



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department (Board) of Juvenile Justice
VAC Chapter Number:	6 VAC 35-20
Regulation Title:	REGULATIONS GOVERNING THE MONITORING, APPROVAL, AND CERTIFICATION PROCESS OF JUVENILE JUSTICE PROGRAMS.
Action Title:	Update and Revise the Regulation
Date:	Enter Date

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

This regulation prescribes how, in accordance with Code of Virginia §§ 16.1-234, 16.1-309.1, 16.1-309.9 B, 16.1-309.10, 16.1-349, and 66-10, the Board and Department of Juvenile Justice will monitor and approve residential and nonresidential programs that are part of the Commonwealth's juvenile justice system. The amendments reflect changes in practice and organizational structure since the current regulation was adopted, clarify the process for monitoring and auditing programs for compliance with board standards, and clarify the certification actions that the board may take in various situations. The proposed regulation would have stricken many "procedural" provisions in the regulation; a number of these procedural provisions are re-introduced in the final regulation to ensure an orderly and fair monitoring and certification process.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The Board of Juvenile Justice adopted REGULATIONS GOVERNING THE MONITORING, APPROVAL, AND CERTIFICATION OF JUVENILE JUSTICE PROGRAMS (6 VAC 35-20), as amended, at its April 9, 2003 regularly scheduled meeting.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The general authority of the Board of Juvenile Justice to promulgate regulations is provided in Code of Virginia § 66-10. In addition, Code of Virginia §§ 16.1-234, 16.1-349, 16.1-309.1, 16.1-309.9 and 16.1-309.10 give the Board and the Department specific authority to monitor and approve programs in Virginia's juvenile justice system.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulation is needed to provide an appropriate process by which, in accordance with Code of Virginia §§ 66-10, 16.1-234, 16.1-349, 16.1-309.1, 16.1-309.9.B, and 16.1-309.10, the Board and the Department of Juvenile Justice will monitor and approve residential and nonresidential programs that are part of the Commonwealth's juvenile justice system. Careful oversight of these programs is necessary to ensure that they operate to protect the safety of the Commonwealth's citizens and to protect the life, health and safety of juveniles served by both residential and non-residential programs. Changes from the current regulation are needed because many procedural steps required in the regulation are no longer practical or in some cases even possible due to organizational changes in the Department of Juvenile Justice. In addition, the amended

regulation provides clearer guidance as to the certification options available to the Board in various circumstances.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The regulation is needed to provide an orderly and equitable process by which the Board will exercise its regulatory oversight of juvenile justice programs and facilities. This procedural regulation establishes how the Board will measure compliance with its regulations and standards, establishes the thresholds for various regulatory actions that the Board might take, and sets minimum requirements for the Department, as the Board's regulatory agent, to monitor programs and report its findings. A number of changes are proposed to ensure that certification and enforcement actions taken by the Board are consistent over time and across programs. The regulation also designates, from among other regulations promulgated by the Board, a number of standards that are designated as "mandatory" and that must be complied with at all times, and provides for monitoring on conditions that affect the life, health and safety of juveniles and staff members in juvenile residential facilities.

While the **proposed** regulation dramatically simplified the process for scheduling, conducting, reviewing and approving certification audits in preparation for a final report to the Board, allowing greater flexibility to accommodate organizational changes in the Department, the **final** amendments restore certain key provisions to ensure a fair and equitable process. A major change is that the proposed regulation outlines the certification options that are available to the Board at various thresholds of compliance with promulgated standards. The regulation also designates a number of "mandatory" standards from other Board regulations. These must be complied with at all times in order for a program to maintain its certification status. The final regulation continues to direct the Department to monitor programs for violations that might pose a threat to the life, health or safety of juveniles or staff of juvenile residential facilities, and gives the Department broad discretion in identifying such violations.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. There are no significant advantages or disadvantages to the general public in adopting the final regulation.
2. The current regulation technically cannot be complied with, inasmuch as it requires action by incumbents in positions that have been eliminated since the adoption of the current regulation. One advantage to the Department and the Board of Juvenile Justice in adopting the final regulation will be that the regulation is consistent with current organizational structures.
3. An advantage to the Department, the Board, and the regulated programs is that the final regulation clearly describes the certification actions available to the Board in various circumstances, thus ensuring consistency over time and across geographical regions. In terms of cost, there are no significant advantages or disadvantages in adopting the final regulation over the current regulation; in either case the cost to the locality of receiving monitoring and auditing visits is incidental, and the cost to the Department is about the same under either the current or the final regulation.

The regulation will affect the approximately 450 state and local programs that are subject to standards issued by the State Board of Juvenile Justice. This total includes 23 state operated court service units; 3 locally operated court service units; eight state operated juvenile correctional centers; one state-operated juvenile detention facility; 15 locally- or regionally-operated juvenile detention facilities; approximately twelve other residential programs including halfway houses, group homes and less secure detention facilities; 27 offices on youth (which will be subject to certification approval only if they receive state funding); and approximately 300 non-residential programs, mostly operating under the Virginia Juvenile Community Crime Control Act.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The table at 6 VAC35-20-100 has been replaced by a narrative explanation of the certification actions that the Board may take under various circumstances.

Additional mandatory standards are designated at 6 VAC 35-20-150 per public comments received.

Provision is made at 6 VAC 35-20-93 for waiver of nonmandatory standards pending Board action on an appeal by a program. The Board added a provision at its April 9 meeting clarifying that the Board may take action on a waiver at its next meeting after receiving notice of the waiver.

The time frame for filing an appeal of an audit finding at 6 VAC -35-20-94 is changed from 30 days to 15 days, to be consistent with the timeframe established at 20-90.B for developing a plan of action to address noncompliance findings.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

1. Detention home administrators raised the issue of 100% compliance for mandatory standards, observing that it is very hard to attain this level when dealing with human beings and unpredictable equipment. They asked what are the impacts of “certification actions available,” and whether life, health safety standards are mandatory, too.

Agency response: The requirement to maintain 100% compliance is not new. In the current regulation, "Life, health, safety standards (LHS)" means those standards related to the life, health or safety of the youth and staff in residential programs as defined by the board that must be maintained in 100% compliance at all times,” and "Mandatory standards" means those standards of performance for nonresidential programs as defined by the board which must be maintained in 100% compliance at all times.” Despite this stated requirement, the current regulation is not clear as to what certification action the Board may take when a program is NOT in 100% compliance with life, health, safety standards or mandatory standards. The final regulation spells out the certification options available to the board, and in fact provides for PROBATIONARY status for one or more life, health, safety violations, to correct the situation. This approach takes noncompliance seriously, but is not the same as decertifying a program for noncompliance. Further, in an earlier round of public comments, the Action Alliance for Virginia’s Children and Youth, The Arc of Virginia, Andrew K. Bock, Jr., Esquire, Mental Health Association of Virginia, National Mental Health Association, Professor Robert E. Shepherd, Jr., and Professor Adrienne E. Volenik of the Mental Disabilities Law Clinic at the University of Richmond all recommended that no less than 100% compliance on LHS (Life, health and safety standards) should be tolerated. The final regulation does clarify that the Board will place a program on probation when there is an unresolved life, health or safety violation.

2. One commenter observed that fire drill training within 7 days of employment can USUALLY be accomplished, but if there are circumstances beyond anyone’s control, such as the individual’s illness, then the standard cannot be met.

Agency response: If noncompliance for any reason (including reasons beyond the control of the facility) results in a threat to life, health or safety of residents or staff, it should be reported to the Board as such. The Board should determine if, under the circumstances, the program is taking appropriate corrective action. It should be noted that, as a matter of practice, certification personnel determine compliance with the cited standard by looking at the number of days the employee was actually AT WORK, so the scenario objected to should not be a problem.

3. The Virginia Council on Juvenile Detention noted that 6 VAC 42-10-710 G. includes language that says “if applicable,” but psychiatric information may not be available without parental consent. It may take longer to get all required permissions than is available in a short term placement such as detention.

Agency response: The requirement objected to is established by another regulation and is merely designated as “mandatory” by the final regulation. Therefore the requirement will still be in effect even if deleted from the final regulation. In practice, if the detention home can document attempts to obtain the required information, they will have met the standard, even if unsuccessful in obtaining the information. Also, it should be noted that detention homes are not subject to 6 VAC 42-10-710 G unless they operate a post-dispositional program, which provides a sufficiently long time frame to obtain the required information.

4. One comment was made regarding monitoring visits. Historically, such visits were not reported to the board unless there was a serious problem. The purpose should be to keep the board informed of important events requiring their attention, not just trying to impress them with how many good deeds we do.

Agency response: the final regulation amends 6 VAC 35-20-63 to provide that the department report to the board any significant deficiencies found through a monitoring visit or through other means when a program has failed to take needed corrective action.

5. The Virginia Council on Juvenile Detention thought changing the language of an audit from a review to an investigation is noteworthy. We have already seen some significant and disturbing changes in the certification “team” makeup and process.

Agency response: The point is well taken; the term “investigation” connotes an adversarial relationship not intended in the certification process. Consequently, term “certification audit” is defined in the final regulation as an on-site VISIT by designated personnel to assess a program's compliance with applicable board standards and policies, the results of which are reported to the board for certification action. As to the reference made to changes in the certification team makeup and process, those changes were made to ensure greater consistency in audits and greater fairness for all programs. Several detention home superintendents have complimented the changes as accomplishing these objectives.

6. The Virginia Council on Juvenile Detention advised that they were somewhat at a loss in formulating responses and comments as they did not have any representation in the drafting of these revisions and were uncertain how to interpret the meanings of some of the changes. They were unable to attend the public hearing September 11 as this was our Council meeting date.

Agency response: The agency did not invite regulated entities into discussions about the contemplated changes in the regulation, but rather invited comments from interested parties, particularly via a memorandum dated March 22, 2000. The Notice of Intended Regulatory Action (NOIRA) for these Certification Regulations was published in the Virginia Register on 3/27/2000. Comments were received from a number of interested parties, including the Action Alliance for Virginia's Children and Youth, The Arc of Virginia, Andrew K. Bock, Jr., Esquire, Mental Health Association of Virginia, National Mental Health Association, Professor Robert E. Shepherd, Jr., and Professor Adrienne E. Volenik of the Mental Disabilities Law Clinic at the University of Richmond. A protracted executive branch review involving the Department of Planning and Budget and the Secretary of Public Safety resulted in multiple changes to the draft

originally circulated with the NOIRA. Further opportunities for public comment were extended via memorandum sent on August 14, 2002.

7. The Virginia Council on Juvenile Detention noted some instances where language in regulation is not consistent with the Virginia Code, such as 22 VAC 42-10-700B and 22 VAC 42-10- 710 G speaking to suspended commitments.

Agency response: The regulations cited in the comment are part of a separate regulation, parts of which are incorporated into these Certification Regulations by reference. When 22 VAC 42-10 (Standards for the Interdepartmental Regulation of Residential Facilities for Children) was adopted, it was accurate. Since adoption of that regulation, the Code of Virginia has been changed. For a number of reasons, there is little likelihood that the interdepartmental regulation will be amended to conform to the Code, but it is not appropriate to attempt to resolve inconsistencies between statute and another regulation in these Certification Regulations. Instead, the Depart and Board propose to resolve any inconsistencies in the Board's Standards for Juvenile Residential Facilities (6 VAC 35-140) which are currently being revised pursuant to the Administrative Process Act.

8. Some comments were received to the effect that the term "Decertified" is defined too vaguely: what are "acceptable levels" of compliance? A fuller definition was requested.

Agency response: The final regulation omits the phrase "acceptable levels" but does not go to the level of definition requested by the commenter. Instead, the table at 6 VAC 35-20-100 clearly describes what level of compliance is required for the various certification actions available to the board.

9. Some comments suggested that "life, health and safety" violations be included in the definition of "deficiency or non-compliance." Related comments suggested strengthening the definition of, and penalties for violating, life, health and safety standards.

Agency response: The final regulation does not enumerate "life, health and safety standards" as such. Rather, the regulation authorizes certification personnel to cite violations of any policy or standard when the result presents a threat to the life, health or safety of residents or staff. Because such situations are dealt with separately, and the consequences of violations are spelled out in the table at 6 VAC 35-20-100, they are not included in the definition of "deficiency or non-compliance."

10. Some comments suggested that the regulation should more clearly require, rather than simply permit, Department intervention to correct life, health and safety violations.

Agency response: the final regulation amends 6 VAC 35-20-65 to require that the Department take immediate action to correct life, health or safety violations if the program has not already done so.

11. On site audit procedures (6 VAC 35-20-80). The proposed regulation repealed this section in favor of creating Department procedures for auditing. Comments were received suggesting that certain minimal audit procedures ought to be included in these regulations, since an on site audit process as the best way to gather information and make an assessment concerning quality of life

issues. Without specification in these regulations, the Department would be free to do desk audits oriented toward procedural, rather than substantive matters.

Agency response: These and certain other procedures are restored in the final regulation.

12. Some comments suggested that a limit be placed on the amount of time a program could remain in probationary status before being decertified.

Agency response: While the agency agrees that probationary status should not be continued indefinitely, the final regulation leaves the matter to the discretion of the board.

13. Some comments expressed confusion about what is meant by “systemic deficiency” and asked that examples be included.

Agency response: examples are given in the final regulation’s definition of “systemic deficiency.”

14. Some comments objected that non-residential programs are not specifically included in 6 VAC 35-20-75. This section should clearly state that the findings will be reported to the Board.

Agency response: The Board will not certify individual non-residential programs other than Court Service Units and Offices on Youth that are receiving state funds. The results of monitoring visits to non-residential programs that are part of VJCCCA plans will be reported to the Board, and the Board may take this information into consideration in reviewing and approving local VJCCCA plans, but will not issue “certification” to individual non-residential programs. There are simply too many, often very small, non-residential programs to provide a formal certification process for each one.

15. Some comments for restoring the provisions governing on-site audit procedures.

Agency response: The final regulation restores some of the provisions governing on-site certification audits. Some of the details are left to administrative discretion.

16. Some comments suggested that 6 VAC 35-20-120 should mandate, rather than just permit, one or more of the actions specified when a program is decertified or denied certification.

Agency response: The final regulation does not require that any specific action be taken, but rather puts programs on notice as to the kinds of actions that are possible. In fact, there may actually be additional actions that could be taken, depending on the circumstances. For example, if the program operates under a contract with the Department, the contract could be terminated. If the Department places children in the program, the Director could order such placements stopped and withdraw any department-placed children from the program. Because it is impossible to foresee the specific circumstances that might cause a program to be decertified, the agency is reluctant to specify the actions that must be taken when a program is in fact decertified.

17. Some comments suggested that the board develop its own “life, health and safety standards” rather than refer to standards established by the Standards for the Interdepartmental Regulation of Residential Facilities for Children or even the Board’s own standards for Juvenile Residential Facilities.

Agency response: The final regulation does not use the term “life, health and safety standard.” Instead, the regulation refers to life health and safety VIOLATIONS, which can result from the violation of any number of standards. Instead of life, health safety standards, the final regulation establishes “mandatory” standards. Mandatory standards may or may not address life, health and safety issues, but nevertheless address issues that are so fundamental as to warrant a requirement of 100% compliance at all times. These certification regulations, being largely procedural in nature, are not the place to establish substantive regulations. The board is in the process of revising its substantive regulations for juvenile residential facilities, and will consider designating certain of those standards as “mandatory.”

18. Some comments suggested that 6 VAC 35-140-300. Showers be made mandatory, as the opportunity to shower daily is crucial to health.

Agency response: While daily showers are a desirable goal, the agency does not believe that failure to meet this standard 100% of the time necessarily poses an unacceptable health risk. The American Correctional Association does not include daily showers among its mandatory standards.

19. Some comments suggested that 6VAC35-140-530. Outdoor recreation, be made a life, health safety standard.

Agency response: While outdoor exercise is a desirable goal, the agency does not believe that failure to meet this standard 100% of the time poses an unacceptable health risk. The American Correctional Association does not include outdoor recreation among its mandatory standards.

20. Some comments suggested that 6 VAC 35-140-660: restricting the use of tear gas, mace, etc. should be made a life, health safety standard.

Agency response: although the American Correctional Association does not make any of its standards regarding chemical agents mandatory, the agency takes the position that any violation of this standard presents a serious situation. The final regulation includes 6 VAC 35-140-660 as a mandatory standard.

21. Some comments suggested that 6 VAC 35-140-680 be made a life, health safety standard. The standard sets training requirements for staff who are authorized to use mechanical restraints.

Agency response: The American Correctional Association has no cognate standard for 6 VAC 35-140-680. The agency believes that even a single violation of the provisions of this standard presents a serious situation. The final regulation includes 6 VAC 35-140-680 as a mandatory standard.

22. Some comments suggested that 6VAC35-140-690. Monitoring restrained residents, be made a life, health safety standard.

Agency response: The American Correctional Association has no cognate standard for 6 VAC 35-140-690. The agency believes that even a single violation of the standard presents a potentially serious situation. The final regulation includes 6 VAC 35-140-690 as a mandatory standard.

23. Some comments suggested that 6VAC35-140-700. Consultation with mental health professional when a juvenile is mechanically restrained for more than two hours, be made a life, health safety standard.

Agency response: Because 6 VAC 35-140-700 is premised upon local procedures, and because there is no practical way to ascertain whether the determination made pursuant to those procedures is in fact appropriate, it will be impossible to determine whether this standard is met 100% of the time, and so is this is not an appropriate mandatory standard.

24. Some comments suggested that 22 VAC 42-10-740. Staff Supervision of Children: be made a life, health safety standard.

Agency response: The American Correctional Association has no standard establishing staffing ratios or work schedules for child care workers. The agency does not believe that failure to meet the requirements of 22 VAC 42-10-740 100% of the time necessarily constitutes a serious threat to life, health or safety. The standard is not included as mandatory standard.

25. Some comments suggested that 22 VAC 42-10-340. requiring lighting to be sufficient for the activities being performed should be added as a life, health safety standard.

Agency response: It is difficult to clearly establish what level of lighting is “sufficient” under the circumstances. Consequently, it is not clear that a single violation of this standard presents a serious situation. ACA 3-JTS-2D-01 has some similar requirements but is not mandatory. Therefore, the standard is not included as a mandatory standard.

26. Some comments suggested that Interdepartmental standards (or parts of standards) 22 VAC 42-10-380. Sleeping Areas, 22 VAC 42-10-470. Buildings and Grounds and 22 VAC 42-10-480. Equipment and Furnishings should be included as life, health and safety standards.

Agency response: the cited standards include multiple criteria, including, for example, cleanliness. It is not apparent that failure to meet these standards 100% of the time would necessarily present a serious situation. The suggested standards are not included as mandatory standards.

27. Some comments suggested adding 22 VAC 42-10-730. Nutrition, paragraph E, as a life, health safety standard, since many juveniles and other people cannot go for long periods of time without food without becoming weak, dizzy, or sick.

Agency response: While this would certainly be a concern if there were a pattern of abuse, it is not clear that failure to meet this standard 100% of the time necessarily presents a serious situation. 22 VAC 42-10-730.E. is more specific than any standard adopted by the American Correctional Association. ACA has no mandatory requirements similar to that of 22 VAC 42-10-730.E. The standard is not included as a mandatory standard.

28. Some comments suggested making mandatory the following provisions of 22 VAC 42-10-800. : 12. Prohibiting the administration of laxatives, enemas, or emetics, except as ordered by a licensed physician or poison control center for a legitimate medical purpose and documented in the resident's record; 13. Prohibiting deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and 14 prohibiting limitation on contacts and visits with advocate employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or the Department for the Rights of Virginians with Disabilities.

Agency response: Any violation of the cited prohibition presents a serious situation. Programs should be free of these prohibited activities 100% of the time. The suggested standard is included as a mandatory standard.

29. Some comments suggested that 22 VAC 42-10-950. Emergency Reports should be added as a life, health safety standard.

Agency response: Unlike other standards that require a substantive response to emergency situations (e.g., 22 VAC 42-10-700), the cited standard as written primarily provides for notification and documentation of the incident and the response taken pursuant to those other standards. While notification and documentation are important for monitoring and management purposes, the agency sees no compelling reason to make 22 VAC 42-10-950 a mandatory standard.

30. Some comments suggested adding to life health and safety standards sections C and D of 22 VAC 42-10-960. Suspected Child Abuse or Neglect.

Agency response: When child abuse or neglect is suspected, the reporting requirements of 22 VAC 42-10-960 should always be followed. It is inconceivable that there would be justification not to comply with these requirements. The recommended standard is included in the final regulation as a mandatory standard.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the

proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

6 VAC 35-20-10. Definitions. The final regulation reinstates several definitions that were deleted in the proposed regulation, including the terms “administrative probation,” “administrative review,” “appeal,” and “program administrator.” These terms are reinstated because substantive provisions in the regulation that were deleted in the proposed regulation are reinstated in the final regulation. In addition, several definitions are modified from the definitions given in the proposed regulation, including “certification audit report,” “certification status,” “certified,” “compliance,” “director,” and “probation.” Most of these changes are for clarification. Finally, a new term is added, “waiver,” having to do with a process established in the final regulation allowing the department to waive compliance with a non-mandatory standard when a program has requested a variance and the board has not yet acted on that request. A definition is added for “unresolved life, health or safety violations.”

6 VAC 35-20-50. A new paragraph C is added regarding audit team members, and a new paragraph E is added authorizing an administrative review audit of central records when a program is part of a larger system.

6 VAC 35-20-60 and 6 VAC 35-20-75. The final regulation clarifies that offices on youth are subject to audit only when they receive state funding.

6 VAC 35-20-63. The final regulation removes the requirement for the Department to report on all monitoring visits, and instead requires that the department report only on significant deficiencies that have not been addressed.

6 VAC 35-20-65 is amended to require that the Department take immediate action to correct life, health or safety violations if the program has not already done so.

6 VAC 35-20-80. The final regulation re-instates requirements for documenting compliance with standards.

6 VAC 35-20-90. The final regulation, in paragraph A, re-instates and clarifies the requirement to provide the audit report to the program administrator. Paragraphs B and C prescribe the process for approving plans of corrective action.

6 VAC 35-20-93. Waivers. This new section added in the final regulation allows the Director to grant a waiver temporarily excusing a program from meeting the requirements of a nonmandatory standard when a program has requested a variance and stated criteria are met. Such a waiver shall be in effect only until such time as the board acts on the variance request. The Board on April 9 added clarification that the Board may take action at its next meeting after receiving notice that a standard had been waived.

6 VAC 35-20-100 is amended in the final regulation. The table depicting various certification actions available to the Board is replaced by a narrative description of the action that can be

taken in each case. In addition, a paragraph is added explaining how the Board will calculate the percentage of standards complied with.

6 VAC 35-20-150 is amended to include 6 VAC 35-140-660 as a mandatory standard. That standard addresses the limits on the use of tear gas, mace, etc. in juvenile residential facilities. Also 6 VAC 35-140-680, which sets training requirements for staff who are authorized to use mechanical restraints, is added as a mandatory standard. Also, 6 VAC 35-140-690 governing the monitoring of restrained juveniles, is added as a mandatory standard.

22 VAC 42-10-800, parts 12, 13 and 14, is added as a mandatory standard.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

These certification regulations are largely procedural, affecting the process by which the state Board of Juvenile Justice exercises oversight of residential and non-residential programs in the Commonwealth's juvenile justice system. As such, this regulation has no impact on the institution of the family or family stability; the regulation will neither strengthen nor erode the authority and rights of parents in the education, nurturing and supervision of their children, will neither encourage nor discourage economic self-sufficiency, self-pride or the assumption of responsibility for oneself, one's spouse or one's children or elderly parents, and will neither support nor erode the marital commitment. The regulation will not increase or decrease disposable family income.