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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC35-170
VAC Chapter title(s)	Regulation Governing Juvenile Data Requests and Research Involving Human Subjects
Action title	Comprehensive review of regulatory provisions governing juvenile data and research requests
Date this document prepared	February 12, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 Juvenile Data Requests and Research Involving Human Subjects establishes processes for individuals and entities seeking data maintained by the Department of Juvenile Justice involving individuals who are or have been court-involved, supervised by the department, or committed to the department. Additionally, the current regulation establishes processes and rules for submitting research proposals involving such individuals and the department. Finally, in accordance with § 66-10.1 and to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et. seq.) of the Code of Virginia, the regulation establishes the processes and rules for human research activities conducted or authorized by the department.

This regulatory action is intended to initiate comprehensive amendments to the chapter to remove provisions that are obsolete, that do not require regulation, or that needlessly mirror existing statutory

language to accomplish the Governor’s regulatory reduction mandate set out in Executive Order 19. Moreover, the action seeks to establish processes for addressing requests for data submitted through alternative data systems and trusts.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

DJJ – Department of Juvenile Justice

VLDS – Virginia Longitudinal Data System, the data system permitting qualified individuals access to de-identified case-specific data from participating agencies.

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 the ORM procedures, “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.”

This regulatory action was prompted primarily to carry out Executive Order 19, which directs agencies and boards to reduce their regulatory requirements by 25%. Although a comprehensive review that resulted in significant regulatory changes was conducted in 2020, the resulting regulatory changes were initiated through the fast-track regulatory process, and a periodic review was not conducted at that time. Thus, in addition to its efforts to reduce regulatory requirements, the department is pursuing this action to carry out the periodic review requirements in § 2.2-4007.1. The Board of Juvenile Justice approved the submission of a Notice of Intended Regulatory Action on December 13, 2023.

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. Section 66-10.1 of the Code of Virginia directs the board to promulgate regulations pursuant to the Administrative Process Act to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research to be conducted or authorized by the Department.

Additionally, the board is empowered with general authority to promulgate regulations in accordance with § 66-10 of the Code of Virginia, which authorizes the board to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department.

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.

Among other requirements, this regulation establishes a formalized process that involves a multitiered approach involving department staff and external professionals tasked with vetting proposals for human research. This process serves to ensure that human research involving court-involved or committed juveniles is conducted in a safe manner, within the parameters of federal and state law, and with the consent and in accordance with the rights of the human subject. The current regulation also provides for a formalized process for submitting requests for case-specific data or requests to perform research. The process is essential to ensure such information is provided in a manner that maintains confidentiality.

The department expects to learn of additional issues that may be generating confusion among the regulated community and will seek to clarify any such issues as they are identified.

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.

The department anticipates proposing several changes to the regulation, as described below:

- Clarify the scope of the chapter and the types of research and requests that fall outside the scope of the regulation;
- Clarify and simplify existing definitions and terms and ensure such terms more closely align with current practices;
- Change the individuals authorized to serve as principals for projects and modify their existing roles and responsibilities;
- Remove requirements that are operational or instructional in nature, can be addressed administratively, or have not previously been enforced;
- Revisit required deadlines for various committee meetings or reviews to allow for greater flexibility;
- Where permissible, remove provisions identifying required content for incorporated forms and specify which incorporated document is required for which process;
- Replace provisions echoing or closely resembling statutory language in Chapter 5.1 of Title 32.1 of the Code of Virginia with a requirement to comply with the applicable statute;
- Modify various confidentiality provisions to ensure they are sufficiently broad to encompass all applicable parties impacted by this chapter whose information is protected under state or federal confidentiality laws or regulations, and ensure all necessary protections are in place regarding sensitive data to prevent unauthorized access to confidential juvenile information;
- Establish processes for requests made through various data trusts not currently addressed in the regulation and for quality or process improvement projects;
- Reconcile confusing provisions regarding requests submitted through the VLDS;
- Add provisions to reflect select requirements currently contained in the supplemental Guidance Document Interpreting 6VAC35-170 to enable the department to continue enforcing these requirements.

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.

As part of the review of this chapter, the department considered whether any of the recommended changes, clarifications, or updates can be accomplished through administrative documents, training, or other alternatives beyond modifying the regulation. Ultimately, the department concluded that reviewing and amending the current regulation is the only means of ensuring that the department fulfills the regulatory reduction requirements imposed in Executive Order 19 and that the department has the authority to continue enforcing certain requirements on external entities.

This regulation sets out processes for requesting data maintained by the department and proposals for research. To the extent a small business is conducting applicable research or seeking DJJ data, it may be subject to the regulation's requirements; however, the department does not expect these provisions to impose significant costs on small businesses.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether the regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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 or email to Kristen Peterson; PO Box 1110, Richmond, Virginia, 23218; (804) 773-0180 (phone); KristenPeterson@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.