

PROPOSED

6 VAC 35 180

**REGULATIONS GOVERNING MENTAL HEALTH SERVICES TRANSITION
PLANS FOR INCARCERATED JUVENILES.
(PROPOSED REGULATION)**

BOARD OF JUVENILE JUSTICE

Title of Regulation: 6 VAC 35-180-10 et seq. Regulations Governing Mental Health Services Transition Plans For Incarcerated Juveniles.

Statutory Authority: §§ 16.1-293.1 and 66-10 of the Code of Virginia.

Effective Date: (TBD)

CHAPTER 180

**REGULATIONS GOVERNING MENTAL HEALTH SERVICES TRANSITION
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PART I

GENERAL PROVISIONS

6 VAC 35-180-10. Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Direct discharge” means the release of a juvenile from commitment to the Department of Juvenile Justice with no supervision conditions imposed upon the juvenile by the Department or a court.

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“Facility” refers to a juvenile correctional center operated by the Department of Juvenile Justice, an alternative placement for juveniles under the direct custody of the Department of Juvenile Justice, or a post-dispositional detention program serving juveniles sentenced under §16.1.284.1 of the Code of Virginia.

“Identified as having a recognized mental health, substance abuse, or other therapeutic treatment need” means a juvenile who meets established criteria based on objective assessment or diagnosis by a qualified mental health professional, as provided for in this regulation.

“Incarceration” means confinement in a post-dispositional detention program pursuant to Virginia Code § [16.1-284.1](#) or in a juvenile correctional center or alternative placement as a result of a commitment to the Department of Juvenile Justice pursuant to subdivision A 14 of § [16.1-278.8](#) or § [16.1-285.1](#).

“Juvenile” means an individual who was committed to the Department of Juvenile Justice pursuant to § [16.1-285.1](#) or to subdivision A 14 of § [16.1-278.8](#) of the Code of Virginia or placed in a post-dispositional detention program pursuant to subsection B of § [16.1-284.1](#) of the Code. For purposes of this regulation, the term includes wards being released from incarceration that are 18 years old or older.

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“Mental Health Initiative Funds” refers to funds appropriated by the General Assembly to the Department of Mental Health, Mental Retardation and Substance Abuse Services for mental health and substance abuse services for children and adolescents with serious emotional disturbances who are not mandated for services under the Comprehensive Services Act.

“Mental health services transition planning” means the enhanced planning process described by sections 70 through 160 of this chapter to ensure the provision of mental health, substance abuse, or other therapeutic treatment services upon a juvenile’s release from incarceration. This planning process is considered “enhanced” because it is more comprehensive than the standard process for developing a plan for probation, parole, or aftercare. This process shall result in a mental health transition services plan.

6 VAC 35-180-20. Purpose and Goal

A. This chapter 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

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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.

B. This chapter is intended to be applied in conjunction with other relevant regulations of agencies of the Commonwealth (e.g., 6 VAC 35-150, Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts; 6 VAC 35-140, Standards for Juvenile Residential Facilities, and 22 VAC 42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities; 8 VAC 20-660-10 et seq., Regulations Governing the Re-enrollment of Students Committed to the Department of Juvenile Justice).

6 VAC 35-180-30. Criteria for Mental Health Services Transition Planning

A juvenile will qualify for mental health services transition planning when one of the following criteria is met:

A. A qualified mental health professional determines that the juvenile has a current diagnosis for a mental illness that is likely to result in significant impairment in the juvenile's functioning in the community, including, but not limited to, the following: psychotic disorders, major affective disorders, substance use disorders, and post-traumatic stress disorder.

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B. The juvenile is currently receiving medication treatment for a mental illness as described in section A. above, and the provider has indicated a treatment necessity to continue such medication upon discharge.

6 VAC 35-180-40. Confidentiality

For all activities conducted in accordance with this chapter, confidential information shall be handled in accordance with the Health Insurance Portability and Privacy Act (HIPAA), federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2), and any other relevant state or federal law or regulation addressing sharing of confidential information.

PART II

AGREEMENTS AMONG AGENCIES AND SERVICE PROVIDERS

6 VAC 35-180-50. Interagency Memorandum of Understanding

Each court service unit (CSU) and post-dispositional detention program shall 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 §2.2-5205, for each jurisdiction covered by the CSU or post-dispositional detention program. The MOU shall specify the parties' commitment to participate in the

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planning process established in this chapter and in §16.1-293.1.B. Other public or private agencies may be party to these agreements as appropriate.

6 VAC 35-180-60. Content of Agreements

The Memorandum of Understanding shall identify:

- A. The substance abuse, mental health, or other therapeutic treatment and case management services that the agencies will make available for juveniles being released from incarceration;
- B. If, and with what restrictions, the Family Assessment and Planning Teams (FAPT), as established by §2.2-5207, shall be responsible for the development and implementation of the mental health transition plan as described in 6 VAC 35-180-100 or how the mental health transition planning process will take place when the FAPT will not serve as the responsible entity;
- C. The process and parties responsible for making the necessary referrals specified in the plan and for assisting the juvenile and the juvenile's family with the process of applying for services identified in the plan;
- D. A timeline for implementation of services upon the juvenile's release from incarceration;
- E. The sources of funding that may be utilized to provide the services;

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F. 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; and

G. Methods for handling confidential information in accordance with the Health Insurance Portability and Privacy Act (HIPAA), federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2), and any other relevant state or federal law or regulation addressing sharing of confidential information.

PART III

FACILITY REVIEW OF JUVENILE'S CASE

6 VAC 35-180-70. Timing and Purpose of Facility Case Review

A. At least 90 days before a juvenile's scheduled release from a juvenile correctional center or post-dispositional detention program, designated staff at the facility where the juvenile resides shall review the juvenile's case, including the juvenile's individualized service plan, to determine if the juvenile qualifies for the enhanced mental health services transition planning based on the criteria set forth in section 30 of this chapter.

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- B. In addition to an assessment of the criteria set forth in section 30, the facility case review shall address the continuing needs of the juvenile, family involvement, the juvenile's progress towards discharge, and the anticipated release date.
- C. The time frames designated in section A. above shall be waived in the event that a judicial order for release of a juvenile sentenced under § 16.1-285.1 (serious offender incarcerated in a juvenile correctional center) or § 16.1-284.1 (placement in a post-dispositional detention program) makes such time frames impracticable. In such cases, review shall be completed as soon as possible, but no later than 30 days after the juvenile's release.

6 VAC 35-180-80. Participants in Facility Case Review

- A. The following parties shall participate (either in person or via telephone or video-conference) in the facility review unless clearly inappropriate (as determined by the professional members of the facility review team) and documented in the case file:
1. The juvenile;
 2. The juvenile's family, legal guardian, or legally authorized representative;
 3. The juvenile's probation or parole officer, or a representative of the Department of Corrections (adult probation), if applicable;
 4. Facility staff knowledgeable about the juvenile and his/her mental health needs;
- and

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5. Other community agency staff, if appropriate (e.g., DSS personnel for a youth to be released to DSS custody).

6 VAC 35-180-90. Distribution and Documentation of Facility Case Review

The results of the facility case review, including any recommendations for treatment or other services, shall be distributed to the parties who participated in the meeting. The distribution shall be documented in the juvenile's record.

PART IV

ENHANCED TRANSITION PLANNING

Section 1

Developing the Transition Plan

6 VAC 35-180-100. Enhanced Mental Health Transition Planning

- A. If the juvenile meets the criteria set out in 6 VAC 35-180-30, the probation or parole officer present at the facility case review meeting shall (i) notify the responsible agency or agencies identified in the Memorandum of Understanding established pursuant to 6 VAC 35-180-50, and (ii) schedule a meeting, to be conducted no later than 30 days prior to the juvenile's anticipated release, to develop the juvenile's mental health services transition plan.

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B. However, when a juvenile (i) will receive a direct discharge from the Department upon attaining the age of 21 and will not be subject to adult parole supervision, or (ii) will be released from a post-dispositional program at age 18 or older without having been placed on probation, the meeting shall be scheduled and proceed only with the juvenile's documented consent and, as required by law, the consent of his/her parent and/or legal guardian.

C. The time frames designated in section A. above shall be waived in the event that a judicial order for release of a juvenile sentenced under § 16.1-285.1 (serious offender incarcerated in a juvenile correctional center) or § 16.1-284.1 (placement in a post-dispositional detention program) makes such time frames impracticable. In such cases, review shall be completed as soon as possible, but no later than 30 days after the juvenile's release.

6 VAC 35-180-110. Referral to Family Assessment and Planning Team (FAPT)

If the juvenile's case is referred to the local Family Assessment and Planning Team established under the Comprehensive Services Act, the meeting will be conducted in accordance with the policies of the Family Planning and Assessment Team.

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6 VAC 35-180-120. Development of the Plan if Other than FAPT

A. If the juvenile's case is not referred to the local Family Assessment and Planning

Team, the following persons shall participate in the development of the mental health services transition plan:

1. The juvenile;
2. The juvenile's parent, legal guardian, or legal custodian unless clearly inappropriate (as determined by the professional members of the review team) and documented in the case file;
3. Unless the juvenile will not be receiving any post-release supervision, the juvenile's probation or parole officer or a representative of the Department of Corrections for those offenders determinately committed under Virginia Code §16.1-285.1 who will be released to adult supervision; and
4. A representative of one or more of the agencies participating in the Memorandum of Understanding established by 6 VAC 35-180-50, as applicable and appropriate.

B. The following persons may be invited to participate in the meeting to develop the juvenile's mental health services transition plan:

1. Other family members or caregivers who are judged to be critical to the person's successful completion of treatment services; and
2. Any other person, agency, or institution having a legitimate interest in the development of the plan for the purpose of providing treatment or services for the juvenile who is the subject of the plan.

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C. If the persons invited pursuant to paragraph B. are unable to participate in the planning meeting as described in paragraph D., they may provide information prior to the meeting.

D. All participants in the development of the plan shall be concurrently available to each other during the transition services planning meeting, either in person, or by telephone conference call, or by video-conference.

Section 2

Content of the Plan

6 VAC 35-180-130. Content of the Plan

A. The plan shall specify:

1. The person(s) assigned case management responsibilities for the development and implementation of the mental health transition services plan. Case management includes making all referrals and coordination of all aspects of the plan;
2. The kinds of substance abuse, mental health, or other therapeutic treatment that will be made available to the juvenile;
3. The provider or providers who will be responsible for delivering each service;
4. The projected time frame over which each service will be provided;
5. The proposed sources through which the services will be funded (Funding sources may include, but are not limited to, Medicaid, Comprehensive Services Act,

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- Family Access to Medical Insurance Security, private insurance, and other federal, state, or local funds such as, Promoting Safe & Stable Families funds, federal mental health and substance abuse block grant funds, Virginia Juvenile Community Crime Control Act funds, DJJ Transitional Services funds, and other state general funds available to the Community Service Boards, the Department of Juvenile Justice, or other agencies participating in the planning process); and
6. Any applications for services, insurance, and other financial assistance that must be completed in order for the juvenile to obtain the identified services. Such applications include (i) those that may be completed and submitted before the juvenile's release from incarceration; (ii) those applications that may be completed before, but may not be submitted until after, the juvenile is released from incarceration; and (iii) those applications that may not be initiated until after the juvenile's release from incarceration. The plan shall assign responsibility for assisting the juvenile or the juvenile's parents or guardians in completing such applications.
- B. To the extent possible, all issues pertaining to the implementation of the plan shall be resolved prior to the juvenile's release.

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Section 3

Completion and Implementation of the Plan

6 VAC 35-180-140. Time Frames for Completing the Plan and Related Tasks

- A. To facilitate the process of referrals for services and application and enrollment for financial and other assistance, the written plan shall be completed at least 10 days prior to the juvenile's release from incarceration, unless such time frame is rendered impracticable by a judicial order to release the juvenile from incarceration. In such instances, the plan shall be completed as soon as possible, but in no event later than 30 days following the date of the court order for release.
- B. All referrals for services and all applications for financial and other assistance shall be completed within sufficient time frames to ensure continuity of necessary treatment and implementation of recommended services upon the juvenile's release.
- C. All participants in the development of the plan shall sign the plan, indicating their commitment to fulfill the responsibilities assigned to them.

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PART V

REVIEW OF THE PLAN

6 VAC 35-180-150. Reports to Probation or Parole Officer

When it is a condition of probation or parole that the juvenile must participate in one or more treatment services provided in accordance with this chapter, the person or agency responsible for providing such clinical services shall report to the probation or parole officer on the juvenile's progress toward meeting the plan's objectives at least monthly as long as the juvenile remains under probation or parole supervision.

1. When the juvenile's treatment need has been met, the service may be discontinued; and the probation or parole officer shall be notified that the juvenile has completed the treatment.
2. When the juvenile discontinues participation in the treatment or is suspended or terminated from the program, the probation or parole officer shall be notified as soon as practicable of the juvenile's changed status.

6 VAC 35-180-160. Periodic Review of Mental Health Transition Plan

- A. Every 90 days, the parties to the plan shall review and assess the juvenile's progress and continued applicability of the plan.
- B. Any changes to the plan shall be made in writing. All participants shall sign and receive copies of the revised plan.

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6 VAC 35-180-170. Final Review Prior to Termination of Probation or Parole

- A. If the juvenile has been placed on probation or parole, the individuals and agencies participating in the implementation of the mental health transition plan shall convene no later than 30 days before the juvenile's anticipated release from probation or parole supervision to determine if any of the services provided for in the plan should continue beyond the juvenile's release from probation or parole supervision.
- B. If the determination is made that one or more services should continue, an updated plan shall be developed for the juvenile, including identification of the case manager to be responsible for the plan from that point forward. All participants shall sign and receive a copy of the updated plan.
- C. If treatment services are continued beyond the juvenile's release from probation or parole, the service provider and case manager shall have no further duty to report to the probation or parole officer on the juvenile's progress in treatment.