



townhall.virginia.gov

Periodic Review Report of Findings

Agency name	Virginia Department of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC35-190
Regulation title	Regulations Governing Juvenile Work and Educational Release Programs
Date this document prepared	May 22, 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.

"CTM" means Community Treatment Model.

"JCC" means juvenile correctional center.

"LOS" means Length of Stay.

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 (the board).

Several statutory provisions give the Department of Juvenile Justice (the department) the authority to establish work release programs for juveniles committed to the department and grant the board the authority to establish regulations governing these programs. Section 66-25.1:3, for example, allows the Director of the Department (director) to establish work release programs, subject to such rules and regulations as the board may prescribe. These programs allow committed juveniles who meet certain criteria to obtain employment with private individuals, corporations, or state agencies or to attend educational or other related community programs outside of the juvenile correctional center. Compensation for youth involved in these programs must be arranged by the director, who must make deductions from such wages based on a statutorily established order of priority and in accordance with regulations promulgated by the board.

In addition, pursuant to § 66-25.1:4, the director is authorized to allow committed juveniles participating in such work release programs up to three days furlough for home visits. The furloughs are subject to the “rules and regulations prescribed by the board.”

Finally, the board is granted general authority to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth” pursuant to § 66-10 of the Code of Virginia.

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 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.

Repealing the regulation is not a viable alternative. If the department wishes to provide work and educational release programs and furloughs to eligible committed residents, it must follow board-prescribed rules and regulations pursuant to §§ 66-25.1:3 and 66-25.1:4. Repealing the regulation would render the director powerless to establish these programs.

Retaining the regulation as currently drafted and amending supplemental procedures or other guidance documents would preserve current regulatory provisions that contain obsolete or outdated references. Furthermore, the department’s standard operating procedures can be amended without notice to detained juveniles or to the general public. Allowing committed juveniles to work regularly or visit communities for furloughs impacts the general public; therefore, the public should have an opportunity to be involved in the rulemaking process for regulations governing these programs.

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 achieving the objective of assisting residents in acquiring necessary work habits, developing marketable skills, and identifying career goals, while protecting public safety.

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.

The department did not receive any public comments regarding this chapter during the public comment period that ran from December 24, 2018, to January 22, 2019, nor did the department establish an informal advisory group for purposes of assisting in 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.

This regulation meets the criteria set out in Executive Order 14, as amended July 16, 2018.

Necessary for the protection of public health, safety, and welfare. This regulation is necessary to protect public health, safety, and welfare. The regulation requires the department to assess whether residents are suitable for the program after considering their offense history and behavior during commitment, sets minimum eligibility criteria for participating residents, and directs juvenile correctional centers to have procedures in place to account for participating residents and verify their location while on work release. Residents who are given the opportunity to participate in the program will develop trade and other employment-related skills, which will increase their chances of obtaining employment upon reentry. Former residents with gainful employment will be less likely to recidivate, thus enhancing public safety.

Necessary to interpret the law. The regulation, as currently drafted, also remains necessary to interpret the law. In enacting both §§ 66-25.1:3 and 66-25.1:4, the General Assembly has declared that the statutes authorizing the director to establish such programs require further interpretation and guidance from the board. The board must continue to have these regulatory provisions in place to ensure that these programs offer residents opportunities to gain relevant work or vocational experience while ensuring the safety of the general public.

Designed to achieve intended objective in the most efficient, cost-effective manner. The objective, as clearly established in 6VAC35-190-20, is to “assist residents in acquiring necessary work habits, developing marketable skills, and identifying career goals through a broad range of career opportunities and mentoring and apprenticeship programs, and to provide such committed residents with job training opportunities that will facilitate their reintegration into the community as productive citizens upon release from commitment.” The regulations establish criteria to ensure that residents will be determined ineligible for program participation if they have not achieved the level of maturity or demonstrated behavior suitable for the privileges associated with temporary release from a JCC. Under the regulation, JCCs may require residents to apply and interview for positions in order to model real-world application and interview processes and to gauge the resident’s suitability for the position. The department must develop procedures to address the resident’s compensation. JCCs also must have written procedures in place for removing a participant from the program. These provisions promote efficiency and consistency and ensure that external businesses that provide residents with these opportunities can do so in the most cost-effective manner.

Clearly written and easily understandable. Although the regulation contains a few provisions that are outdated, the regulation is clearly written and easy to understand.

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 § 2.2-4007.1 of the Code of Virginia, 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 would leave the director powerless to establish work programs and provide its participants with opportunities for furloughs.

Retaining the regulation as currently drafted would preserve current regulatory provisions that contain obsolete and outdated references. This approach would tend to increase confusion and reduce compliance within the regulated entity.

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.

Continued need for the regulation: This regulation continues to be necessary to comply with §§ 66-25.1:3 and 66-25.1:4 of the Code of Virginia. The department must comply with rules and regulations established by the board in the operation of its work release programs.

Nature of complaints or comments received concerning the regulation: The department did not receive any public comments either in support of or in opposition to the existing regulation.

Complexity of the regulation: This regulation is not complex. It contains only 11 sections, each of which is clearly written and easy to understand.

Extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation: The regulation does not conflict with federal or state law or regulation.

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: In accordance with the mandate set forth in § 2.2-4007.1 of the Code of Virginia, the department last reviewed this regulation on June 26, 2015. At that time, the department was in the process of amending its LOS Guidelines and beginning implementation of the CTM. Since that time, the department has fully implemented the CTM in its juvenile correctional centers and fully conformed to the changes in the LOS

Guidelines. These and other changes made in the department's operations render various provisions of the regulation obsolete.

Economic impact on small businesses: This regulation is intended to benefit communities and small businesses by allowing juveniles to work in such environments and facilitating their successful reintegration into society. The current regulation requires that participating employers comply with all federal and state laws and regulations, including those related to employment and child labor laws. This requirement will have no additional impact on small businesses that would be subject to the requirements of federal and state labor laws regardless of whether they employ residents committed to the department.