



**Virginia  
Regulatory  
Town Hall**

## Proposed Regulation Agency Background Document

Currently awaiting OAG statement - must reference under BASIS

<b>Agency Name:</b>	Department (Board) of Juvenile Justice
<b>VAC Chapter Number:</b>	6 VAC 35-150
<b>Regulation Title:</b>	Standards for Non-residential Services Available to Juvenile and Domestic Relations District Courts
<b>Action Title:</b>	Amend
<b>Date:</b>	July 16, 2001

This information is required pursuant 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*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Historically, this regulation has set minimum standards for court service staffs and related supportive personnel so that "uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth." (Code of Virginia § 16.1-233 C.)" The regulation also establishes standards for the development, implementation, operation and evaluation of the nonresidential community-based programs and services such as those established by the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 *et seq.* Of the Code of Virginia).

The proposed amendments are intended to establish more uniform minimum service levels by giving greater prominence to standard operating procedures adopted by the Department. At the same time, the standards permit program flexibility to meet diverse local circumstances.

### 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 must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed 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 found in Code of Virginia § 66-10 (6), which provides that the Board shall have the power and duty "[t]o 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."

The specific legal authority for regulations governing court services units is Code of Virginia § 16.1-233. C., which directs that "The State Board shall establish minimum standards for court service staffs and related support personnel and promulgate regulations pertaining to their appointment and function to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth." This statute mandates the regulation; the Board has no discretion in the matter.

Also, the specific legal authority of the Board to promulgate regulations governing community-based programs available to the juvenile courts is found in Code of Virginia § 16.1-309.9.A., which directs that "The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation and evaluation of the range of community-based programs, services and facilities authorized by this article." Again, the statute mandates the regulation and the Board has no discretion in the matter.

### Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed 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.*

As a result of the periodic review mandated by Executive Order 25 (98), the regulation was found to be partly effective in ensuring uniform statewide services and in permitting program

flexibility to meet local circumstances within statewide minimum service levels. Proposed amendments are intended to enhance the minimum level of services on a statewide basis and ensure more uniformity of services.

Since the regulation was adopted in 1997, the Department's Division of Community Programs has surveyed court service unit practices and developed a manual of standard operating procedures. Amendments throughout the regulation require adherence to these new Department procedures (or to comparable procedures developed by locally operated services units) in addressing the requirements of the various standards. The goal is to ensure uniform services to the greatest extent possible.

## 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 providing detail of the regulatory action's changes.*

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New language at 6 VAC 35-150-270 and 6 VAC 35-150-290 takes into account the development of the Department's statewide data base, commonly referred to as the Juvenile Tracking System.

In many standards throughout the regulation, the phrase "written policy, procedure and practice shall provide" would be deleted as redundant. The language was modeled after certain national standards, but resulted in the Board's requiring, by regulation, that the Board issue a policy on the same subject as the regulation! A clarification is offered at new 6 VAC 35-150-35 that "these standards individually and collectively establish 'programmatic and fiscal policies' governing the operation of court service units and non-residential programs for which the Department is responsible, as provided for by § 66-10 of the Code of Virginia."

6 VAC 35-150-350 (B) and (G) are amended to require that a supervision plan be completed within 30 days following disposition.

6 VAC 35-150-420 is amended to modify the requirements of a probation officer's contact with a juvenile when the juvenile is committed to the Department.

6 VAC 35-150-440 is amended to simplify the requirements for a background check of personnel in programs to which a juvenile might be referred for services when the program's main focus is other than juvenile treatment (for example, to various agencies to do community service).

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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, please include a sentence to that effect.*

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- 1) There is no known advantage or disadvantage to individual members of the public, or the public at large, or business entities, in either the current form of the regulation or the proposed amendments. In either case the regulation is intended to ensure a minimum level of service for juvenile and domestic relations district courts and to ensure adequate supervision of delinquent juveniles in their communities.
  - 2) The revisions to the regulation will tighten requirements for state operated court services to units to operate in accordance with standard procedures approved by the Department. Whether this is viewed as an advantage or disadvantage to the individual court service unit, the locality and court it serves, and the personnel of the unit, will probably vary from case to case.
  - 3) The primary advantages to the agency will be (a) greater consistency on a statewide basis for certain services made available to the Juvenile and Domestic Relations District Courts of the Commonwealth and (b) enhanced ability to monitor compliance with requirements and better manage resources.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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a) The changes proposed in the regulation are not anticipated to change the cost of enforcing the regulation. Historically, court services units have been subject to triennial "certification audits" by agency personnel, and the results of those audits have been reported to the state Board of Juvenile Justice for formal "certification action." The proposed amendments will not alter this historical practice nor result in either reduced or increased costs.

Cost of conducting formal audits of 36 court services units at 12 each year:

\$7800 - Staff time for audit prep work, on-site visit, and post audit reports.

\$1400 - Mileage expense (object code 1282)

\$1000 - Lodging (object code 1285)

\$500 - Meals (object code 1288)

\$10700 per year estimated expenses for audits.

Codes = program/sub program (319/01, fund source (01) and fund detail (00) for these efforts.

Fund 0100

b) The changes proposed in the regulation are not anticipated to change the costs to localities. Localities have certain responsibilities under law with respect to court services units (whether state-operated or locally operated). The changes in the regulation are not expected to either increase or decrease the costs to localities.

c) Individual court services units (both state-operated and locally-operated) will be most affected by the changes in the regulation. In addition, providers of programs and services under the Virginia Juvenile Community Crime Control Act will be affected by the regulation.

d) There are 33 state operated CSUs and 3 locally-operated CSUs, and approximately 400 VJCCCA programs.

e) The projected cost of the regulatory CHANGES on the affected CSUs and VJCCCA programs is not expected to be different from the costs associated with compliance with the current regulation. Some economies are projected based on the ability to assign "weights" to probation and parole cases considering a juvenile's relative risk of reoffending, and additional economies are anticipated based on the ability to modify required contacts by the probation or parole officer under the supervision plan, using the same risk factors. However, it is expected that these economies will be offset by rising case loads and an increase in mandated service levels, resulting in no net cost savings nor cost increase.

### 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 cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

New language at 6 VAC 35-150-270 and 6 VAC 35-150-290 would specifically require the intake officer to make all required entries into the Department's Juvenile Tracking System, as specified in the Department's Manual of Standard Operating Procedures for Court Service Units.

In many standards throughout the regulation, the phrase "written policy, procedure and practice shall provide" would be deleted. The phrase has been interpreted to mean that the Board, the Department or individual court service units must adopt a policy statement for each standard -- in practice often simply repeating the standard verbatim in order to meet this supposed requirement. Proposed new 6 VAC 35-150-35 explains that "these standards individually and collectively establish 'programmatic and fiscal policies' governing the operation of court service units and non-residential programs for which the Department is responsible, as provided for by § 66-10 of the Code of Virginia." Thus, the regulation itself establishes policy regarding the programmatic and fiscal operations of the subject non-residential programs and services, and a separate policy statement reiterating the regulation's policy statement is redundant and unnecessary.

Paragraphs B and G of 6 VAC 35-150-350 are amended to require that a supervision plan be completed within 30 days following disposition. Some court service units have reported interpreted the phrase "after receiving the case" to refer to the case's assignment to an individual probation officer, and have argued that the time requirement did not apply until the case was individually assigned. The result has been that some juveniles were not placed under active supervision until some time past the 30 days after disposition referenced in the standard. The amendment affirms that the intent of the standard is to ensure that juveniles are timely placed under active supervision in accordance with the order of the court and for the protection of the community.

6 VAC 35-150-420 is amended to require probation officers to "meet with the [committed] youth at least every 90 days during the youth's final 12 months of commitment, and make contact with the youth at least once every 90 days, either in person, by video conference or by telephone, prior to the youth's final 12 months of commitment." This change will permit parole officers to concentrate their in-person efforts on the period of the juvenile's transition and preparation for release from direct care, while allowing broad discretion as to how to maintain contact with a committed juvenile prior during earlier parts of the youth's incarceration.

6 VAC 35-150-440 is amended to clarify that when an agency or program provides direct services or supervision to juveniles, all employees and volunteers who provide such direct service or supervision shall undergo a thorough background check; when an agency or program refers juveniles to other service providers, the referring agency shall require the service provider to document that all persons who provide services or supervision through substantial one-on-one contact with juveniles have undergone a background check. When juveniles were referred to programs whose main focus was other than juvenile treatment (for example, to various agencies to do community service), the requirement for background checks on persons in these programs who might have incidental but direct contact with juveniles was jeopardizing the referral process.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Inasmuch as the Board is mandated by law to issue the subject regulations, the only viable "alternatives" involve adjustments to the form and content of the regulation.

The agency considered making its manual of "standard operating procedures" in effect the regulation governing court services units. This alternative was rejected because that manual must be adaptable to changing circumstances in Virginia's communities as well as to changing policy goals of the agency's administration. The requirements of regulatory rule making under the Administrative Process Act do not permit the quick adaptability that is needed for "standard operating procedures."

**Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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A continuing issue is the meaning and scope of the term "standard," especially in relation to policy and regulation. Proposed new 6 VAC 35-150-35 is an attempt to clarify how these standards and not only binding regulations but technically establish policy (for purposes of accreditation with national correctional associations).

Several comments questioned whether the regulation itself, or the department's standard operating procedures, should govern various aspects of probation and parole supervision. The proposed regulation seeks to strike a balance between the administrative flexibility that comes with greater emphasis on the standard operating procedures, and the enhancement of minimum service levels that comes when requirements are spelled out in the regulation. So, for example, 6 VAC 35-150-55, permits but does not require a system of "weighting" probation officers' caseloads based on risk and other factors, while other standards require compliance with approved procedures (e.g., 6 VAC 35-150-335 regarding informal supervision and 6 VAC 35-150-350 regarding supervision plans).

There was some discussion as to whether the regulations should mandate specific uses of the Department's "Juvenile Tracking System." The proposed regulation, at 6 VAC 35-150-270 and 6 VAC 35-150-290, mandates specific uses of the Juvenile Tracking System to ensure that the statewide network contains complete, timely and accurate information for use at all stages of a youth's involvement with the juvenile justice system.

It was suggested that certain statutory requirements be re-stated in the regulation, on the grounds that, as a practical matter, the department's certification process measures compliance with standards but not with statutes. There were more comments on the other side, suggesting that the regulation should NOT restate requirements that are set out in the Code of Virginia. In general, the proposed revisions do not restate statutory requirements.

One comment suggested that the language at 6 VAC 35-150-490, regarding deprivation of food and water, needed clarification. The intent of the language appears to be clear, however, and is also consistent with similar language in other regulations issued by the Board of Juvenile Justice, so the proposed regulation does not include any revision.

There was comment to the effect that records management and case management standards should be uniform across the juvenile justice system. The proposed language at 6 VAC 35-150-140 no longer endorses separate unit procedures for records management; but the requirement that records be developed and maintained "in accordance with approved procedures," nevertheless allows for variations when properly approved. Similarly, 6 VAC 35-150-510 does not establish a statewide format for record keeping, but requires that each program keep its own records according to a consistent internal system that complies with broad statewide guidelines.

There were many comments concerning the required background checks, particularly of persons who are otherwise licensed, or who have minimal contact with juveniles. Although there is potentially an adverse impact on small provider organizations, on organizations that rely heavily on volunteers, and on therapists and other professionals who are not associated with an agency, the draft regulation continues to emphasize the requirement for a background check as a "due diligence" measure to protect children under supervision or receiving court-ordered services. (Related issues involve the definition of "direct services" and "supervision" for purposes of determining the need for a background investigation.) The agency expects to receive further comment on this topic when the proposed regulation is published.

One individual suggested that individual unit procedures should be further reduced in favor of statewide standard operating procedures. The proposed regulation does not uniformly adopt this suggestion. For example, while the recommendation is adopted at 6 VAC 35-150-220, regarding searches of youth, it was not considered as critical to establish a statewide standard at 6 VAC 35-150-190, regarding the handling funds in court service units.

The suggestion was made to add a new requirement at 6VAC 150-280, Medical and Psychiatric Emergencies at Intake, so that the residential facility where the youth is placed would be notified that medical care was received by the youth prior to placement, to alert the receiving agency staff to ask for the discharge instructions from the youth. From the perspective of the receiving facility, Interdepartmental Standard 22 VAC 42-10-580 would cover this situation, so the additional requirement is not included in the proposed regulation.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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Through the periodic review process and examination of the regulation, the agency has concluded that the regulation, overall, is clearly written and easily understandable by the individuals and entities affected. There are some instances where comments from the public or agency personnel suggest clarifying language, definitions, or revisions; and these suggestions are discussed under "detail of changes" and "public comment," above.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The Department anticipates conducting a periodic review of the regulation no later than October, 2004. At that time, the agency will assess: 1) whether "uniform services, insofar as is practical, [are] available to juvenile and domestic relations district courts throughout the Commonwealth" (see Code of Virginia § 16.1-233 (C)); 2) whether developing supervision plans and assigning caseloads based on juveniles' risk of reoffending results in lower rates of recidivism; 3) whether the standards meet the needs of Virginia's communities, as evidenced by court service units or non-residential programs requesting variances under the Board's certification regulations or proposing alternative standards under the provisions of 6 VAC 35-150-40.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential 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.*

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Many juveniles who come into contact with the juvenile justice system lack strong, healthy family support systems. On the other hand, the parents of many other juveniles who come into contact with this system are deeply involved with their children. This regulation encourages cooperation between probation officers and parents whenever practical, without constraining probation officer's authority when parental cooperation is absent. The proposed amendments in no way alter the Commonwealth's commitment to involve parents and family to the greatest extent possible when a juvenile comes into contact with the juvenile justice system. The regulation has specific requirements for including a juvenile's family in the preparation and review of supervision plans, and requires completion of a family involvement plan when a juvenile is committed. For example, 6 VAC 35-150-10 provides that "a single supervision plan may include, as appropriate, specific plans for supervision during probation and parole, and for treatment of a youth and services for the youth's family during commitment."