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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department (Board) of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation</b>	6VAC35-71-350
<b>Regulation title</b>	Regulation Governing Juvenile Correctional Centers
<b>Action title</b>	Amendment to 6VAC35-71-350 to include an exemption for juvenile correctional centers relating to toilet facilities ratios.
<b>Date this document prepared</b>	April 25, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This action would amend 6VAC35-71-350 relating to the resident-to-toilet ratio in juvenile correctional centers. The proposed amendment changes the date for which juvenile correctional centers are required to comply with the requirement to have one toilet, one hand basin, and one shower or tub for every four residents (one-to-four ratio) in any building constructed or structurally modified after July 1, 1981 to require only those buildings constructed or structurally modified after December 28, 2007 to meet the aforementioned one-to-four ratio. This amendment would bring the regulation into alignment with the prior residential regulation (6VAC35-51-460) that was effective September 17, 2008 and superseded on December 31, 2013.

## Acronyms and Definitions

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

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Board - State Board of Juvenile Justice

Department - Department of Juvenile Justice

## Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On January 7, 2014, the Board approved the Department's request to submit a Fast-track action to initiate the process to amend section 6VAC35-71-350 of the Regulation Governing Juvenile Correctional Centers.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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Section 66-4 of the *Code of Virginia* creates the Board while § 66-10 states that the Board shall have the power and duty to promulgate such regulations as may be necessary to carry out the provisions of this title and the other laws of the Commonwealth. Per § 66-24 (D), the Board shall promulgate regulations for licensure or certification of community group homes or other residential facilities that contract with or are rented for the care of juveniles in direct state care. The Board's regulations shall address the services required to be provided in such facilities as it may deem appropriate to ensure the welfare and safety of the juveniles. In addition, the Board's regulations shall include, but need not be limited to, (i) specifications for the structure and accommodations of such facilities according to the needs of the juveniles to be placed in the home or facility; (ii) rules concerning allowable activities, local government- and group home- or residential care facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each home or facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

During the drafting of 6VAC35-71 (Regulation Governing Juvenile Correctional Centers) an exemption for secure facilities was erroneously deleted in the new regulation that was provided for in the previous regulation 6VAC35-51-460 (D) of the Standards for Interim Regulation of Children's Residential Facilities. This section stated: *“There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981, except secure custody facilities. Facilities licensed after December 28, 2007, shall comply with the one-to-four ratio”* (emphasis added). The previous regulations granted secure custody facilities built prior to December 28, 2007, an exception to the one-to-four ratio because these facilities were built when the construction standard was one toilet, one hand basin, and one shower or tub for every eight residents. The Standards for Interim Regulation of Children's Residential Facilities 6VAC35-51 were effective September 17, 2008 through December 31, 2013.

The current regulation governing juvenile correctional centers became effective January 1, 2014, and does not include the exemption for secure facilities built prior to 2007. Without this exemption, secure custody facilities constructed after July 1, 1981 are required to conform to the one-to-four ratio. However, the majority of secure facilities across the Commonwealth cannot meet this regulatory requirement since they were constructed using a one-to-eight ratio that was required by construction speculations in effect from July 1, 1981 through December 27, 2007. It will be cost prohibitive for facilities to meet the requirements set forth in the current regulations.

The fast track rule making process is requested to amend the language in 6VAC35-71-350 to include the exemption language. The amended language, if approved, will be substantially similar to the original language drafted in 6VAC35-51-460 which as noted above grandfathered in those facilities certified prior to December 28, 2007 that were constructed to conform to the one-to-eight ratio. All of other sections of the regulation will remain unchanged.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

It is anticipated that the amendment to 6VAC35-71-350 will be noncontroversial as the proposed change re-inserts language that was erroneously deleted in this regulatory action that superseded the regulatory provision with the exemption. The Department and the Board are of the understanding that this action is

correcting a scrivener’s error. There was not public comment in opposition to the proposed amendment. The juvenile correctional center facility administrators, the Department’s certification unit, the Department’s administration, and the Board support the proposed amendment as noncontroversial. Concurrently, on January 7, 2014, the Board granted all juvenile correctional centers built prior to December 28, 2007, a variance to the one-to-four ratio required in 6VAC35-71-350 until such time as the regulations were amended with the understanding that a similar regulatory action be pursued to reincorporate the exemption for juvenile correctional centers.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.) Please be sure to define any acronyms.*

The proposed amendment changes the date for which juvenile correctional centers are required to comply with the requirement to have one toilet, one hand basin, and one shower or tub for every four residents (one-to-four ratio) in any building constructed or structurally modified after July 1, 1981 to require only those buildings constructed or structurally modified after December 28, 2007 to meet the aforementioned one-to-four ratio.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
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 indicate.*

The primary advantage of the proposed amendment is to (1) correct a drafting error and (2) to avoid a substantial financial burden and, thus, achieve a financial saving to the Commonwealth for the cost of labor and materials required to construct additional bathroom facilities in the four state-operated juvenile correctional centers to meet the current regulatory requirements. In addition to the capital costs, there would likely be additional administrative costs associated with overtime hours for staff that would be required to monitor construction staff to comply with the regulatory requirement that staff monitor all situations in which outside personnel perform any kind of work in the immediate presence of residents. The bathroom facilities are located in the juvenile’s living area and construction in this space would be disruptive to the juvenile’s daily routines for the duration of the construction. There are no advantages or disadvantages to the public and no disadvantages in adopting the proposed change to the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

The proposed amendment 6VAC35-71-350 does not address federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

No localities will be particularly affected when 6VAC35-71-350 is amended.

**Regulatory flexibility analysis**

*Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The proposed amendment made to the Regulation Governing Juvenile Correction Centers is limited to revising one section and there is not an associated adverse impact on small business. There are no small business related compliance or reporting requirements and there are not any designs or operational standards impacting small businesses. The proposed amendment impacts state operated juvenile correctional centers.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<p><b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>The Department of Juvenile Justice and its state-operated juvenile correctional centers</p>
<p><b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.</p>	<p>The Department of Juvenile Justice and its four state-operated juvenile correctional centers. No small businesses will be affected.</p>

<p><b>Benefits expected as a result of this regulatory proposal.</b></p>	<p>State operated juvenile correctional centers will be in compliance with the requirements of the regulations without having to incur additional costs or request repeated variance from the requirements of 6VAC35-71-350 from the Board.</p>
<p><b>Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.</b></p>	<p>\$ 0</p>
<p><b>Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.</b></p>	<p>\$ 0</p>
<p><b>All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>\$ 0</p>

**Alternatives**

*Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The Board, at the request of the Department, granted a variance from the one-to-four ratio requirement in 6VAC35-71-350 to all the juvenile correctional centers to bring the facilities into compliance with the regulation currently in effect. The variance is not intended to be a permit solution and therefore the Board is seeking to amend the regulation.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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 amendment to this regulation will have no direct impact, either positively or negatively, on the institution of the family and family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, intent, rationale, and likely impact of proposed requirements</b>
6VAC35-71-350	Not applicable	There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after July 1, 1981.	<p>There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified after December 28, 2007.</p> <p>The proposed change will bring the regulation into accord with the current construction in the four state-operated juvenile correctional centers.</p>