



Proposed Regulation Agency Background Document

Agency name	Board (Department) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6VAC 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	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The amendments reflect changes made in the Code of Virginia since the original regulation was adopted in 1991, particularly the recodification of Title 9 and Title 2.1 in 2001, which resulted, for example, in § 9-6.14:7.1 being replaced by § 2.2-4007. Also, since the current regulation was adopted in 1991, there have been a number of technological innovations, such as e-mail, FAX and internet-based applications, 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. Several proposed amendments recognize the acceptance of these technological innovations as routine modes of communication. Finally, amendments provide guidance for maintaining, updating and purging lists of interested parties.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), 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.

A. The Administrative Process Act (Chapter 40 of Title 2.2 of the Code of Virginia) sets out the procedures for promulgating regulations. Specifically, § 2.2-4007, paragraph D, directs agencies of the Commonwealth to develop, adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of regulations.

B. Code of Virginia § 66-3 requires that, when the Department acquires real property for the purpose of operating a juvenile correctional facility or other residential or administrative facility, the Department shall comply with **standards set by the Board to ensure adequate public notice and local hearing**.

Section [66-10](#) of the Code of Virginia empowers the Board of Juvenile Justice to make, adopt and promulgate rules and regulations.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

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. Many of the proposed revisions are intended to permit and encourage the use of “new” technologies in communicating about regulations.

Also, a new PART of this regulation is added to address the statutory requirement of Code of Virginia § 66-3 that the Board establish standards “to ensure adequate public notice and a local hearing” when the Department acquires real property for the purpose of establishing a juvenile correctional facility.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Several sections of the regulation (20, 30, 60, 70) include updated references to the Code of Virginia.

References to "operating units" (sections 10, 80, 90, 100) have been deleted, allowing the Department flexibility to centralize or decentralize the internal processes for facilitating the steps of the Administrative Process Act as circumstances may warrant.

Guidance is provided for identifying and soliciting input from interested parties (sections 80, 90, 100, 105, 110).

New provisions allow the public to petition for rulemaking (Section 120), provide for notice and public hearing when the Department acquires real property for certain purposes (Sections 130, 240, 150).

Issues

Please identify the issues associated with the proposed regulatory action, 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1. The primary advantages to the public is increased facility to participate in the regulatory process through e-mail, FAX, and internet applications, etc.
2. The primary advantage to the Commonwealth is the ability to communicate contemplated regulatory changes more efficiently and economically via e-mail, fax and internet applications.

There are no known disadvantages to the public or the Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including	\$0. This regulation is administrative in nature. Any costs associated with, for example, printing of
--	--

(a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	materials, public hearings, etc., would continue to be required with or without this regulation, or the amendments that are proposed, and would be covered in the operating budget of the Department, including the Directors' funds set aside to support administrative functions on behalf of the Board of Juvenile Justice.
Projected cost of the regulation on localities	\$0. There may be incidental costs associated with, for example, travel to attend a public hearing or to copy and mail comments, but these are discretionary actions on the part of localities and are not directly imposed by the regulation.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Interested parties include organizations and individuals in the "youth advocacy community," such as the Institute for Law and Psychiatry at the University of Richmond and the Virginia Poverty Law Center; professionals and providers in the juvenile justice arena, such as the Virginia Correctional Association, the Virginia Juvenile Officers' Association, and the Virginia Council on Detention; and state agencies such as the Commission on Youth, the Department of Criminal Justice Services, the Department of Correctional Education, and the coordinating Office for the Interdepartmental Regulation of Children's Residential Facilities.
Agency's best estimate of the number of such entities that will be affected	10 to 20, depending on the nature of the substantive regulation being considered.
Projected cost of the regulation for affected individuals, businesses, or other entities	\$0. There may be incidental costs associated with, for example, travel to attend a public hearing or to copy and mail comments, but these are discretionary actions on the part of individuals, businesses or other entities and are not directly imposed by the regulation.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The Code of Virginia (see § 2.2-4007) is clear that Public Participation Guidelines must be promulgated as regulations. There is no alternative.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

No comments were received during the NOIRA period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The regulation ensures that interested parties have an opportunity to be involved in reviewing and commenting on regulations being considered by the Board of Juvenile Justice. To the extent that parents of juveniles in the juvenile justice system, or at risk of entering that system, choose to participate in the comment process, this regulation enhances parents' opportunity to have a say in how Virginia will treat its delinquent and at-risk youth population. However, the substance of the regulation has no direct impact, either positive or negative, on Virginia's families and their stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10.		Definitions.	Terms are deleted that are not used in the revised regulation. The agency name is updated from "Youth and Family Services" to "Juvenile Justice."
20		Cites legal authority	The references are updated to reflect

		for the regulation	<p>the recodification of the Administrative Process Act in 2001.(In particular, § 9-6.14:7.1 was replaced by Section 2.2-4007.)</p> <p>Also, reference to Code of Virginia § 66-3 is added. 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.</p>
30.		Purpose,	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.
40		. Administration	Clarifies that the Department, through designated staff, acts as agent of the board in the development and review of regulations as prescribed by the Administrative Process Act and executive orders of the Governor.
50		Application of regulations	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.
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.

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.
80		Identification of interested parties	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.
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.
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.
	105		This proposed new section details the categories of information that must be sent to interested parties.
110		Administrative Process Act procedures	Updates the statutory references. Also declares 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.
	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.
	130.	Notice to Local Governing Authority.	When the Department acquires real property for the purpose of operating a juvenile correctional center or other residential or administrative facility, it shall provide notice to the governing body of the locality in which the property is located. The Department may give such notice as soon as it has reason to believe it may acquire a specific property, but must give notice at least 30 days prior to entering into a contract to purchase or accepting a deed or other instrument of conveyance for the property.
	140.	Public hearing	The Department shall conduct a public hearing within 30 days from the date it notified the locality. If, however, the locality elects to conduct its own hearing within this same 30 days, the Department may dispense with its hearing.
	150		Department staff shall attend the local hearing and shall prepare a summary of the public comments made and any responses offered by the Department. The Department shall include a summary of the public comments, and its responses, in any report to the General Assembly or to the Governor and any executive branch agency which has a role in reviewing and approving the proposed development

			of the juvenile correctional facility on the property which was the subject of the local hearing.
--	--	--	---