



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Board of Juvenile Justice
VAC Chapter Number:	6 VAC 35-140
Regulation Title:	Standards for Juvenile Residential Facilities
Action Title:	Enter Action Title
Date:	Enter Date

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

The regulation sets operating standards for residential facilities serving Virginia's juvenile justice system, including group homes, detention homes, juvenile correctional centers and boot camps.

Two broad categories of amendments are proposed. The first category includes new or expanded standards governing post-dispositional detention programs, as required by Code of Virginia Section 16.1-284.1.D: "Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds thirty calendar days to be provided separate services for their rehabilitation, consistent with the intent of this section."

The second category includes new or expanded standards closely tracking those of national accrediting organizations such as the American Correctional Association and the National Commission on Correctional Health Care. Most of the proposed changes will affect only juvenile correctional centers and will impose no additional burden on locally operated programs. It should be noted that many of the proposed "new" standards, or substantially similar requirements, were in effect and applicable to juvenile correctional centers prior to January 1998, when the regulation was simplified to give juvenile residential facilities greater operational flexibility. While the Department has generally continued to operate in accordance with many of those nationally recognized standards, the proposed amendments make it the policy of the Commonwealth to operate its juvenile correctional facilities in accordance with nationally recognized "best practices" in juvenile corrections.

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 of the Board to promulgate regulations governing local juvenile residential facilities is 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." In addition, Code of Virginia § 16.1-248.1 (D) provides that "A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall have regard for reasonable utilization of these facilities and the requirements of § 16.1-309.4, consistent with the intent of this section."

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.

The regulation establishes operational standards for residential facilities housing juveniles who are or have been before the court. The public safety is enhanced by providing residential placements for juveniles whose delinquent behavior makes them a threat to persons or property. In addition, the regulation sets standards to ensure that such juveniles are provided a safe and humane environment; are appropriately and adequately supervised; and receive meaningful programs and services.

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.

6 VCAC 35-140-10 includes several amended definitions to bring this regulation into closer compliance with nationally recognized standards.

6 VAC 35-140-510 is amended and 6 VAC 25-140-515 is added to meet the new statutory requirements for standards governing post-dispositional detention.

The following proposed "new" standards were in effect for juvenile correctional centers prior to January 1998 and are being restored in their original or a modified form. The following standards are being made applicable to all juvenile residential facilities, however, not just correctional centers:

- 6 VAC 35-140-290, outside personnel working in the facility;
- 6 VAC 35-140-300, allowing residents to shower after strenuous exercise.

The following standards are being applicable to all secure facilities, including both detention homes and juvenile correctional centers:

- 6 VAC 35-140-630, control of perimeter;
- 6 VAC 35-140-670 (6), requiring a record of mechanical restraint distribution.

The following standards apply only to juvenile correctional centers:

- 6 VAC35-140-711, institution's mission and organization;
- 6 VAC 35-140-712, Service needs of resident population;
- 6 VAC 35-140-713, community-facility advisory committee;
- 6 VAC 35-140-725, administrative requirements;
- 6 VAC 35-140-726, Financial practices;
- 6 VAC 35-140-730 (D), regarding living conditions in segregation;

- 6 VAC 35-140-740 (B), requiring staff to sign their shift assignments;
- 6 VAC 35-140-751, supervision and control when youth are being moved;
- 6 VAC 35-140-752, prohibiting youth from supervising other youth;
- 6 VAC 35-140-756, dayroom furnishings;
- 6 VAC 35-140-758, regarding counseling services and the ratio of counseling staff to youths;
- 6 VAC 35-140-760, making institutional operating procedures available to staff and the public;
- 6 VAC 35-140-761, regarding new or revised policies;
- 6 VAC 35-140-765, annual evaluation of information system;
- 6 VAC 35-140-765, media access to facility;
- 6 VAC 35-140-766 (A), public information program;
- 6 VAC 35-140-795, employment, restitution and school release programs;
- 6 VAC 35-140-803, hospital services;
- 6 VAC 35-140-804, access to health care;
- 6 VAC 35-140-806, provision of medical care;
- 6 VAC 35-140-810, religious programs (A through D);
- 6 VAC 35-140-815, informal communication and physical contact during visitation;
- 6 VAC 35-140-820, requiring recreation staff and equipment;
- 6 VAC 35-140-822, regarding programs to reinforce positive behavior;
- 6 VAC 35-140-825, youth access to publications;
- 6 VAC 35-140-830, staff code of ethics;
- 6 VAC 35-140-832, staff performance review;
- 6 VAC 35-140-834, reimbursement of approved expenses;
- 6 VAC 35-140-840, legal assistance for staff;
- 6 VAC 35-140-842, political activity;
- 6 VAC 35-140-845, daily inspections;
- 6 VAC 35-140-846, housekeeping plan;
- 6 VAC 35-140-847, sanitation inspections;
- 6 VAC 35-140-848, alternate power source;
- 6 VAC 35-140-850, canteen;
- 6 VAC 35-140-855, hair care services;
- 6 VAC 35-140-860, superintendent's review of personnel policies;
- 6 VAC 35-140-870, review of research proposals;
- 6 VAC 35-140-880, requirements of food services;
- 6 VAC 35-140-890, detainees;
- 6 VAC 35-140-900, release consideration;
- 6 VAC 35-140-920, program of release preparation.

The following standards that were in effect prior to January 1998 will apply to juvenile correctional centers, and will be strengthened or modified based on a review of national standards and agency practice:

- 6 VAC 35-140-805, which sets minimum frequency for sick call;
- 6 VAC 35-140-807, prostheses and related medical devices;
- 6 VAC 35-140-858, transitional placements;
- 6 VAC 35-140-865, documentation of vacancy rate;
- 6 VAC 35-140-910, scheduling of release consideration;
- 6 VAC 35-140-930, progressive preparation for release.

Potentially significant changes are drafted for 6 VAC 35-140-560, governing room confinement, including new requirements for staff supervision and the opportunity for exercise.

The following new standards for juvenile correctional centers are proposed based on nationally recognized standards:

- 6 VAC 35-140-730 (C), requiring single occupancy rooms for certain juveniles;
- 6 VAC 35-140-730 (E), action by the health authority when a juvenile is placed in segregation;
- 6 VAC 35-140-766 (B), on dealing with the media in emergency and non-emergency situations;
- 6 VAC 35-140-810 E, requiring that space be made available for religious services;
- 6 VAC 35-140-843. Firearms;
- 6 VAC 35-140-844, inspection and maintenance of security devices.

The following proposed standards for juvenile correctional centers are adaptations or variants of nationally recognized standards:

- 6 VAC 35-140-755, regarding the proximity of staff offices and duty stations to living areas;
- 6 VAC 35-140-791, day leave into the community;
- 6 VAC 35-140-831, staff training;
- 6 VAC 35-140-940, pre-parole transitional graduated release.

The following standards would apply to all secure facilities. The amendments are based on the Department's actual practice. 6 VAC 35-140-540 (C) would require a staff member to remain in the view of another staff member (without any gender requirement) when entering an area occupied by residents of the opposite sex.

6 VAC 35-140-260, governing background checks on personnel in any juvenile residential facility, clarifies the conditions under which certain employees may begin work pending the completion of a background check.

6 VAC 35-140-660 is amended to clarify that the Board has never authorized, and has no intention of authorizing, the use of tear gas or mace in juvenile correctional facilities.

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.

The regulation governs the operation of juvenile residential facilities. The primary advantage to the general public in adopting these revised standards is to protect the public safety by providing secure facilities in which to confine juveniles who may be a threat to others or to property.

There are no known significant advantages or disadvantages to businesses of implementing the amended provisions.

There may be significant advantages to individual citizens, particularly to the juveniles who are placed in such residential facilities and their families, inasmuch as the regulation sets standards that provide for residents' safety, health care, educational and vocational programming, psychological and other treatment programs, etc.

The primary advantage to the agency in adopting the proposed amendments is that the agency will be better able to demonstrate, through the board's certification process, compliance with nationally recognized standards for the operation of juvenile correctional facilities. This can be a significant advantage in litigation over agency policies, procedure and practice.

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.

There is no projected cost to the state to implement and enforce the amended regulation over and above costs already associated with implementing and enforcing the existing regulation. The Department of Juvenile Justice, as well as most local detention homes and group homes, have historically looked to national accreditation standards as a guide to their practice. Generally, the

new or modified standards codify historical practice and provide a means for monitoring and documenting compliance with nationally recognized best practices.

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.

6 VCAC 35-140-10 includes several amended definitions to bring this regulation into closer compliance with nationally recognized standards.

For example, the definition of “major rule violation” is amended to more closely follow standards of the American Correctional Association, which define "major infraction" as "A rule infraction involving a grievous loss and requiring imposition of due process procedures. Major infractions include (1) violations that may result in disciplinary detention or administrative segregation; (2) violations for which punishment may tend to increase an inmate's sentence, such as extending parole eligibility; (3) violations that may result in a forfeiture, such a loss of good-time or work time; and (4) violations that may be referred for criminal prosecution.

The term “isolation” is replaced by “disciplinary detention,” inasmuch as ACA standards do not use the term "isolation" and describe "Disciplinary detention" as "a unit housing inmates convicted of serious rule violations."

The definition of “segregation” is amended to more closely follow the meaning as defined in ACA standards.

67 VAC 35-140-75 is amended to include new items 8, regarding the forwarding of mail and packages after a youth’s release, and 9, requiring that residents and staff be informed of the policies governing mail. Similar provisions were in effect for juvenile correctional centers prior to January 1998, and are now being made applicable to all juvenile residential facilities. Both provisions closely track ACA standards.

A minor change at 6 VAC 35-140-220 (3) is based on National Council on Correctional Health Care standard Y-61 which states that "access to health records and health information is controlled by the health authority consistent with applicable local, state and federal law."

6VAC35-140-230 is amended is based on NCCHC standard Y-43, Patient Transport: "Written policy and defined procedures require, and actual practice evidences, that juvenile are transported safely and in a timely manner for medical, mental health, and dental clinic appointments both inside and outside the facility (i.e., hospital, health care provider, another facility)."

New paragraph C is added to 6 VAC 35-140-280 to comply with ACA 3-JTS-3C-04: All personnel who work with juveniles receive sufficient training so that they are thoroughly familiar with the rules of juvenile conduct, the rationale for the rules, and the sanctions available.

6 VAC 35-140-285 is added to correspond to ACA 3-JTS-1D-05, which states: "Library and reference services are available to complement the training and staff development program." ACA offers this additional comment: "Reference materials should be readily accessible to employees. Materials not usually available at the facility should be acquired through other sources, such as juvenile justice clearinghouses and interlibrary loans." NOTE: inclusion of this standard here, rather than in the section applying to JCCs, will ensure that detention homes will also be included, and this may be seen as a new (half-funded) mandate. A similar standard applying to juvenile correctional centers was in effect prior to January 1998.

New 6 VAC 35-140-506, governing background checks for community-based service providers, is drafted to conform to similar requirements in standards for nonresidential programs available to juvenile and domestic relations district courts.

New 6 VAC 35-140-507 provides for Limitation of contact with juveniles when there are indications that an individual who is providing post-dispositional programs or services has a physical, mental or emotional condition that might jeopardize the safety of juveniles.

6 VAC 35-140-510 is added 6 VAC 25-140-515 is amended to meet the new statutory requirements for standards governing post-dispositional detention. The amendments establish that certain programming or treatment requirements apply only when the court orders a post-dispositional detention in excess of 30 days; that post-dispositional services must be separate from any pre-dispositional services; that only qualified persons provide treatment; and that there be policies governing treatment providers from outside the facility. In addition, proposed new 6 VAC 35-140-515 makes it clear that when a juvenile is placed in a post-dispositional program for longer than thirty days, certain requirements of the Interdepartmental Standards for Children's Residential Facilities will apply.

Guidelines are set forth regarding the statutorily mandated assessment of the juvenile's suitability for the post-dispositional program. In addition, proposed new 6 VAC 35-140-515 makes it clear that when a juvenile is placed in a post-dispositional program for longer than thirty days, certain requirements of the Interdepartmental Standards for Children's Residential Facilities will apply.

The terminology changes made at 6 VCAC 35-140-10 and throughout the regulation are intended to bring this regulation's usage into closer compliance with national standards.

The following proposed "new" standards were in effect for juvenile correctional centers prior to January 1998 and are being restored in their original or a modified form. The following standards are being made applicable to all juvenile residential facilities, however, not just correctional centers:

6 VAC 35-140-290, outside personnel working in the facility. The revision is stronger than the current standard because it requires staff supervision in any case where contact with youth is

possible, not just in those cases where there are in fact youth immediately present. The proposed language is identical to ACA Standard 3-JTS-1A-30.

6 VAC 35-140-300, allowing residents to shower after strenuous exercise. This requirement was in effect for Juvenile Correctional Centers prior to 1998. The proposed new language was removed in 1998 because there is not enough time in the daily schedule to get residents showered after exercise and showers can be scheduled only in the evening after the close of the program day. The new may be necessary to meet ACA standard: 3-JTS-4B-I3 "Written policy, procedure, and practice provide an approved shower schedule that allows daily showers and showers after strenuous exercise."

6 VAC35-140-450 is amended to clarify that "a full medical examination is not required if the juvenile was a resident in the facility within the previous 60 days; in such cases, a physician or qualified health care practitioner shall review the juvenile's medical file and update as necessary."

6 VAC35-140-480 is amended to clarify that the facility shall make reasonable documented efforts to return the property to the resident, parent or legal guardian and shall have a written policy for the disposal of personal property that remains unclaimed 90 days after a documented attempt to return the property.

The following standards are being made applicable to all secure facilities, including both detention homes and juvenile correctional centers:

6VAC35-140-530, recreation. Some secure facilities do not have sufficient space to accommodate all their residents in an outdoor recreation at one time. The result is that, while all residents have the opportunity to exercise daily, residents get to exercise outside on a rotating schedule over a period of several days. The revised standard is consistent with ACA 3-JDF-5E-02 and 3-JDF-5E-04.

6VAC35-140-550. Due process, is amended to clarify and simplify requirements, particularly in detention homes. One reason for change is that ACA defines a major infraction as "A rule infraction involving a grievous loss and requiring imposition of due process procedures. Major infractions include (1) violations that may result in disciplinary detention or administrative segregation; (2) violations for which punishment may tend to increase an inmate's sentence, such as extending parole eligibility; (3) violations that may result in a forfeiture, such as loss of good-time or work time; and (4) violations that may be referred for criminal prosecution." Therefore, both moderate and major offenses as defined by the department fall into the category of "major infraction" as defined by ACA. Another change in the same section makes clear that when a ward is confined to a room as a form of "pre-hearing detention," it should be treated under the rules for administrative segregation. Another change in the same section addresses the question as to whether a "hearing" could be conducted as a series of separate interviews. The proposed amendment indicates that a "hearing" requires that at least the hearing officer or panel and the charged resident must be present throughout the hearing.

6 VAC 35-140-630, control of perimeter. The proposed revised standard was in effect for juvenile correctional centers prior to January 1998. The revision is stronger than the current standard in that it requires not just a "plan" to control the perimeter, but effective "appropriate means" to do so. The standard is substantially identical to ACA standard 3-JTS-2G-02.

6 VAC 35-140-670 (6), requiring a record of mechanical restraint distribution. New item 6 was a requirement for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-3A-17.

Proposed standard 6 VAC 35-140-685 (except the final sentence) applied to juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-4C-35: "Written policy, procedure, and practice govern the use of restraints for medical and psychiatric purposes. Written policy should identify the authorization needed; when, where, and how restraints may be used; and for how long." The comment on this standard adds: "When restraints are part of a health care treatment regimen, the restraints used should be those that would be appropriate for the general public within the jurisdiction."

The following standards apply only to juvenile correctional centers:

6 VAC 270 (B), staff physical examination. Requirements similar to proposed paragraph B were in effect prior to January 1998. It complies with ACA 3-JTS-1C-16: Written policy, procedure, and practice provide that employees who have direct contact with juveniles receive a physical examination prior to job assignment. Employees receive reexaminations according to a defined need or schedule. Paragraph B will require the Department to establish physical standards for direct care staff.

6 VAC35-140-711, institution's mission and organization; Proposed paragraph A was a requirement prior to January 1998. It complies with ACA 3-JTS-1A-03: There is a written document delineating the institution's mission within the context of the total system. This document is reviewed at least annually and updated as needed. Proposed paragraph B was a requirement prior to January 1998. It complies with ACA 3-JTS-1A-15: There is a written document describing the facility's organization. The description includes an organizational chart that groups similar functions, services, and activities in administrative subunits. This document is reviewed annually and updated as needed.

6 VAC 35-140-712, Service needs of resident population. A similar requirement was in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-5C-02: "Written policy, procedure, and practice provide that facility staff identify the collective service needs of the juvenile population at least annually. Special programs are provided to meet the needs of juveniles with specific types of problems."

6 VAC 35-140-713, community-facility advisory committee. The proposed standard was in effect prior to January 1998. It complies with ACA 3-JTS-1A-10: Written policy, procedure, and

practice provide that there exists an advisory committee, representative of the community, that serves as a link between the program and the community.

6 VAC 35-140-725, administrative requirements.

Proposed paragraph A was in effect prior to January 1998. It is consistent with ACA 3-JTS-1A-22: "The governing authority hold meetings at least annually with the facility administrator."

A standard similar to proposed paragraph B applied to juvenile correctional centers prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1A-24: Written policy, procedure, and practice demonstrate that the facility administrator submits a written report of the facility's activities at least quarterly to the parent agency. These reports include major developments in each department or administrative unit, major incidents, population data, assessment of staff and juvenile morale, and major problems and plans for solving them.

Proposed paragraph C was in effect prior to January 1998. It is consistent with ACA 3-JTS-3A-11: Written policy, procedure, and practice require that the facility administrator or designee, assistant facility administrator(s), and designated department heads visit the facility's living and activity areas at least weekly to encourage informal contact with staff and juveniles and to informally observe living and working conditions.

Requirements similar to proposed paragraph D were in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1A-20: Written policy, procedure, and practice provide for regular meetings between the facility administrator and all department heads and their key staff members. Such meetings are to be conducted at least monthly.

A standard similar to paragraph E was in effect prior to January 1, 1998. The proposed standard is consistent with ACA 3-JTS-4C-03: Written policy, procedure, and practice provide that the health authority meets with the facility administrator at least quarterly and submits annual statistical summaries and quarterly reports on the health care delivery system and health environment.

Proposed paragraph F was a standard prior to January 1998. It is consistent with 3-JTS-1A-21: Written policy, procedure and practice provide for a system of two-way communication between all levels of staff and juveniles.

6 VAC 35-140-726, Financial practices.

Requirements similar to proposed paragraph A were in effect prior to January 1998. The standard is intended to be consistent with ACA 3-JTS-1B-07: Written policy, procedure, and practice demonstrate that the procedures for collection, safeguarding, and disbursement of monies comply with the accounting procedures established by the governing jurisdiction. These procedures are reviewed annually and updated as needed.

Paragraph B was a standard in effect prior to January 1998. It is consistent with ACA 3-JTS-1B-08: The facility's accounting system is designed to show the current status of income and expenditures.

Requirements essentially the same as proposed paragraph C were in effect prior to January 1998. The proposed standards is consistent with ACA 3-JTS-1B-09: Written policy, procedure, and practice provide that all monies collected at the facility are placed in an officially designated and secure location daily.

The requirements of paragraph D were in effect prior to January 1998. The standard is consistent with ACA 3-JTS-1B-01: Written policy, procedure, and practice provide that the facility administrator is responsible for fiscal management and control. Management of fiscal operations may be delegated to a designated staff person.

The requirements of proposed paragraph E. were included in standards prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1B-10: Written policy, procedure, and practices provide that reports of all monies collected and disbursed are distributed to the parent agency and other designated authorities.

Requirements similar to those of paragraph F were in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1B-11: Written policy, procedure, and practice provide for ongoing monitoring of the facility's fiscal activities. The results are reported in writing at least quarterly and are forwarded to the parent agency.

The requirement of paragraph G was in effect prior to January 1998. It is consistent with ACA 3-JTS-1B-12: Written policy, procedures, and practice provide for an independent financial audit of the facility. This audit is conducted annually or as stipulated by statute or regulation, but at least every three years.

Requirements similar to those of paragraph H were in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1B-13: Written policy, procedure, and practice govern inventory control of property, supplies, and other assets. Inventories are conducted at time periods stipulated by applicable statutes, but at least every two years.

Requirements similar to paragraph I were in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1B-14: Written policy, procedure, and practice govern the requisition and purchase of supplies and equipment, including at a minimum the purchasing procedures and criteria for the selection of bidders and vendors.

Requirements similar to paragraph J were in effect prior to January 1998. Except for the reference to bonded personnel (Department personnel are not bonded) the proposed standard is consistent with 3-JTS-1B-03: Written policy, procedure, and practice cover at a minimum the following fiscal areas: internal controls, petty cash, bonding for all appropriate staff, signature control on checks, and the issuing or use of vouchers.

6 VAC 35-140-730 (D), regarding living conditions in segregation.

The proposed standard is based upon ACA standard 3-JTS 2C-02-1. The commentary on that standard notes that while standards permit the housing of juveniles in multiple rooms, there is a need for single rooms for the juvenile groups listed.

A standard similar to paragraph D was in effect prior to January 1998. The exact language of the proposed standard may be modified, depending on the Department's decisions regarding the use of certain terminology relating to various forms of room confinement. The proposed standard is intended to comply with ACA 3-JTS-3E-05: Written policy, procedure, and practice specify that juveniles placed in confinement are afforded living conditions and privileges approximating those available to the general juvenile population. Exceptions are justified by clear and substantiated evidence.

New paragraph E is based on NCCHC standard Y-40, Health Evaluation of Juveniles in Segregation (essential).

6 VAC 35-140-740 (B), regarding post orders and shift assignments.

A sentence is added to paragraph A to comply with ACA 3-JTS-3A-05: There are written operational shift assignments that state the duties and responsibilities for each assigned position in the facility; these shift assignments are reviewed at least annually and updated if necessary.

Requirements similar to new paragraph B were in effect prior to January 1998. The proposed standard complies with ACA 3-JTS-3A-06: Written policy, procedure, and practice provide for personnel to read the appropriate shift assignment each time they assume a new position and to sign and date the assignment.

6 VAC 35-140-751, supervision and control when youth are being moved. Requirements similar to the proposed standard were in effect for juvenile correctional centers prior to January 1998. The proposed standard meets ACA 3-JTS-3A-14 ("Written policy, procedure, and practice provide that staff regulate juvenile movement.") and ACA 3-JTS-3A-15 ("Written policy, procedure, and practice govern the transportation of juveniles outside the facility and from one jurisdiction to another.")

6 VAC 35-140-752, prohibiting youth from supervising other youth. A requirement similar to the proposed standard was in effect prior to January 1998. Board policy 18-017 made an exception when youth are involved in an approved leadership training program under the supervision of appropriately trained staff. The proposed standard is intended to meet ACA 3-JTS-3A-08 ("Written policy, procedure, and practice provide that no juvenile or group of juveniles is given control or authority over other juveniles.") while permitting the Department to continue approved leadership training programs.

6 VAC 35-140-756, dayroom furnishings. Similar requirements were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-2C-05: Dayrooms provide sufficient seating and writing surfaces for every juvenile using the dayroom at one time. Dayroom furnishings are consistent with the security needs of the juveniles assigned.

6 VAC 35-140-758, regarding counseling services and the ratio of counseling staff to youths.

The requirements of paragraph A were included in standards for juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-5C-04: Counseling personnel are available at a ratio of one to every 25 juveniles, at a minimum, to provide counseling and social services to juveniles.

The requirements of paragraph B were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-5C-05: Written policy, procedure, and practice provide that staff members are available to counsel juveniles at their request; provision is made for counseling juveniles on an emergency basis.

Requirements similar to paragraph C were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-5C-08: Written policy, procedure, and practice require that comprehensive counseling and assistance are provided to pregnant juveniles in keeping with their expressed desires in planning for their unborn child.

6 VAC 35-140-760, making institutional operating procedures available to staff and the public.

Proposed paragraph A was in effect prior to January 1998. It is consistent with ACA 3-JTS-1A-17: The policies and procedures for operating and maintaining the facility and its satellites are specified in a manual that is accessible to all employees and the public. This manual is reviewed at least annually and updated as needed.

Paragraph B is amended to clarify that the goal of the standard is NOT to have each facility re-state the SOPs, (which, after all, are "standard" operating procedures applicable to all) but to ensure that, when variations are necessary, appropriate accommodation is made in consideration of the physical plant, institutional program, etc., and that the Deputy approves these are being consistent with the overall purposes of the SOPs.

6 VAC 35-140-761, regarding new or revised policies.

Proposed paragraph A was in effect prior to January 1998. It is consistent with ACA 3-JTS-1A-19: Written policy, procedure, and practice provide that new or revised policies and procedures are disseminated to designated staff and volunteers and, when appropriate, to juveniles prior to implementation.

Proposed paragraph B was a standard prior to January 1998. It is consistent with ACA 3-JTS-1A-11: Written policy, procedure, and practice demonstrate that employees participate in the formulation of policies, procedures, and programs.

6 VAC 35-140-765, annual evaluation of information system. A similar standard was in effect for juvenile correctional centers prior to 1998. The proposed standard complies with ACA 3-JTS-1F-08: "The effectiveness of the information system as it relates to overall facility management is evaluated in writing at least annually. **Comment:** The facility administrator should have the opportunity to comment on and offer recommendations regarding the system's usefulness."

6 VAC 35-140-765, media access to facility. The proposed standard addresses ACA 3-JTS-1A-27: "Written policy, procedure, and practice grant representatives of the media access to the facility consistent with preserving juveniles' rights to privacy and maintaining order and security." A similar standard applied to juvenile correctional centers prior to January 1998.

6 VAC 35-140-766, public information program. Requirements similar to paragraph A were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-1A-25: Written policy, procedure, and practice provide for a public information programs that encourages interaction with the public and the media. The requirements of paragraph B are based on ACA standard 3-JTS 1A-27-1.

6 VAC 35-140-795, employment, restitution and school release programs.

Provisions similar to paragraph A were included in standards for juvenile correctional centers prior to January 1998. The proposed standard is consistent with ACA 3-JTS-51-05: Where statutes permit, written policy, procedure, and practice allow for juveniles' participation in employment, restitution, or school release programs.

The provisions of paragraph B were included in standards for juvenile correctional centers prior to January 1998. The proposed standard is consistent with ACA 3-JTS-51-02: Temporary release programs should include but not be limited to the following:

- written operational procedures
- careful screening and selection procedures
- written rules of conduct and sanctions
- a system of supervision to minimize abuse of program privileges
- a complete record keeping system
- a system for evaluating program effectiveness
- efforts to obtain community cooperation and support

6 VAC 35-140-803, hospital services. The requirement of the proposed standard was included in standards for juvenile correctional centers in effect prior to January 1998. The proposed standard complies with ACA 3-JTS-4C-34: A written agreement exists between the facility administrator and a nearby hospital for all medical services that cannot be provided within the facility.

6 VAC 35-140-804, access to health care. Requirements similar to paragraph A were in effect for juvenile correctional centers prior to January 1998. The standard is consistent with two nationally recognized standards: ACA 3-JTS-4C-07: "Written policy, procedure, and practice provide for unimpeded access to health care and for a system for processing complaints regarding health care. These policies are communicated orally and in writing to juveniles on arrival in the facility and are put in a language clearly understood by each juvenile." NCCHC standard Y -33 Information on Health Services (essential), states: "written policy and defined procedures require, and actual practice evidences, that information about the availability of health care services is communicated orally and in writing to juveniles, in a form and language they understand, within 24 hours of their arrival at the facility." NOTE: CORE standard 22 VAC 42-10-800.(9) ("The following actions are prohibited: 9. deprivation of health care; ") does not comply with the ACA or the NCCHS standards' affirmative requirements.

The requirements of paragraph B were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-4C-I5 In facilities housing females, obstetrical, gynecological, family planning, and health education services are provided as needed.

6 VAC 35-140-806, provision of medical care. The requirements of the proposed standard were included in regulations governing juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-4C-I2 (Mandatory): Written policy, procedure, and practice provide that treatment by health care personnel other than a physician, dentist, psychologist, optometrist, podiatrist, or other independent providers is performed pursuant to written standing or direct orders by personnel authorized by law to give such orders. Nurse practitioners and physician's assistants may practice within the limits of applicable laws and regulations.

6 VAC 35-140-810, religious programs.

Requirements similar to paragraph A were in effect prior to January 1998. The proposed standard complies with ACA3-JTS-5G01: The facility has a qualified staff person who coordinates the facility's religious programs.

Paragraph B was in effect prior to January 1998 and comports with ACA 3-JTS-5G-02: There is a systematic approach to determine the personnel requirements for the religious programs to ensure all juveniles access to staff and services

Prior to January 1998, standards for juvenile correctional centers required that "The facility shall provide or make available to all youth the following programs and services, at a minimum: Religious services and counseling;" and that "Written policy, procedure, and practice shall provide for youth to participate in religious services and counseling on a voluntary basis. Religious counseling between clergy and youth shall be confidential." Current CORE standard 22 VAC 42-10-860.C ["Residents shall not be coerced to participate in religious activities."] does not require that religious services be provided, only that they not be mandatory. Proposed paragraph C is consistent with ACA 3-JTS-5G-04: Written policy, procedure, and practice provide for juveniles to participate in religious services and counseling on a voluntary basis.

Paragraph D is a proposed new standard intended to comply with ACA 3-JTS-5G-05: Written policy, procedure, and practice provide that juveniles have the opportunity to participate in practices of their religious faith that are deemed essential by the faith's judicatory, limited only by documentation showing threat to the safety of persons involved in such activity or that the activity itself disrupts order in the facility.

New paragraph E is proposed to comply with ACA 3-JTS-5G-03: Written policy, procedure, and practice provide that space is available for religious services.

6 VAC 35-140-815, informal communication and physical contact during visitation. The proposed requirement was a standard applicable to juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-5H-I4: "Written policy, procedure, and practice provide that juvenile visiting facilities permit informal communication, including opportunity for physical contact." NOTE: CORE standard 22 VAC 42-10-800.(3) prohibiting the banning of visits with family or legal guardians does not address the affirmative requirement of the ACA standard regarding informal communications and physical contact.

6 VAC 35-140-820, requiring recreation staff and equipment.

Requirements similar to paragraph A were in effect for juvenile correctional centers prior to 1998. The proposed standard complies with ACA 3-JTS-5F-0I: A facility of 50 or more juveniles has a full-time, qualified recreation director who plans and supervises all recreation programs. Facilities of less than 50 juveniles have a staff member trained in recreation or a related field....

The requirements of paragraph B were part of standards for juvenile correctional centers prior to January 1988. The proposed standard complies with ACA 3-JTS-5F-05: A variety of fixed and movable equipment is provided for each indoor and outdoor recreation period.

6 VAC 35-140-822, regarding programs to reinforce positive behavior. The proposed standard was a part of standards for juvenile correctional centers prior to January 1998. The standard

complies with ACA 3-JTS-3C-01: Written policy, procedure, and practice provide for a system of rewarding the positive behavior of individual juveniles.

6 VAC 35-140-825, youth access to publications. A standard similar to the one proposed here was in effect for juvenile correctional centers prior to January 1998. The proposed standard is consistent with ACA 3-JTS-5H-06 ("Written policy, procedure, and practice govern juvenile access to publications.") and implements some of the suggestions offered in the ACA "comment" on the standard: "Specific policies and procedures should exist to define which publications are allowed in the facility and how they will be inspected. Restrictions to access should be directly related to the maintenance of facility order and security."

6 VAC 35-140-830, staff code of ethics. The proposed standard was in effect prior to January 1998 and comports with ACA3-JTS-1C-23: A written code of ethics prohibits employees from using their official positions to secure privileges for themselves or others and from engaging in activities that constitute a conflict of interest. This code is available to all employees.

6 VAC 35-140-832, staff performance review. Similar requirements were in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1C-18: Written policy, procedure, and practice provide for an annual written performance review of each employee. The review is based on defined criteria, and the results are discussed with the employee.

6 VAC 35-140-834, reimbursement of approved expenses. Similar requirements were in effect prior to January 1998. The proposed standard complies with ACA 3-JTS-1C-20: Written policy, procedure, and practice provide for employees to be reimbursed for all approved expenses incurred in the performance of their duties.

6 VAC 35-140-840, legal assistance for staff. Similar provisions were in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS- 1A-28: Written policy, procedures, and practice specify the circumstances and methods for the facility administrator and other staff to obtain legal assistance as needed in the performance of their duties.

6 VAC 35-140-842, political activity. A similar standard was in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1A-29: There is written policy regarding campaigning, lobbying, and political practices. This policy conforms to governmental statues and regulations and is known and available to all employees.

6 VAC 35-140-845, daily inspections. A similar standard was in effect prior to January 1998. The proposed standard complies with ACA 3-JTS-3A-10: Written policy, procedure, and practice provide that supervisory staff conduct a daily inspection, including holidays and weekends, of all areas occupied by juveniles and submit a daily written report to their supervisor. Unoccupied areas are to be inspected weekly.

6 VAC 35-140-846, housekeeping plan. A similar standard applied to juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-4B4: There is a written housekeeping plan for the facility's physical plant.

6 VAC 35-140-847, sanitation inspections. A similar standard for juvenile correctional centers was in effect prior to 1998. The proposed standard complies with ACA 3-JTS-4B-01: Written policy, procedure, and practice require weekly sanitation inspections of all facility areas. Comment: In addition to the regular inspections by government officials, all facility areas should be inspected at least weekly by a designated staff member who should submit a written report to the administrator documenting deficiencies whenever they occur.

6 VAC 35-140-848, alternate power source. A similar standard applied to juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-3B-06: The facility has access to an alternate power source to maintain essential services in an emergency.

6 VAC 35-140-850, canteen. Similar requirements were in effect prior to January 1998. The proposed standard is consistent with ACA 3-JTS-1B-17: A canteen is available where juveniles can purchase approved items that are not furnished by the facility. The canteen operations are strictly controlled using standard accounting procedures.

6 VAC 35-140-855, hair care services. This standard was in effect for juvenile correctional centers prior to January 1998. It is consistent with ACA 3-JTS-4B-15: There are hair care services available to juveniles.

6 VAC 35-140-857 Coordination of counseling, clinical and other services. Prior to 1998 standards for juvenile correctional centers required that "Social services personnel shall share relevant information and coordinate their efforts with appropriate facility youth careworkers." The proposed standard makes the general requirement more specific, but is still consistent with ACA 3-JTS-5C-07: Social services personnel share relevant information and coordinate their efforts with appropriate facility juvenile care-workers.

6 VAC 35-140-860, superintendent's review of personnel policies. A similar standard was in effect prior to January 1998. The proposed standard complies with ACA 3-JTS-1C-03: The facility administrator reviews the facility's internal personnel policies annually and submits to the parent agency any recommended changes that are relevant to the parent agency's policies.

6 VAC 35-140-870, review of research proposals. Prior to January 1998 juvenile correctional center standards included a provision that closely tracked ACA 3-JTS-1F-04: "The facility administrator reviews and approves all facility research projects prior to implementation to ensure that they conform with the policies of the parent agency." The proposed standard is consistent with agency guidelines for reviewing and approving research proposals and should still comply with ACA requirements.

6 VAC 35-140-880, requirements of food services.

Proposed paragraph A was a standard applying to juvenile correctional facilities prior to January 1998. The standard complies with ACA 3-JTS-4A-02: Written policy, procedure, and practice specify the food service budgeting, purchasing, and accounting practices, including but not limited to the following systems:

- food expenditure cost accounting designed to determine cost per meal per juvenile
- estimation of food service requirements
- purchase of supplies at wholesale and other favorable price conditions, when possible
- determination of and responsiveness to juvenile eating preferences
- refrigeration of food, with specific storage periods

Proposed paragraph B was a standard applying to juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-4A-03: Written policy, procedure, and practice require that accurate records are maintained of all meals served.

A requirement similar to proposed paragraph C was in effect for juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-4A-04 [Mandatory]: "There is documentation that the facility's system of dietary allowance is reviewed at least annually by a dietician to ensure compliance with nationally recommended food allowances." NOTE: existing CORE standard 22 VAC 42-10-730. A does not require annual review by a dietician.

The requirements of paragraph D applied to juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-4A-05: Written policy, procedure, and practice require that food service staff develop planned menus and substantially follow the schedule and that food flavor, texture, temperature, appearance, and palatability are taken into consideration in the planning and preparation of all meals.

The requirements of paragraphs E and F were part of standards applying to juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-4A-II (PART): Written policy, procedure, and practice provide for the following:

- weekly inspection of all food service areas, including dining and food preparation
- areas and equipment
- sanitary, temperature-controlled storage facilities for all foods
- daily checks of refrigerator and water temperatures by administrative, medical, ordietary personnel

The requirements of paragraph G were applicable to juvenile correctional centers as part of standards in effect prior to January 1998. The standard complies with ACA 3-JTS-4A-I2: Shelf goods are maintained at 45 degrees to 80 degrees Fahrenheit, refrigerated foods at 35 degrees to 40 degrees Fahrenheit and frozen foods at 0 degrees Fahrenheit or below.

The requirements of paragraph H were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-4A-15, which is Mandatory: "3. All food handlers are instructed to wash their hands on reporting to duty and after using toilet facilities."

The requirements of paragraph I were included in standards for juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-4A-15, which is Mandatory: "4. Juveniles and other persons working in food service are monitored each day for health and cleanliness by the director of food services (or designee)."

The requirements of paragraph J were included in standards for juvenile correctional centers prior to January 1998. The standard complies with ACA 3-JTS-4A-15, which is

Mandatory: "2. When the facility's food services are provided by an outside agency or individual, the facility has written verification that the outside provider complies with the state and local regulations regarding food service."

6 VAC 35-140-890, detainers. Similar provisions were included in standards governing juvenile correctional facilities prior to January 1998. The proposed standard complies with ACA 3-JTS-51-14: The releasing authority does not accept the presence of a detainer as an automatic bar to release. The authority pursues the basis of any such detainer and releases the juvenile to detainers when appropriate. Comment: Detainers represent an outstanding charge that may or may not be adjudicated and should not automatically constitute a bar to release to an aftercare program or other approved placement. Staff should, as a matter of practice, trace detainers to determine their basis and probability of service. When appropriate, the releasing authority should release juveniles to detainers.

6 VAC 35-140-900, release consideration. Similar requirements were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-51-11: The releasing authority has available in writing information about a juvenile's prior history; his/her current situation; events in the case since any previous hearings; the juvenile's future plans; and relevant conditions in the community.

6 VAC 35-140-920, program of release preparation. Similar provisions were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-51-01: Written policy, procedure, and practice provide that all juveniles have access to a program of release preparation prior to their release to the community.

The following standards that were in effect prior to January 1998 will apply to juvenile correctional centers, and will be strengthened or modified based on a review of national standards and agency practice:

6 VAC 35-140-805, which sets minimum frequency for sick call. Requirements similar to those of the proposed standard were in effect for juvenile correctional centers prior to January 1998, that complied with ACA 3-JTS-4C-30: "Sick call for non-emergency medical service, conducted by a physician and/or other qualified medical personnel, is available to each juvenile as follows:

1. Small facilities of less than 50 juveniles hold sick call once per week, at a minimum.
2. Medium-sized facilities of 50 to 200 juveniles hold sick call at least three times per week.
1. Large facilities of over 200 juveniles hold sick call a minimum of five times per week."

The proposed standard reinstates the concept of a minimum number of sick calls, but follows the more stringent requirements of NCCHC standard Y-39: "In small facilities of fewer than 25 juveniles, sick call is held once a week, at a minimum. In medium-sized facilities of 25 to 100 juveniles, sick call is held at least three days a week. In facilities with over 100 juveniles, sick call is held a minimum of five days a week."

6 VAC 35-140-807, prostheses and related medical devices. A similar standard was in effect for juvenile correctional centers prior to January 1998. It is consistent with ACA 3-JTS-4C-33: "Medical and dental prostheses are provided when the health of the juvenile would otherwise be

adversely affected, as determined by the responsible physician." The proposed standard adopts the requirement of NCCHC standard Y-59 to also provide orthoses (i.e., "specialized mechanical devices used to support or supplement weakened or abnormal joints or limbs, such as braces, foot inserts, or hand splints.")

6 VAC 35-140-858, transitional placements. Prior to January 1998 there was a requirement for juvenile correctional centers to provide "placement in community residential centers, foster homes, and group homes for youth needing transitional assistance." The proposed standard is similar to, but not identical with, ACA standard 3-JTS-5I-17: Written policy, procedure, and practice provide for placement in community residential centers, foster homes, and group homes for juveniles needing transitional assistance.

6 VAC 35-140-865, documentation of vacancy rate. Prior to January 1998, this standard was in effect: "The facility director shall demonstrate that the overall vacancy rate among staff positions authorized to work directly with youth does not exceed 10 percent for any 18-month period," which is identical to ACA 3-JTS-1C-06 . The proposed standard recognizes that vacancies may be beyond the control of the facility administration, and so avoids the 10% figure, but does hold the superintendent responsible for notifying the central administration whenever the vacancy pattern becomes "excessive."

6 VAC 35-140-910, scheduling of release consideration. Similar requirements were part of standards for juvenile correctional centers prior to January 1998. The proposed standard takes into consideration both the Board's length of stay guidelines and the Department's case management procedures, and is consistent with ACA 3-JTS-5I-08: Juveniles are scheduled automatically for hearing and review by the releasing authority or designated agent when they are first legally eligible for release consideration or on completion of prescribed programs, in order to set a tentative release date.

6 VAC 35-140-930, progressive preparation for release. Prior to 1998 juvenile correctional centers were subject to a standard that was a verbatim restatement of ACA 3-JTS-5I-03: "Written policy, procedure, and practice include graduated release through a systematic decrease in supervision and corresponding increase in juvenile responsibility as part of the classification program." The proposed standard recognizes that the Department has implemented a classification system and has established case management procedures that must serve as the means for delivering any program of progressive preparation for release.

Potentially significant changes are drafted for 6 VAC 35-140-560, governing room confinement, including new requirements for staff supervision and the opportunity for exercise. The change from 30-minute checks to 15-minute checks is to conform to ACA standard 3-JTS-3C-07: "During room restriction, staff contact is made with the juvenile at least every 15 minutes, depending on his/her emotional state. The juvenile assists in determining the end of the restriction period." Similarly, ACA standard 3-JTS-3E-04 requires that "Juveniles placed in confinement are checked visually by staff at least every 15 minutes and are visited at least once each day by personnel from administrative, clinical, social work, religious, or medical units." The 15-

minute timeframe is consistent with Board policy 20-206: Room Restriction: "Staff shall make contact with the youth every 15 minutes or less, depending on the youth's emotional state, and shall allow the youth to assist in determining the end of the restriction period by modifying his or her behavior." ACA standard 3-JTS-5F-03 states that "Written policy, procedure, and practice grant juveniles access to recreational opportunities and equipment, including, when the climate permits, outdoor exercise." The comment on this standard adds: "Exercise and recreation are essential to good health. The facility should provide juveniles a well-designed and comprehensive recreation program. Special effort should be made to provide daily physical exercise for those juveniles in restricted living units. Courts have held that juvenile facilities must provide at least one hour per day of large muscle exercise outdoors unless the weather is inclement (Aherns v. Thomas 434 F.Supp. 873, 898 (W.D. Mo. 1977) and Baker v. Hamilton, 345 F.Supp. 345, 353 (W.D. Ky. 1972). The draft revision recognizes the general principle but also recognizes that there might be valid security reasons for keeping a resident indoors.

The following new standards for juvenile correctional centers are proposed based on nationally recognized standards:

6 VAC 35-140-730 (C), requiring single occupancy rooms for certain juveniles;

6 VAC 35-140-730 (E), action by the health authority when a juvenile is placed in segregation;

6 VAC 35-140-766 (B), on dealing with the media in emergency and non-emergency situations;

6 VAC 35-140-810 E, requiring that space be made available for religious services;

6 VAC 35-140-843. Firearms. The proposed standard is required to come into compliance with ACA 3-JTS-3A-30: Firearms are not permitted in the facility except in emergency situations.

6 VAC 35-140-844, inspection and maintenance of security devices. Existing standard [6 VAC 35-140-310, which applies to all juvenile residential facilities, states "All safety, emergency and communications systems shall be inspected by designated staff according to a schedule which is approved by the facility administrator and which meets all applicable regulations." This does not meet the requirements of ACA 3-JTS-3A-12: Written policy, procedure, and practice require at least weekly inspection and maintenance of all security devices, and corrective action is initiated when necessary. Thus, the standard above is proposed.

The following proposed standards for juvenile correctional centers are adaptations or variants of nationally recognized standards:

6 VAC 35-140-755, regarding the proximity of staff offices and duty stations to living areas. The proposed standard is a combination of a requirement that applied to juvenile correctional centers prior to January 1998 ("Staff offices in living units are located so that staff are readily accessible to youth.") and ACA 3-JTS-3A-04 ("Juvenile careworker positions are located in or immediately adjacent to juvenile living areas to permit workers to hear and respond promptly to emergency situations.")

6 VAC 35-140-791, day leave into the community. A generic provision governing day leave was included in juvenile correctional center standards prior to January 1998. The proposed standard complies with that part of ACA 3-JTS-51-06 that provides for escorted day leave into the community: "Written policy, procedure, and practice provide for and govern escorted and unescorted or day leaves into the community." Comment: There should be provision to escort juveniles into the community for needed medical and dental care; to visit ill family members or attend funerals; and to participate in community affairs and/or events that would have a positive influence on the juvenile. Unescorted or day leaves should be extended for a variety of reasons related to the juvenile's planned return to the community and consistent with the public safety.

6 VAC 35-140-831, staff training.

Paragraph A. Standards for juvenile correctional centers in effect prior to 1998 required only 80 hours of training beyond orientation during the first year for professional specialists. Standards for both juvenile careworkers and professional specialists included the list of subject areas identified by ACA; the lists overlapped but were not identical. The department currently provides 120 hours of training at least for juvenile careworkers, but determines the subject matter independently of standards. Except for the enumeration of subject areas to be covered in the training, the proposed standard is consistent with ACA 3-JTS-1D-09 (for juvenile careworkers) and ACA 3-JTS-1D-10 (for professional specialists): Written policy, procedure, and practice provide that all [juvenile careworkers or professional specialist employees who have juvenile contact] receive an additional 120 hours of training during their first year of employment and an additional 40 hours of training each subsequent year of employment. This training covers at a minimum the following areas: (not enumerated here inasmuch as the two lists differ somewhat).

Requirements similar to paragraph B were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-1D-08 regarding administrative and managerial staff (but omits the listed subjects) and ACA 3-JTS-1D-11: Written policy, procedures and practice provide that all support employees who have regular or daily contact with juveniles receive 40 hours of training in addition to orientation training during their first year of employment and 40 hours of training each year thereafter.

Requirements similar to paragraph C were included in standards for juvenile correctional centers prior to January 1998. The proposed standard complies with ACA 3-JTS-1D-12: Written policy, procedure, and practice provide that all clerical/support employees who have minimal or no contact with juveniles receive an additional 16 hours of training during the first year of employment and 16 hours of training each year thereafter.

6 VAC 35-140-940, pre-parole transitional graduated release. Prior to January 1998 standards for juvenile correctional centers included a provision for temporary release programs that was a word-for-word restatement of ACA 3-JTS-51-02: Temporary release programs should include but not be limited to the following:

- written operational procedures
- careful screening and selection procedures
- written rules of conduct and sanctions
- a system of supervision to minimize abuse of program privileges
- a complete record keeping system
- a system for evaluating program effectiveness

- efforts to obtain community cooperation and support

The proposed standard permits but does not require a temporary release program, and makes certain modifications rendering the standard more directly applicable to Virginia's juvenile justice system.

The following standards would apply to all secure facilities. The amendments are based on the Department's actual practice. 6 VAC 35-140-540 (C) would require a staff member to remain in the view of another staff member (without any gender requirement) when entering an area occupied by residents of the opposite sex. The Department cannot always meet the current requirement that "Staff shall always be in plain view of a staff person of the opposite sex when entering an area occupied by residents of the opposite sex," because the Department does not assign staff on the basis of gender, so that at any given time there may not be staff of both sexes present.

6 VAC 35-140-260, governing background checks on personnel in any juvenile residential facility, clarifies the conditions under which certain employees may begin work pending the completion of a background check. The amendments to paragraph A place in regulation, and not in Department procedure, the minimum elements required as part of a background investigation. This is necessary since the regulation applies to public and privately operated juvenile residential facilities while the Department procedure applies only to units of the Department. Facilities are free to include additional elements in their background investigations, such as verification of employment and education, check of references, and checks with local agencies such as local police departments, sheriffs, and courts. The Department background investigation also includes computer checks with the VCIN; NCIC, and DMV, but these checks are available only to criminal justice agencies.

6 VAC 35-140-660 is amended to clarify that the Board has never authorized, and has no intention of authorizing, the use of tear gas or mace in juvenile correctional facilities.

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.

The regulation is mandatory and not discretionary. However, it might be possible for the Department to continue to rely on agency policy and procedure rather than to incorporate into regulation provisions that comply with nationally recognized standards, since the Department has continued to operate in accordance with many of the nationally recognized standards that were deleted in the 1998 revision. The Department has rejected this approach, however, because without guidance at the regulatory level the Board of Juvenile Justice has no routine way to monitor and certify agency compliance with such nationally recognized standards. With the new standards incorporated into this regulation, the Board 's certification process provides a routine mechanism for monitoring and documenting compliance with nationally recognized best practices in juvenile corrections.

Public Comment

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

The Virginia Council on Juvenile Detention recommended the change at 6VAC35-140-450 clarifying that “a full medical examination is not required if the juvenile was a resident in the facility within the previous 60 days; in such cases, a physician or qualified health care practitioner shall review the juvenile’s medical file and update as necessary.”

The Virginia Council on Juvenile Detention also recommended the change at 6VAC35-140-480, clarifying that the facility shall make reasonable documented efforts to return the property to the resident, parent or legal guardian and shall have a written policy for the disposal of personal property that remains unclaimed 90 days after a documented attempt to return the property.

The Council on Juvenile Detention suggested the amendments to 6 VAC35-140-530.
The Council on Juvenile Detention suggested the changes to 6 VAC 35-140-550 governing due process.

The following standards were drafted in consultation with superintendents of detention homes operating post-dispositional detention programs:

- 6 VAC 35-140-502, Approval of Post-dispositional detention programs,
- 6 VAC 35-140-503, Agreement with Court Services Unit,
- 6 VAC 35-140-504, Program Description,
- 6 VAC 35-140-505, Paid employment of post-dispositionally detained juveniles;
- 6 VAC 35-140-511, Delivery of medication.

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.

The regulation is written primarily for operators of juvenile residential facilities. The Department has determined, both through examination of the regulation and the application of the regulation on a regular basis as part of the Board’s certification process, that the regulation generally is relevant and understandable by the entities primarily affected. Where the language of the regulation might not have been clear, detention home superintendents and others have suggested revisions.

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.

The Department will initiate a review and re-evaluation of this regulation within three years of its adoption to determine if the regulation should be continued, amended or terminated. In keeping with past practice, the review will consider any waivers or variances approved by the Board that may indicate a need to modify the underlying regulatory requirements. The review will consider whether the specific requirements of the individual standards included in the regulation continue to be relevant to juvenile residential facilities.

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.

The amendments regarding post-dispositional detention should (indirectly) strengthen the institution of the family. At the heart of the statutory provision for locally-operated post-dispositional detention programs is the notion that in some cases, juveniles who would otherwise be committed to state care can be better treated in or near their own communities, close to their families and other support systems.

There are few amendments throughout the regulation that will potentially strengthen the institution of the family. For example, new 6 VAC 35-140-791 makes specific provision for wards to leave the facility under supervision of trained facility staff for needed medical and dental care, to visit ill family members or to attend funerals. In addition, new 6 VAC 35-140-815 permits informal communication and opportunity for physical contact during family visits to the facility.

Otherwise, the regulation will have little or not impact on the institution of the family.