

Every 90 days, if necessary, the supervision plan shall be revised according to progress toward established goals or the need for additional goals and objectives.



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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Department (Board) of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation</b>	6 VAC 35-180
<b>Regulation title</b>	Mental Health Services Transition Plans for Incarcerated Juveniles
<b>Action title</b>	Proposed Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles
<b>Date this document prepared</b>	July 19, 2006

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 proposed regulations provide the framework for creating a mental health services transition plan for the provision of mental health, substance abuse, or other therapeutic treatment services for persons returning to the community following commitment to a juvenile correctional center or postdispositional detention. The goal is to ensure implementation and continuity of necessary treatment and services in order to improve short- and long-term outcomes for juvenile offenders with significant needs in these areas. Services should be provided in the least restrictive setting consistent with public safety and the juvenile's treatment needs. The plan shall address the juvenile's need for, and ability to access, medication, medical insurance, disability benefits, mental health services, and funding necessary to meet the juvenile's treatment needs.

### 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.

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Virginia Code § 66-10 establishes the general authority of the Board of Juvenile Justice to promulgate regulations.

During the 2005 session, the General Assembly enacted Senate Bill 843 and House Bill 2245 thereby creating Virginia code § 16.1-293.1. (See 2005 Va. Acts cc. 334 and 405.) Virginia Code § 16.1-293.1 provides that the “Board of Juvenile Justice, after consultation with the Department of Mental Health, Mental Retardation and Substance Abuse Services, must promulgate regulations for the planning and provision of post-release services for persons committed to the Department of Juvenile Justice (DJJ) pursuant to subdivision A 14 of § 16.1-278.8 or placed in a postdispositional detention program pursuant to subsection B of § 16.1-284.1 and identified as having a recognized mental health, substance abuse, or other therapeutic treatment need.” Virginia Code § 16.1-293.1 also specifies certain elements that must be included in the transitional treatment plan, which, therefore, will be addressed in the regulation.

### 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, the environmental benefits, and the problems the proposal is intended to solve.*

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The purpose of the proposed regulation is to ensure the planning and provision of post-release services addressing the mental health, substance abuse, or other therapeutic treatment needs of incarcerated juveniles as they transition back into their communities. The goal is to ensure implementation and continuity of necessary treatment and services in order to improve short- and long-term outcomes for juvenile offenders with significant needs in these areas. Services should be provided in the least restrictive setting consistent with public safety and the juvenile’s treatment needs.

### 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.)*

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As mandated by subsection A of Virginia Code § 16.1-293.1, the proposed regulation specifies how individuals will be identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The regulation requires that the transitional services plan be in writing and completed prior to the person’s release. The plan must be designed to ensure continuity of necessary treatment and services.

As mandated by subsection B of Virginia Code § 16.1-293.1, the regulation requires that:

- the mental health services transition plan identify the mental health, substance abuse, or other therapeutic needs of the person being released;

- appropriate treatment providers and other persons from state and local agencies or entities, as defined by the Board, participate in the development of the plan.

In addition, the proposed regulation provides that appropriate family members, caregivers, and other relevant persons are to be invited to participate in the development of the person's plan.

As mandated by subsection C of Virginia Code § 16.1-293.1, the proposed regulation requires that, prior to the person's release from incarceration, the identified agency or agencies responsible for the case management of the mental health services transition plan will make the necessary referrals specified in the plan. The proposed regulations also require identifying the person who will assist in applying for insurance and other services identified in the plan, including completing and submitting applications that may be submitted only upon release.

### 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.*

The regulation enhances the public safety because the services mandated therein should reduce recidivism by juveniles who have been incarcerated and identified with a mental health treatment need. About 1,000 juveniles are released each year from a JCC. Of those juveniles, 60% of the males and 90% of the females have diagnosed mental health treatment needs (41% of males and 59% of females have severe emotional disturbances). Half of the youth have taken psychotropic medications prior to commitment; 25% have been hospitalized in mental hospitals prior to commitment; and approximately 70% of all wards are identified as having a "High Treatment Need" for substance abuse services. 75% of the wards were committed for non-violent offenses.

This regulation is intended to ensure the planning and provision of post-release services addressing the mental health, substance abuse, or other therapeutic treatment needs of incarcerated juveniles as they transition back into their communities. The goal is to ensure implementation and continuity of necessary treatment and services in order to improve short- and long-term outcomes for juvenile offenders with significant needs in these areas. Services should be provided in the least restrictive setting consistent with public safety and the juvenile's treatment needs. The plan shall address the juvenile's need for, and ability to access, medication, medical insurance, disability benefits, mental health services, and funding necessary to meet the juvenile's treatment needs.

The regulatory action poses no disadvantages to the public or the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include 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 statement to that effect.*

There are no applicable federal requirements or no requirements that exceed applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

The new regulations apply statewide.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.*

In addition to any other comments, the Board/Department is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board/Department is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping, and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email, or fax to Deron M. Phipps, P. O. Box 1110, Richmond, VA 23218-1110. Telephone: (804) 786-6407. FAX: (804) 371-0773. Email: Deron.Phipps@djj.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and</b>	The regulations attempt to improve the utilization
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<p><b>enforce the proposed regulation, including (a) fund source/fund detail and (b) a delineation of one-time versus on-going expenditures</b></p>	<p>and coordination of services currently available for children with significant mental health issues upon their transition from a juvenile correctional center to their home localities. The regulations provide the framework for the Department to develop appropriate interagency linkages with state and local agencies, public and private institutions. Each court service unit (CSU) and postdispositional detention program will be required to enter into a single, integrated Memorandum of Understanding (MOU) with the public agencies that are required to participate in the Community Policy and Management Team (CPMT) as established by Virginia Code § 2.2-5205 for each jurisdiction covered by the CSU or postdispositional detention program. Those entities involved in the CPMT include Community Service Boards (CSBs) established pursuant to Virginia Code § 37.2-501, juvenile CSUs, Department of health, Department of social services, and the local school division. The CPMT also includes a parent representative and a representative of a private organization or association of providers for children’s or family services if such organizations or associations are located within the locality.</p>
<p><b>Projected cost of the regulation on localities</b></p>	<p>It is hoped that the regulation may improve the coordination and provision of services for children with significant mental health issues who leave the custody and supervision of the state and return to their home localities. Under current law, these services are primarily provided through broad and diverse network of CSBs and their directly-operated and contractual programs. Today, 40 CSBs provide some services in every city and county in Virginia; 134 localities in all. Community Service Boards are the local public mental health, mental retardation, and substance abuse authorities. While CSBs are agents of the local governments that established them, most CSBs are not city or county government departments. The Department of Mental Health, Mental Retardation and Substance Abuse Services disbursed more than \$206 million of state and federal funds to the 40 CSBs in FY 2003. In addition, more than \$106 million of state funds matched federal Medicaid reimbursements for State Plan Option and Mental Retardation Waiver services.</p> <p>CSBs offer varying combinations of six core</p>

	<p>services:</p> <ul style="list-style-type: none"> <li>• emergency services (mandated),</li> <li>• local inpatient services,</li> <li>• outpatient and case management services,</li> <li>• day support services,</li> <li>• residential services, and</li> <li>• prevention and early intervention services.</li> </ul> <p>CSBs exist to provide individualized, effective, flexible, and efficient treatment, habilitation, and prevention services in the most accessible and integrated, yet least restrictive, setting possible. CSBs draw upon all available community resources along with people’s natural support systems (family, friends, work) to ameliorate the effects of mental disabilities and substance use disorders, encourage growth and development, support recovery and self-determination, and assist individuals to realize their fullest potentials. CSBs serve as the single points of entry into publicly-funded mental health, mental retardation, and substance abuse services for their service areas, including access to state mental health and mental retardation facility services through preadmission screening, case management, and coordination of services. The current Core Services Taxonomy defines all of the categories and subcategories of core services, units of service, and static capacities; and it includes performance contract definitions.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b></p>	<p>About 1,000 juveniles are released each year from a juvenile correctional center (JCC). Of those juveniles, 60% of the males and 90% of the females have diagnosed mental health treatment needs. (41% of males and 59% of females have severe emotional disturbances). Half of the youth have taken psychotropic medications prior to commitment; 25% have been hospitalized in mental hospitals prior to commitment; approximately 70% of all wards are identified as having a “High Treatment Need” for substance abuse services; and 75% of the wards were committed for non-violent offenses.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>In drafting the proposed regulation, DJJ convened a work group of all interested state and local, public and private entities that may be impacted by the proposed regulation. Staff from the following state and local, public and private entities participated on the work group: Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Correctional Education, Department</p>

	<p>of Education, Department of Medical Assistance Services, Department of Rehabilitative Services, Department of Social Services, Department of Corrections, Rappahannock Community Service Board, Chesapeake Community Service Board, Virginia Counsel on Juvenile Detention, Virginia Post-Dispositional Detention Coordinators' Association, Virginia Municipal League, JustChildren Foundation, Virginia Commission on Youth, and University of Richmond School of Law Mental Disabilities Law Clinic.</p>
<p><b>All projected costs of the regulation for affected individuals, businesses, or other entities. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>The purpose of the MOU will be to identify the duties and responsibilities of developing a mental health transition plan for a juvenile nearing release from a JCC or juvenile detention facility and identified as having a significant mental health issue. The mental health transition plan will establish a process for coordinating state and local agencies that are responsible for providing services and treatment to juveniles with significant mental health issues. The mental health transition plan will outline a process for the planning and provision of post-release services addressing the mental health, substance abuse, or other therapeutic treatment needs of incarcerated juveniles as they transition back into their communities. The mental health transition plan will establish a framework to identify the process and parties responsible for making the necessary referrals and for assisting the juvenile and the juvenile's family with the process of applying for services identified in the mental health transition services plan. The mental health transition services plan will identify the sources of funding that may be utilized to provide the services. The plan will also identify methods for maximizing available sources of funding, including Medicaid, and the process and parties responsible for initiation of application(s) for insurance or other benefits that may be used to fully or partially fund such services.</p>

The goal is to promote the implementation and continuity of necessary treatment and services in order to improve short- and long-term outcomes for juvenile offenders with significant needs in these areas. Services should be provided in the least restrictive setting consistent with public safety and the juvenile's treatment needs. The plan shall address the juvenile's need for, and ability to access, medication, medical insurance, disability benefits, mental health services, and funding necessary to meet the juvenile's treatment needs.

**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. 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 regulation.*

There are no appropriate alternatives to this regulatory action. The agency is required to adopt the regulations to implement the provisions of Chapters 334 and 405 of the 2005 Acts the Virginia General Assembly. Although the Department of Juvenile Justice has done planning for transition services as part of its parole planning for many years, the General Assembly has indicated that the process should be uniform from locality to locality, and, therefore, should be established in regulation. As DJJ’s policies have no controlling authority outside the Department, the most realistic alternative (to plan and provide for mental health transition services “in accordance with written policies and procedures of the Department”) is not a viable alternative to the regulation.

**Regulatory flexibility analysis**

*Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

The agency has developed the regulations in collaboration with a stakeholder group, which included representatives of providers, community organizations, and state agencies with an interest in transitioning children with mental health issues from a secure facility back into the community. This group considered various alternatives for meeting the requirements of the legislation and attempted to develop the regulatory provisions that can be easily understood and implemented. The Department intends to continue to work in collaboration with the stakeholders.

**Public comment**

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

The Notice of Intended Regulatory Action (NOIRA) was filed with the Virginia Register on September 15, 2005. A public comment period ran from November 28, 2005, through December 30, 2005. No public comments were received.

Commenter	Comment	Agency response



**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The statute mandating the regulation specifies that appropriate family members, caregivers, or other persons shall be invited to participate in the development of the person’s plan. The regulation should, therefore, strengthen parents’ involvement in the process of transitioning their incarcerated child back into the community and in the plan for treatment.

**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:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
	10	Definitions	Provides the definitions for any unique words and terms used in this proposed chapter.
	20	Purpose and Goal	States the purpose and goals of the regulation.
	30	Criteria for Mental Health Services Transition Planning	Provides the criteria for which a juvenile will qualify for mental health services transition planning.
	40	Confidentiality	Ensures that all activities conducted in accordance with this proposed chapter comply with all relevant state and federal laws and regulations concerning confidentiality.
	50	Interagency Memorandum of Understanding	Requires each court service unit (CSU) and postdispositional detention program enter into a Memorandum of Understanding (MOU) with the public agencies that are required to participate in

			the Community Policy and Management Team (CPMT) for the purposes of establishing a framework for creating a mental health transition plan.
	60	Content of Agreements	Provides the criteria drafting the Memorandum of Understanding.
	70	Timing and Purpose of Facility Case Review	Establishes the timeframes for the juvenile correctional center or postdispositional detention program to evaluate a juvenile prior to release to determine whether or not the juvenile meets the criteria for a mental health transition plan.
	80	Participants in Facility Case Review	States which parties shall be required to participate in the facility review. The parties to the review may participate via telephone or video-conference.
	90	Distribution and Documentation of Facility Case Review	Provides that the results of the facility case review must be distributed to the parties who participated in the meeting.
	100	Enhanced Mental Health Transition Planning	Provides the timeframes for providing notice to the responsible agencies identified in the Memorandum of Understanding of a juvenile's anticipated release for the purposes of developing the juvenile's mental health services transition plan.
	110	Referral to Family Assessment and Planning Team	If the juvenile's case is referred to the local Family Assessment and Planning Team (FAPT) established under the Comprehensive Services Act, the meeting will be conducted in accordance with the policies of the FAPT.
	120	Development of the Plan if Other than FAPT	For a case not referred to the local FAPT, section 120 lists the persons who will be required to participate in the development of the mental health services transition plan.
	130	Content of the Plan	Provides the requirements and contents for developing the mental health transition services plan.
	140	Time Frames for Completing the Plan and Related Tasks	Provides the timeframes for completing the referrals for services and application and enrollment for financial and other assistance identified in the mental health transition services plan.

	150	Reports to Probation or Parole Officer	Provides the timeframes for on-going progress reports when participation in one or more treatment services identified in the mental health transition services plan is mandated in accordance with a juvenile's terms of probation or parole supervision.
	160	Periodic Review of Mental Health Transition Plan	Requires the parties to the mental health transition services plan to perform periodic reviews concerning the juvenile's progress and continued applicability of the plan.
	170	Final Review Prior to Termination of Probation or Parole	Provides the circumstances for determining if any of the services provided for in the mental health transition services plan should continue beyond the juvenile's release from probation or parole supervision.