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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Virginia Department (Board) of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation(s)</b>	6 VAC35-11-50
<b>Regulation title(s)</b>	Public Participation Guidelines
<b>Action title</b>	Fast-Track Amendment of Public Participation Guidelines to
<b>Date this document prepared</b>	June 6, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The proposed regulatory action seeks to amend 6VAC35-11-50 of the department's public participation guidelines to direct the department, when considering regulatory actions, to afford interested parties an opportunity to be accompanied and represented by counsel or other representatives. This change is mandated by Chapter 795 of the 2012 Acts of Assembly.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

"Board" means the Board of Juvenile Justice.

"Department" means the Department of Juvenile Justice unless the context clearly indicates otherwise.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On May 6, 2019, the board voted to approve an amendment to the Public Comment provision of the Public Participation Guidelines, set out in 6VAC35-11-50 for submission through the fast-track regulatory process.

### Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

*As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.*

During the 2012 legislative session, the General Assembly enacted legislation (Chapter 795 of the 2012 Acts of Assembly) that requires nonexempt rulemaking agencies to afford interested parties, pursuant to the agency's Public Participation Guidelines, with the opportunity to be accompanied and represented by counsel or other representatives with respect to the formation of regulations. This is in addition to the current requirements in the Public Participation Guidelines, which direct the department, in considering nonemergency, nonexempt regulatory action, to afford interested parties the opportunity to submit data, views, and arguments to the agency.

Pursuant to the statutory mandate in § 2.2-4007.1 of the Code of Virginia, the department conducted a periodic review of the Public Participation Guidelines in 2018 and discovered this omission. The department asked the board to approve an amendment to 6VAC35-11-50 to incorporate this requirement.

The proposed amendment is mandated by statute and will ensure the department's compliance with the statutory provision. Therefore, the amendment is not expected to be controversial.

### Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

The promulgating entity is the board.

Code of Virginia § 2.2-4007.02 requires state agencies to develop, adopt, and use public participation guidelines in order to ensure the involvement of interested persons in the formation and development of the agency's regulations. Among other requirements, subsection B directs agencies, pursuant to such

guidelines, to provide interested persons with the opportunity to be accompanied and represented by counsel or other representatives.

Additionally, § 66-10 of the Code of Virginia authorizes the board to promulgate such regulations as may be necessary to carry out the provisions of Title 66 and other laws of the Commonwealth.

### Purpose

*Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

This regulatory action is necessary to comply with Chapter 795 of the 2012 Acts of Assembly. The amendment was recommended by the Department of Planning and Budget and will conform the board's Public Participation Guidelines with the Model Guidelines published by the Department of Planning and Budget.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The proposed amendment adds language to Section 50 of the department's Public Participation Guidelines. The proposed amendment requires the department, in formulating regulations, to afford interested parties an opportunity to be accompanied and represented by counsel or other representatives as part of the regulation formation process.

### Issues

*Please identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

There are no disadvantages associated with the regulatory change. The regulation will bring the department into compliance with Code of Virginia § 2.2-4007.02. In addition, it will benefit the general public and the department by ensuring that, with respect to regulatory development, repeal, and amendment, interested persons are able to have adequate representation throughout the regulatory formation process.

### Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no related federal requirements associated with this regulatory action.

### Agencies, Localities, and Other Entities Particularly Affected

*Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

#### Other State Agencies Particularly Affected

No other state agencies are particularly impacted by the proposed amendment. Other state agencies will be impacted only to the extent they are considered interested persons who wish to be represented by counsel or other representatives in the consideration of the regulatory action in question.

#### Localities Particularly Affected

No localities are particularly impacted by the proposed amendment. Localities will be impacted only to the extent they are interested persons who wish to be represented by counsel or other representatives in the consideration of the regulatory action in question.

#### Other Entities Particularly Affected

No other entities are particularly impacted by the proposed amendment. Other entities will be impacted only to the extent they are interested persons who wish to be represented by counsel or other representatives in the consideration of the regulatory action in question.

### Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

#### Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:	The proposed amendment is not expected to have an economic impact on the department.
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<p>a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The department does not expect the proposed amendment to have an economic impact on other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The proposed amendment will not result in any economic benefits for state agencies. The change is designed to ensure that interested persons can receive representation with respect to regulation formation and amendment.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The proposed amendment is not expected to have an economic impact on localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The proposed amendment will not result in any economic benefits for localities. The change is designed to ensure that interested persons can receive representation with respect to regulation formation and amendment.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>The proposed amendment will impact “interested parties” and the counselor or representatives they utilize to provide representation throughout the formulation of regulations.</p>
<p>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. Small business means a business entity, including its affiliates, that:                  a) is independently owned and operated and;                  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The number of interested parties and representatives potentially impacted by this proposal cannot be determined. To the extent that a “business,” meets the definition of “small business and is interested in one of the department’s regulatory actions, that business will also be impacted.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:                  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;                  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;                  c) fees;                  d) purchases of equipment or services; and                  e) time required to comply with the requirements.</p>	<p>The proposal is not expected to impose costs on affected individuals, businesses, or other entities, as the proposal affords those entities an opportunity to be accompanied or represented by counsel, should they elect that option.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Interested parties may receive an indirect economic benefit from the proposed amendment</p>

	to the extent that representation in the process results in changes that are economically favorable to that person.
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## Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

Apart from amending the regulation as proposed, there are no viable alternatives to accomplishing the objective of this regulation. Section 2.2-4007.02 of the Code of Virginia requires agencies to develop, adopt, and utilize public participation guidelines and to afford interested parties, pursuant to these guidelines, an opportunity to be represented by counsel or other representatives in the formulation of regulations. Flouting this mandate would violate state law.

## Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

There are no viable alternatives to accomplishing the objective of this regulation that would not conflict with state law.

## Public Participation

*If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

## Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

*If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
50	N/A	Currently, the department must provide interested parties an opportunity to submit data, views, and arguments to the agency when considering regulatory actions.	The proposal adds language to subsection A requiring the department also to afford such interested parties with an opportunity to be accompanied and represented by counsel or other representatives in its consideration of regulatory actions. The purpose of this amendment is to comply with Chapter 795 of the 2012 Acts of Assembly. While the department and board have never prohibited such representation in the regulatory formulation process, having express language in the Public Participation Guidelines will ensure that interested parties, board members, and department staff are aware of this requirement.