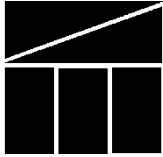


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

6 VAC 35-101 Regulation Governing Juvenile Secure Detention Centers
Department of Juvenile Justice
Town Hall Action/Stage: 5113 / 8371
October 27, 2018

Summary of the Proposed Amendments to Regulation

The Board of Juvenile Justice (Board) proposes to eliminate a gap in its authority with respect to juvenile detention centers (JDCs) that enter into agreements to house residents who are under the custody of a separate entity. Currently, the Regulation Governing Juvenile Secure Detention Centers is silent as to agency oversight over these third-party agreements.

Result of Analysis

Overall, the benefits likely exceed the costs for the proposed changes.

Estimated Economic Impact

All JDCs operating in the Commonwealth are subject to the Department of Juvenile Justice's (DJJ's) detention center¹ and certification² regulations by virtue of their pre-dispositional or post-dispositional programs. But not all juvenile detainees within those facilities are covered. The current Regulation Governing Juvenile Secure Detention Centers does not

¹ Regulation Governing Juvenile Secure Detention Centers:
<https://law.lis.virginia.gov/admincode/title6/agency35/chapter101/>

² Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities:
<https://law.lis.virginia.gov/admincode/title6/agency35/chapter20/>

address contracts between JDCs and separate entities for purposes of detaining juveniles under the separate entity's custody.

There is currently one JDC in Virginia with such a contract with the federal government's Office of Refugee Resettlement (ORR). It has 22 federal migrant children detained. There are also multiple JDCs that have contracts with DJJ to operate detention reentry, community placement, or other similar programs. In FY 2017, nine JDCs operated community placement programs and 13 operated detention reentry programs. Technically, in addition to ORR, DJJ also counts as a separate entity (from the JDCs).

DJJ does currently have express authority to monitor juvenile residential facilities and audit them for compliance with the Regulations Governing Juvenile Secure Detention Centers; however, there is no express statutory or regulatory mechanism giving the DJJ access to the files of residents who are housed in a detention center under these contractual arrangements. Nor is the DJJ authorized to interview these residents to assess the facility's compliance with the regulation without authorization by the outside entity.

Accordingly, the Board proposes to create a new section of the Regulations Governing Juvenile Secure Detention Centers entitled "Contracts between juvenile detention centers and separate entities" that would add language to require JDCs that agree to house residents under the custody of a separate entity to mandate that the programs be subject to the agency's certification regulations. This provision would be included in the contract. In addition, the contract would also authorize DJJ to monitor, audit, and certify these programs using the same criteria as existing pre-dispositional and post-dispositional programs operated in the JDC for state-assigned residents. By mandating that these contractual arrangements include an express provision giving the Department this authority, DJJ's certification unit will have the same level of access to these residents and their files as it has currently for residents in predispositional and postdispositional programs. The proposed new language enables the agency to effectively monitor, audit, and certify programs housing youth under a separate entity's custody.

In practice for the juveniles at JDCs through contracts with DJJ for detention reentry, community placement, or other similar programs, the facilities grant DJJ the same level of access to these residents and their files as it has currently for residents in predispositional and

postdispositional programs. Thus, the proposed amendments would not likely significantly affect these children and programs.

DJJ does not have such access to the migrant children and their files. The proposed amendments may help the agency ensure that the detention centers are supervising and caring for these residents within the parameters of its regulations and in a manner that promotes safety and security. DJJ staff would spend some additional time reviewing files and interviewing residents. The potential benefits likely exceed the small cost.

Businesses and Entities Affected

The proposed amendments affect DJJ, juvenile detention centers, and outside entities that enter into contracts to allow juvenile detention centers to house residents under that outside entity's custody. The federal Office of Refugee Resettlement currently has a written agreement with a juvenile detention centers in Virginia.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment

The proposed amendments are unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property

The proposed amendments would not affect the use and value of private property.

Real Estate Development Costs

The proposed amendments would not affect real estate development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

Costs and Other Effects

The proposed amendments would not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses:

The proposed amendments do not adversely affect businesses.

Localities:

The proposed amendments do not adversely affect localities.

Other Entities:

The proposed amendments do not adversely affect other entities.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.