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Periodic Review Report of Findings

Agency name	Virginia Department of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC 35-60
Regulation title	Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs
Date this document prepared	April 11, 2019

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

Acronyms and Definitions

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

No acronyms are used in this report.

Legal Basis

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

The promulgating entity is the Board of Juvenile Justice (board).

The Delinquency Prevention and Youth Development Act (Act) requires the Director of the Department of Juvenile Justice to develop and supervise delinquency prevention and youth development programs and authorizes the director to make grants to counties and cities to support their efforts to address increasing

juvenile delinquency. Code of Virginia § 66-28 requires the board to “prescribe policies governing applications for grants pursuant to this Act and standards for the operation of programs developed and implemented under the grants.” In addition, pursuant to § 66-10 of the Code of Virginia, the board is granted broad authority to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.”

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Juvenile Justice (department) considered three alternatives for accomplishing the purposes of the regulation: 1) repeal the regulation in its entirety; 2) retain the regulation as currently written and supplement the regulation with additional guidance, including, for example, procedures and guidance documents; and 3) amend the regulation.

Under § 66-31 of the Code of Virginia, grants made to localities pursuant to the Act must be of an amount up to seventy-five percent of the total program budget for the proposed program, “subject to funds provided by the General Assembly.” Although the legislature has not provided funding for the Act since Fiscal Year 2002, the statute directing the board to develop standards for such programs remains in effect. Therefore, repealing the regulation in its entirety is not a viable alternative.

While the regulation is statutorily mandated, it contains several cross references to regulatory sections in other chapters of the department’s regulations that have since been repealed. It also defines terms not used elsewhere in the regulation. Retaining the regulation as is would create confusion and may result in reduced compliance should the General Assembly renew grant funding in the future. Supplementing these obsolete provisions and cross references with written procedures or guidance documents would be insufficient to address these regulatory defects.

The only remaining viable alternative is to amend the regulation to address the issues raised in the preceding paragraph. Amending the regulation is the least burdensome alternative available for ensuring that the board remains compliant with the statutory requirement in § 66-28.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

A public comment period was open from November 12, 2018 to December 12, 2018. The department did not receive any public comments following the publication of the Notice of Periodic Review for this regulatory chapter. Nor did the department form an informal advisory group to assist in conducting the periodic review.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Necessary for the protection of public health, safety, and welfare. This regulation meets some, but not all, of the criteria set out in Executive Order 14, as amended July 16, 2018. The regulation seeks to ensure that there are clear provisions in place regarding the process for applying for grants under the Act and that programs established under this Act operate in accordance with uniform standards. The General Assembly's decision to defund these grants calls into question whether the programs and the corresponding regulations continue to be necessary to protect public health, safety, and welfare.

Necessary to interpret the law. The regulation, as currently drafted, remains necessary to interpret the law. In enacting § 66-28, the General Assembly has declared that localities developing delinquency prevention programs under the Act require additional guidance on the process for obtaining grant funding for these programs, as well as a baseline for the effective development and operation of such programs. The board must continue to have provisions in place that regulate how these programs are developed and operated in order to comply with state law.

Designed to achieve intended purpose. Under § 66-27, the director may make grants to counties and cities "to promote efficiency and economy in the delivery of youth services and to provide support to localities seeking to respond positively to the growing rate of juvenile delinquency." The regulations include provisions designed to achieve this purpose, such as requiring Offices on Youth to complete a Biennial Comprehensive Plan and requiring the inclusion of an evaluation of program effectiveness in such plan.

Clearly written and easily understandable. Although the regulation is straightforward and not complex, it contains several cross references to regulatory sections in other chapters of the department's regulations that have since been repealed. Additionally, it defines terms not used elsewhere in the regulation. The regulation imposes requirements that are not sufficiently detailed, which may result in reduced compliance.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

As part of the statutory mandate set out in Code of Virginia § 2.2-4007.1, the department considered whether this regulation should be amended, repealed, or retained as is. The department concluded that amending the regulation is the best means of promoting consistency in its application and encouraging compliance.

Repealing the chapter in its entirety is not a viable option as it would conflict with the board's statutory mandate to prescribe policies and promulgate standards for the operation of programs under the Act.

Similarly, retaining the regulation as is, without making amendments, would fail to address many of the concerns outlined in this report. Cross references to obsolete provisions in other regulatory chapters would persist, which could result in confusion and reduce compliance should the grant funding be reinitiated in the future.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be necessary to satisfy the statutory mandates in § 66-28. The regulation establishes the general requirements for recipients of grant funding under the Act, addresses the responsibilities and administration of Youth Services Citizen Boards, and sets minimum standards for the administration of Offices on Youth.

The department did not receive any comments or complaints regarding the existing regulation during the public comment period.

Although the regulation is straightforward, cross references to obsolete provisions in other regulatory chapters may create confusion and result in inconsistent application of the regulatory provisions.

The regulation does not overlap or conflict with federal or state law. Additionally, most of the provisions in the regulation are not duplicative of federal or state law. When the department conducted an initial review of the regulation in 2001, it repealed several provisions that mirrored requirements expressly set out in the Code of Virginia. The regulation is duplicative only to the extent necessary to implement the applicable statutory mandates.

The department has not conducted a periodic review or amended this regulation since 2011. Since that time, the General Assembly has not reinitiated grant funding for the development and operation of programs under the Act. As a result, the regulation currently has no impact on localities or small businesses. Similarly, amending the regulation to address concerns noted in this report will not have an economic impact on small businesses.