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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board (Department) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC 35-10
Regulation title	Public Participation Guidelines
Action title	Update the regulation to reflect technological and statutory changes since the original regulation was adopted in 1991.
Document preparation date	February 20, 2004

This information is required for executive review (www.townhall.state.va.us/dbppages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dbppages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Public Participation Guidelines provide a variety of means for interested parties and the general public to be made aware of and to offer their comments on regulations being considered, drafted or revised by the Board of Juvenile Justice. Since the current regulation was adopted in 1991, there have been a number of technological innovations whose widespread acceptance has made communication on regulatory action both faster and easier, and yet the current regulation does not include those innovations in the routine public information process. The Department proposes to add a number of provisions that recognize the acceptance of internet based applications, e-mail and faxes as routine modes of communication.

The Department is considering whether to address the statutory requirement of Code of Virginia § 66-3 in this regulation. That section requires that, when the Department acquires real property for the purpose of operating a juvenile correctional facility, the Department shall comply with standards set by the Board to ensure adequate public notice and local hearing.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Code of Virginia § 2.2-4007, paragraph D, mandates that all agencies that issue regulations promulgate public participation guidelines :

“D. **Public participation guidelines** for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties, and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.”

Code of Virginia § 66-10, gives the Board of Juvenile Justice the power and the duty “6. To 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.”

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

6VAC35-10-10. Definitions. The agency proposes to delete terms that are not used in the revised regulation, and to update the agency name from “Youth and Family Services” to “Juvenile Justice.”

6VAC35-10-20, Authority, will be changed to update references to the Administrative Process Act. (The APA has been recodified since the regulation was originally adopted. Title 9 and Title 2.1 were recodified effective October 1, 2001, resulting in many changes. In particular, § 9-6.14:7.1 was replaced by Section 2.2-4007.) The Department is considering whether to include the statutory requirement of Code of Virginia § 66-3 in this section of the regulation. That section requires that, when the Department acquires real property for the purpose of operating a juvenile

correctional facility, the Department shall comply with standards set by the Board to ensure adequate public notice and local hearing.

6VAC35-10-30. Purpose, would be amended to address not only the development of regulations, but also their amendment. Also, if the decision is made to address the public notice requirements of COV Section 66-3 in this regulation, that will be referenced in this section.

6VAC35-10-40. Administration. (No substantive changes currently contemplated)

6VAC35-10-50, Application of regulations, would be amended to make it clear that these public participation guidelines apply to all regulations adopted, amended or repealed by the Board of Juvenile Justice, unless exempted or excluded by law. An additional amendment would make clear that the Board could provide additional opportunity, beyond the requirements of these guidelines, for public comment in process of drafting, revising or repealing regulations.

6VAC35-10-60. Effective date. This section would be deleted because The effective date of the regulation is no longer a part of the regulation itself, but is noted in the Virginia Register of Regulations when the final regulation is published.

6VAC35-10-70. Application of the Administrative Process Act. This section would be amended so that statutory references would reflect recodification. Also, the section would include reference to applicable Executive Orders of the Governor.

6VAC35-10-80. Identification of interested parties. This section would be amended to require the Department (not individual operating units of the agency) to maintain lists of interested parties. New paragraphs would offer guidance on adding parties to the lists, and purging the lists of inactive names.

6VAC35-10-90. Notification of interested parties. This section would be amended to require the Department (not individual operating units of the agency) to notify interested parties. The amendment would allow notice by U.S. mail, fax, or e-mail. A new paragraph would require use of both the Department's web page and on the Regulatory Town Hall web page maintained by the Department of Planning and Budget.

6VAC35-10-100. Solicitation of input from interested parties. A new paragraph would be added to afford interested parties an opportunity, early in the regulatory process, to submit data, views, and arguments in person, by regular mail, e-mail, or facsimile. Current provisions regarding advisory panels would be amended to clarify that panels shall consist of persons representative of those who have registered an interest in the subject of the regulation or persons who have an expertise in a specific regulatory matter. The regulation would no longer specify that advisory panels consist of no less than three persons or meet less than twice.

6VAC35-10-105. Documents to be sent to persons or entities on the mailing list. **This is a proposed new section;** it would detail the categories of information that must be sent to interested parties.

6VAC35-10-110. Administrative Process Act procedures. Amendments would update the statutory references. Also, this section would declare the general policy of the Board to conduct one or more public hearings as part of the public comment period for all regulations, and whenever practicable to schedule at least one such hearing in conjunction with a meeting of the Board so that the board members may hear first hand from persons who have an interest in the regulation.

6VAC35-10-120. Petition for rulemaking. This is a proposed new section, consistent with Code of Virginia § 2.2-4007, permitting any person to petition the Board to develop a new regulation or to revise an existing regulation.

The agency is considering adding new sections addressing the process to be used in meeting the public involvement requirements of Code of Virginia § 66-3 in this regulation. That section requires that, when the Department acquires real property for the purpose of operating a juvenile correctional facility, the Department shall comply with standards set by the Board to ensure adequate public notice and local hearing.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

The regulation is mandated by state law. While the agency may supplement the regulation with policies and procedures, these cannot substitute for the regulation itself.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The regulation is procedural in nature and is designed to facilitate and enhance the involvement of interested parties in the development, review and revision of regulations issued by the Board of Juvenile Justice. As such, the public participation guidelines will have no impact on the institution of the family or on family stability.