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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC35-180
VAC Chapter title(s)	Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles
Action title	Amends the provisions applicable to mental health service transition plans for certain detained and committed juveniles as a result of a comprehensive review of the existing provisions
Date this document prepared	January 2, 2020

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Regulation Governing Mental Health Service Transition Plans for Incarcerated Juveniles (6VAC35-180) establishes a process for ensuring the provision of post-release services for juveniles committed to the Department of Juvenile Justice (the department) or detained in a postdispositional program who have been identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The department has not amended this regulation since it took effect in 2008.

The intent of this regulatory action is to conduct a comprehensive review and amendment of this existing regulatory chapter to ensure that the regulation: (i) establishes requirements that are feasible for applicable staff in juvenile correctional centers, court service units, and post-D programs operated by juvenile detention centers; (ii) is not broader in scope than intended by the governing statute, and (iii)

includes provisions aimed at successfully transitioning youth with recognized mental health, substance abuse, or other treatment needs from these facilities to the community.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“MHSTP” means Mental Health Services Transition Plan, which is the enhanced plan developed to ensure the provision of mental health, substance abuse, or other therapeutic treatment services upon a juvenile’s release from commitment to the department or a postdispositional program operated by a juvenile detention center.

“Postdispositional program” or “post-D program” means a program in a detention center serving residents who are subject to a sentence or dispositional order for placement in the detention center pursuant to § 16.1-284.1 of the Code of Virginia.

Mandate and Impetus

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, or board decision). 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.”

On March 27, 2019, the department published its Periodic Review Report of Findings regarding this regulatory chapter. In its findings, the department recommended amending the regulation as “the best strategy for promoting consistency in application and compliance.”

On November 13, 2019, the Board of Juvenile Justice (the board) approved the department’s request to file a Notice of Intended Regulatory Action to initiate the comprehensive review and amendment of this chapter.

Legal Basis

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

The promulgating entity is the Board of Juvenile Justice.

Code of Virginia § 16.1-293.1 requires the board, in consultation with the Department of Behavioral Health and Developmental Services, to promulgate a regulation that addresses the process for planning and providing post-release services for individuals identified as having a mental health, substance abuse, or other therapeutic treatment need who are committed to the department pursuant to § 16.1-278.8(A)(14) or placed in a postdispositional program pursuant to subsection B of § 16.1-284.1. Additionally, pursuant to § 66-10, the board is granted broad authority to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.”

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulation helps to ensure that residents transitioning out of commitment with the department or detention through a post-D program who have substance abuse or other treatment needs have services and treatment available during and after their transition. These services are essential to combat recidivism and ensure the juvenile's successful transition to the community and, therefore, are necessary to protect the public health, safety, and welfare of the Commonwealth's citizens.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Based upon a preliminary review of the regulation, the department is considering the following substantive amendments:

- Modifying titles or qualifications of individuals authorized to determine whether residents have a recognized mental health, substance abuse, or other therapeutic treatment need that warrants an MHSTP;
- Clarifying roles and changing the required content of the Memoranda of Understanding that court service units and local agencies must execute to facilitate MHSTP planning under the existing regulation;
- Narrowing the categories of youth for whom an MHSTP is required in order to conform to language in the governing statute;
- Expanding the discretion of staff and, possibly, other interested parties in determining individuals who should be invited to attend the facility case review meeting;
- Removing obsolete terminology and provisions that are inconsistent with the current practices of the department and its regulated entities.

The department may identify additional areas of concern during the course of the comprehensive regulatory review.

Alternatives to Regulation

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.

Pursuant to § 2.2-4007.1 of the Code, the department considered three alternatives for accomplishing the purpose of the regulation: 1) repeal the regulation; 2) retain the regulation as currently written and supplement the regulation with additional guidance, including, for example, facility procedures and guidance documents; and 3) amend the regulation. Ensuring that services are in place for individuals transitioning out of DJJ commitment or post-D program placement and who have substance abuse or

other treatment needs is essential for the protection and safety of the public and the youth who are transitioning from commitment or detention. These services are necessary to guarantee that such youth are equipped with the tools necessary to thrive in the community and to reduce the likelihood of recidivism. Furthermore, pursuant to § 16.1-293.1, the board is required to promulgate regulations for postdispositional and committed juveniles identified as having mental health, substance abuse, or other therapeutic treatment needs. In the face of this statutory mandate, repealing the regulation is not a viable option.

Although the regulation is statutorily mandated and necessary to ensure affected juveniles are equipped for success following commitment or detention, it contains terminology, regulatory citations, and concepts that are now obsolete. Several concepts are not fully developed or adequately defined, which could create uncertainty among the entities subject to its directives. Retaining the regulation without removing these obsolete terms, correcting the erroneous citations, or otherwise addressing these deficiencies may generate confusion and inconsistency in the application of the regulation, which is likely to result in reduced compliance.

Amending the regulation will allow the board to address these concerns while complying with its statutory mandate in § 16.1-293.1 of the Code of Virginia.

**Periodic Review and
Small Business Impact Review Announcement**

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Juvenile Justice is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Kristen Peterson, Regulatory Coordinator, PO Box 1110, Richmond, VA 23219; (804) 588-3902 (phone); (804) 371-6497 (fax); Kristen.Peterson@djj.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.