
- Add a new section pertaining to department responsibility. The workgroup recommended adding a new section to capture a portion of the language in the repealed Section 30 regarding the department's responsibility in auditing and certifying programs and facilities.
- 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 workgroup recommended revising all of these sections accordingly, including rewriting entire provisions when necessary.
- Repeal procedural sections. The workgroup recommended repealing one or more sections which are procedural in nature and do not belong in the regulation.
- Eliminate DIBR. This chapter currently incorporates a document entitled *Guidance Document: Self Audits/Evaluations, September 2013, Department of Juvenile Justice*. Because this is document was created by the department, its incorporation is prohibited by the Virginia Code Commission's regulation 1VAC70-10-140.

IV. PROCESS FOR SUBMISSION OF NOIRA AND NEXT STEPS

The NOIRA serves as the first stage of the standard regulatory process and is intended to alert the public of the board's intention to take certain regulatory action. If the board approves the department's request to proceed with the NOIRA, the department will complete and submit the necessary filing to the Virginia Regulatory Town Hall. This will launch Executive Branch review of the action. Once the Executive Branch reviews are complete, the action will undergo a 30-day public comment period, after which the department will present proposed text for board approval and advancement to the Proposed stage of the standard regulatory process. The anticipated timeframes for the NOIRA are established in the table below:

Timeframes for NOIRA Stage

Action/Review	Deadline for Completion
Submit NOIRA to Virginia Regulatory Town Hall	No deadline after board approval
Department of Planning and Budget	14-day deadline
Secretary of Public Safety and Homeland Security	14-day deadline
Office of Regulatory Management	14-day deadline
Governor/Chief of Staff	No deadline

Publication of NOIRA in Virginia Register	In accordance Register's Publication Schedule
Public Comment Period	30-day deadline

V. CONCLUSION

While the text of the amendments is being finalized, the department believes the key issues have been identified and that the time is right to initiate formal action on this regulation. The department respectfully requests that the board authorize the department to file the NOIRA and begin the standard regulatory process.



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Department of Juvenile Justice

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TO: State Board of Juvenile Justice

FROM: Virginia Department of Juvenile Justice

SUBJECT: Request Amendment of Board Policies 20-002 (Alternatives to Incarceration) and 20-504 (Termination of Probation); Request Retention of Board Policy 17-003 (Due Process in Transfer to More Restrictive Program or Facility)

DATE: December 6, 2024

I. SUMMARY OF ACTION REQUESTED

The Department of Juvenile Justice (the department) respectfully requests that the State Board of Juvenile Justice (the board) approve the amendment of two board policies and the retention of one board policy pursuant to the authority established in *Code of Virginia* § 66-10.

II. BACKGROUND OF THE REQUEST

Code of Virginia § 66-10 contains three provisions that empower the board to establish certain policies and give rise to duties related to policies. The statute provides in pertinent part:

The board shall have the following powers and duties:

1. To establish and monitor policies for the programs and facilities for which the Department is responsible under this law;
2. To ensure the development of a long-range youth services policy;
3. To monitor the activities of the Department and its effectiveness in implementing the policies developed by the Board...

Pursuant to this statutory authority, the board currently has 34 active policies in place ranging in subject matter from overall administration of the department to operations within facilities and programs regulated by the department. Many of these policies were established in the early 1990s and were last reviewed or updated more than ten years ago.

At the April 2022 board meeting, the department informed the board of its intent to conduct a comprehensive review of each existing board policy and to make a formal recommendation to the board to retain, amend, or rescind each one based upon that review. The department described its plan to recommend retaining or amending those policies that are mandated by statute or that provide guidance above and beyond what is required by regulation and to recommend rescinding those policies that have been subsumed into regulation, that duplicate existing law, or that are obsolete.

To date, the department has made recommendations for, and the board has acted on 18 policies. The department is now recommending action on three additional policies. Summaries of the existing policies and recommendations for action are contained in Part IV of this memorandum.

III. DIFFERENCES BETWEEN BOARD POLICIES AND BOARD REGULATIONS

Code of Virginia § 2.2-4001, which provides definitions for terms used in the Administrative Process Act (§ 2.2-4000 et. seq.) (the Act), defines the term “regulation” as “any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.” The Act makes it clear that all regulations are subject to the requirements contained in the Act unless an exception or exemption applies.

In contrast, policies are neither defined nor expressly addressed in the Act. Furthermore, while policies may be enforced by the authorized body to the extent that they do not collide with a law or regulation, they do not have the same force and effect of law afforded to regulations.¹ It is the Department’s understanding, therefore, that policies are not regulations subject to the requirements of the Act. This means that the authority to establish, amend, and rescind board policies rests solely with the board, and additional involvement or approval by other executive branch agencies is not required, nor must the board consider any public comments before taking action to amend or rescind such policies.

IV. POLICIES IDENTIFIED FOR AMENDMENT OR RETENTION

Current Policy

20-002 Alternatives to Incarceration

The Board of Juvenile Justice actively encourages alternative methodologies to incarceration or residential placement consistent with maintaining the welfare of the juvenile and the assurance of public safety. Alternative methodologies, such as electronic monitoring, may be used to supplement traditional forms of court-authorized supervision in a variety of situations including as an alternative to pre-dispositional detention, a supplement to post-dispositional community supervision, and as part of parole supervision or placement of youth.

Effective Date: September 9, 2009

Most Recent Review: September 9, 2009

Recommendation: Amend

Proposed Amended Policy:

20-002 Alternatives to Detention

The Board of Juvenile Justice actively encourages alternatives to detention or residential placement consistent with the welfare of the juvenile and the assurance of public safety. Alternatives such as electronic monitoring may be used to supplement traditional forms of court-authorized supervision in a variety of situations, including as an alternative to pre-dispositional detention, a supplement to postdispositional community supervision, and as part of parole supervision or placement of youth.

Effective Date: September 9, 2009

Most Recent Review: December 6, 2024

¹ 2011 Op. Va. Att’y Gen. 99, 102.

Rationale for Recommendation:

The department recommends amending the policy to avoid the use of “incarceration,” regarding juveniles in favor of “detention,” which is more in keeping with the rest of the language in the policy. This change is recommended in the opening words of the policy, as well. Additionally, the current version of the policy is wordy in some places, and the recommended amendments make the policy clearer and more concise. For example, the word “methodologies” is not necessary when describing “alternatives to detention or residential placement.”

Current Policy

20-504 Termination of Probation

Consistent with Department procedures and in collaboration with the courts, each court service unit shall develop a process for early termination of probation supervision when supervision is no longer warranted by the circumstances of the case to protect the community and to meet the juvenile’s needs.

Effective Date: May 1, 1994 *Most Recent Review:* April 8, 2009

Recommendation: Amend

Proposed Amended Policy:

20-504 Termination of Probation

The Department shall develop procedures for early termination of probation supervision when supervision is no longer warranted by the circumstances of the case to protect the community and to meet the juvenile’s needs.

Effective Date: May 1, 1994 *Most Recent Review:* December 6, 2024

Rationale for Recommendation:

The department has been working to reduce the number of CSU-specific documents in favor of statewide procedures. This helps ensure that youth across the Commonwealth are treated the same way, regardless of the judicial district in which they reside. The recommended amendments would be consistent with that effort.

Current Policy

17-003 Due Process in Transfer to More Restrictive Program or Facility

Due process safeguards shall be provided for residents prior to their transfer to a more restrictive unit, program, or facility while in direct care. In the case of emergency transfers, such safeguards shall be initiated immediately after transfer. The resident's treatment needs shall be considered in the decision to transfer the resident.

Effective Date: September 9, 2009 *Most Recent Review:* September 9, 2009

Recommendation: Retain

Rationale for Recommendation:

The JCC regulation, in 6VAC35-71-710, addresses resident transfers between and within juvenile correctional centers and contains provisions addressing most of Policy 17-003, but those provisions do not explicitly mention consideration of the resident's treatment needs as discussed in the policy. Updates to 6VAC35-71-710, currently in process with the comprehensive review of the regulation, also do not address that portion of the policy. The department, therefore, recommends this policy be retained.

V. IMPACT AND EFFECTIVE DATE OF BOARD ACTION

If the board votes in support of the department's recommendations in Part IV of this memorandum, the proposed changes will take effect immediately. Adopting the department's recommendations will provide clarity in the policy pertaining to alternatives to incarceration, support the effort to provide statewide guidance in early termination of probation, and leave in place important safeguards for youth being transferred to more restrictive settings. Accordingly, the department recommends that the board adopt these amendments.