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Final Regulation Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation(s)	6 VAC35-160
Regulation title(s)	REGULATIONS GOVERNING JUVENILE RECORD INFORMATION AND THE VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM
Action title	Revises the process to submit, process, preserve, and disseminate juvenile record information in the Virginia Juvenile Justice Information System in accordance with Title 16.1 (§§ 16.1-222, 16.1-223, 16.1-224, 16.1-225, and 16.1-300) of the <i>Code of Virginia</i> .
Date this document prepared	May 11, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.

The Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System (VJJIS) provide the processes participating agencies, which include 34 state- and locally-operated court service units, two department-operated facilities, 24 locally-operated juvenile detention homes, any juvenile group homes funded by the Virginia Juvenile Community Crime Control Act (VJCCCA) and other agencies or organizations eligible to receive juvenile record information under *Code of Virginia* § 16.1-300 must follow when submitting, processing, preserving, disseminating, protecting, and expunging juvenile record information in the VJJIS. The regulations set out the procedures a participating agency must follow when it receives a request for juvenile records, the process for challenging the accuracy of a juvenile record, and the methods for expunging and disposing of records. Additionally, the

regulation authorizes the Department to conduct audits to ensure and verify compliance with the terms of the regulation.

The proposed amendments to the regulation ensure that the processes for submission, preservation, dissemination, and security measures for data in the VJJIS are consistent with the Information Technology Resource Management (ITRM) standards, the technology standards with which all Commonwealth executive agencies must comply. Additionally, the proposed amendments remove antiquated terms and requirements and provide clarifying language for processes that were previously vague.

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.

- Board – State Board of Juvenile Justice
- Department or DJJ – Department of Juvenile Justice
- ITRM – Information Technology Resource Management
- VJJIS - Virginia Juvenile Justice Information System

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.

On April 26, 2017, the Board of Juvenile Justice authorized the advancement of the Juvenile Records Information and the Virginia Juvenile Justice Information System, 6VAC35-160, as amended, to the Final Stage of the Regulatory Process.

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.

The Board of Juvenile Justice (Board) is entrusted with general authority to promulgate regulations by § 66-10 of the *Code of Virginia*, which provides that the Board may “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.”

The following statutes specifically address the establishment of the VJJIS and the Board’s related authority to promulgate regulations governing the security and confidentiality of any data submission.

§16.1-222. Established; powers of Director.

- A. There is hereby established within the Department of Juvenile Justice the Virginia Juvenile Justice Information System which shall operate separate and apart from the Central Criminal Records Exchange.

- B. The Director of the Department of Juvenile Justice is authorized to employ such personnel, establish such offices, acquire such equipment, and use such available equipment as shall be necessary to carry out the purpose of this chapter. He is further authorized to enter into agreements with other state agencies for services to be performed for the Virginia Juvenile Justice Information System by employees of such other agencies.

§16.1-223. Receipt, etc., of data; forms for reports; confidentiality.

- A. The Virginia Juvenile Justice Information System shall receive, classify and file data reported to it pursuant to §16.1-224. The Director is authorized to prepare and furnish to all court service personnel automated data processing equipment, which shall be used for making the data submissions.
- B. Data stored in the Virginia Juvenile Justice Information System shall be confidential, and information from such data that may be used to identify a juvenile may be released only in accordance with § 16.1-300.

The data submissions may be made available to the Central Criminal Records Exchange or any other automated data processing system, unless the data is identifiable with a particular juvenile. The State Board of Juvenile Justice shall promulgate regulations governing the security and confidentiality of the data submission.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.

The regulation applies to the juvenile record information of all juveniles supervised by or in the care and custody of the Department. The purpose of the proposed amendments is to maintain the confidentiality requirements of § 16.1-300 of the *Code of Virginia* and to ensure that the regulation is consistent with the security requirements for juvenile information set out in the Commonwealth ITRM Standards. The Department is unaware of any potential issues that may need to be addressed as the regulation is developed outside of the proposed changes noted below.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The proposed language makes two substantive changes to the regulation. First, the proposed amendments require background checks for those individuals who will have access to juvenile record information. While the existing regulation does not mandate background checks before individuals may access juvenile records, DJJ’s policy requires such background checks. Second, as DJJ is subject to COV ITRM standards, the proposed amendments replace references to DJJ data policies with references to these statewide technology standards.

In addition, the proposed language removes antiquated terms and requirements and provides clarifying language for processes that were previously vague.

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 proposed amendments provide several advantages to the general public. The ITRM standards, after which the proposed amendments to the regulation are modeled, ensure that juvenile record data are collected, disseminated, and processed in a manner that protects the security and confidentiality of the data and thereby protects the general public. The regulation provides a mechanism for individuals or their representatives to challenge juvenile record information, and the proposed amendments clarify the process.

Additionally, the proposed amendments benefit the Department, state and locally-operated court service units, secure juvenile detention centers, juvenile group homes, and other public and child welfare agencies by providing them with specific, up-to-date guidance regarding the processes for requesting juvenile record information, the manner in which challenges concerning juvenile record information must be handled, and the process by which juvenile record information may be expunged.

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.

There are no requirements that exceed applicable 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 by 6VAC35-160 as proposed to be amended.

Family impact

Please assess the impact of this 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 regulation is not anticipated to have a direct impact, either positively or negatively, on the institution of the family and family stability. The regulation neither encourages nor discourages economic self-sufficiency, self-pride, or the assumption of responsibility. The regulation neither strengthens nor erodes marital commitment nor increases or decreases disposable family income.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	The term "data owner" is defined to mean a department employee responsible for the policy and practice decisions regarding data as identified by COV ITRM Standard Security (501-08).	The ITRM standard cited in this definition has been changed to 501-09.1.	This corrects an inaccurate reference.
10	"Destroy" is defined in the proposed stage as to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping."	Extraneous language in the definition of "destroy has been removed.	1VAC7-10-30 provides that, in construing regulations, the word "includes" means "includes, but not limited to."
10	A proposed change to the definition of "need to know" would have provided that once access to an application is authorized, the authorized data user is still obligated to assess the appropriateness of each specific access only necessary to perform official job duties and responsibilities.	The amendment originally proposed in the "need to know" definition has been stricken.	Because this information is set out in Section 60 of the regulation, it is unnecessary to include it as part of the definition. Furthermore, the inclusion of this information in the definition section violates the prohibition in the Style Manual against including substantive provisions within the definitions section.
60	For individuals providing treatment or rehabilitative services to a juvenile, they are authorized to access only such information as is relevant to the treatment. The authorized user is still	The phrase "is still" has been replaced with "remains."	This change was recommended for style purposes.

	obligated to assess the appropriateness of each specific access on a need-to-know basis.		
100	In ensuring that information contained on discarded computers is not available to unauthorized parties, all data must be completely erased or otherwise unreadable in accordance with COV ITRM Standard 514-04 or any successor COV ITRM standard addressing the removal of Commonwealth data from electronic media. (Note that this document is incorporated by reference).	The reference to “any successor COV ITRM standard that addresses removal of Commonwealth data from electronic media” has been removed.	Effective January 1, 2016, pursuant to 1VAC7-10-140, agencies are prohibited from adopting prospective changes to an incorporated document by referring to a future edition or revision of the document.
130	Unattended remote access devices must be made inoperable to prevent unauthorized access of juvenile record information by implementing a screen saver lockout period after a maximum of 15 minutes of inactivity, as required by COV ITRM Standards, SEC 501-09 or any successor COV ITRM Standard addressing information security.	The reference to COV ITRM Standard Sec 501-09 has been replaced with 501-09.1. The reference to “any successor COV ITRM standard that addresses removal of Commonwealth data from electronic media” has been removed.	This change reflects an update to the ITRM standards. Effective January 1, 2016, pursuant to 1VAC7-10-140, agencies are prohibited from adopting prospective changes to an incorporated document by referring to a future edition or revision of the document.
150	Participating agencies must immediately notify the appropriate data owner when it is found that incorrect information has been entered into the VJJIS.	The language “when it is found” has been replaced with “upon discovery.”	This change was recommended for style purposes.
330	Computerized records ordered expunged must be deleted from all databases and electronic files in such a manner that the records cannot be accessed or recreated through ordinary equipment use or software that is part of the VJJIS, pursuant to ITRM SEC 514-03.	The reference to ITRM standard SEC 514-03 has been replaced with 514-04.	This change corrects an inaccurate reference.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No public comments were submitted.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6VAC35-160-10	N/A	Defines terms used within the regulation.	Adds the following terms and definitions to ensure the public understands the meaning of terms used throughout the regulation and to reflect terminology used in the COV ITRM Standards: <ul style="list-style-type: none"> • “Commonwealth of Virginia Information Technology Resource Management Standards” or “COV ITRM Standards” means the information technology standards applicable to all Commonwealth Executive Branch agencies that manage, develop, purchase, and use information technology resources in the Commonwealth of Virginia. • “Data owner” means a Department of Juvenile Justice employee who is responsible for the policy and practice decisions regarding data as identified by COV ITRM Standard Security (SEC) 501-09.1. • “Remote access” means a connection to the department’s systems from a remote location other than a department facility. • “Telecommunication connection” means the infrastructure used to

			<p>establish a remote access to department information technology systems.</p> <p>Replaces the term and definition “VJJIS functional administrator” with the term and definition for “data owner” in order to conform to terms used in the ITRM Standards.</p> <p>Amends definitions of “expunge” and “juvenile record information” to clarify that the references to identifying information are to “personal” identifying information.</p> <p>Amends definition of “need to know” to remove the requirement that once access to an application is authorized, the data user remains obligated to assess the appropriateness of each specific access on need-to-know basis, as this is set out in Section 60 of the regulation.</p>
6VAC35-160-30		Designates locally operated court service units, juvenile secure detention centers, and boot camps among the local participating agencies in the VJJIS.	Removes “boot camps” from the designation as a participating agency in the VJJIS. Currently, there are no juvenile boot camps in operation.
6VAC35-40		Requires the Department to develop a written agreement with other participating agencies delineating the agency’s access to and responsibility for information contained in the VJJIS.	Amends the language to require the Department to develop a memorandum of agreement and a nondisclosure agreement to ensure protection of confidential juvenile information.
6VAC35-160-50		Requires participating agencies to submit data and other information, as required by department policy.	Amends the language to replace “policy” with “procedures” as the Department issues procedures and the Board issues policies.
6VAC35-160-60		Allows the Department to limit or expand the scope of access granted to participating agencies in accordance with policies governing confidentiality of information and system security.	Expands the authorities to include statutes, regulations, and procedures governing confidentiality of information and system security and removes the reference to “policies” as policies are issued by the Board.
6VAC35-160-70		Authorizes the Department to require a background check of any individual given access to the VJJIS system through a participating agency. Restricts direct access to authorized employees.	<p>Replaces “may” with “shall” to mandate that the Department require background checks of individuals who will have access to the VJJIS system.</p> <p>Replaces the category of persons who have direct access to juvenile record information to include authorized</p>

			<p>“individuals” rather than authorized employees. This amendment acknowledges that persons with access to the VJJIS may not be employees of a participating agency.</p>
6VAC35-160-90		<p>Restricts access to areas where juvenile record information is collected, stored, processed, or disseminated to include only those authorized persons who are clearly identified.</p>	<p>Removes the requirement that the authorized persons be clearly identified.</p>
6VAC35-160-100		<p>Requires participating agencies with automated juvenile record information files to: 1) designate a system administrator to maintain and control user accounts, system management, and security measures; 2) maintain backup copies of juvenile record information; 3) develop a disaster recovery plan for the department’s inspection and review; 4) control system specifications and documentation to prevent unauthorized access and dissemination; and 5) develop procedures for discarding old computers to avoid unauthorized access.</p>	<p>Removes the requirements that participating agencies with automated juvenile record information files: maintain backup copies of juvenile record information and control system specifications and documentation to prevent unauthorized access and dissemination. Replaces these directives with a requirement to develop and implement a logical access procedure to prevent unauthorized access and dissemination. Also adds a new requirement that all data be completely erased or otherwise made unreadable in accordance with COV ITRM Standard SEC 514-04.</p>
6VAC35-160-110		<p>Requires access controls for computer security to be kept under maximum security conditions.</p>	<p>Relaxes the standard for the maintenance of access controls to require that the access controls be kept secure.</p>
6VAC35-160-130		<p>Provides that dedicated telecommunication lines are required for direct or remote access to computer systems containing juvenile record information; however, the Department may permit the use of a non-dedicated means of data transmission to access juvenile record information when there are adequate and verifiable safeguards in place to restrict access to authorized persons.</p> <p>Also, permits remote access of juvenile record information and requires any unattended remote access device be</p>	<p>Removes extraneous language referencing the Department’s general requirement of telecommunication lines for direct or remote access to computer systems with juvenile record information.</p> <p>Clarifies that an unattended remote access device must be made inoperable for purposes of accessing juvenile record information by implementing a screen saver lockout period after a maximum of 15 minutes of inactivity. This language is necessary to conform to the requirements in the COV ITRM Standards SEC 501-09.1.</p>

		made inoperable for purposes of accessing juvenile record information.	
6VAC35-160-150		Requires participating agencies to immediately notify the VJJIS functional administrator upon discovering that incorrect information has been entered into the VJJIS and requires the functional administrator to timely correct the information.	Replaces “VJJIS functional administrator” with “data owner” consistent with the change made in the definitions section.
6VAC35-160-170		Identifies, as the title to this section of the regulation, “Information to be disseminated only in accordance with law and regulation.”	Makes a technical amendment to the title to read: “Information to be disseminated only in accordance with applicable statutes and regulations.”
6VAC35-160-170(C)		References the Health Insurance Portability and Accountability Act (HIPAA) and the federal substance abuse law as additional areas of the law where disclosure limitations are identified.	Removes the reference to HIPAA. The Office of the Attorney General has previously opined that the Department is not a HIPAA-covered entity.
6VAC35-160-180		Allows participating agencies to be compensated for search and copying time when a nonparticipating agency requests juvenile record information and requires the two parties to enter into an agreement where the requester agrees to pay the fees before initiating the search.	Amends the language to clarify that the agreement to pay the fees must be written, and that any release must accord with applicable statutes and regulations.
6VAC35-160-210		Requires the person responding to a request to disseminate health or substance abuse treatment records to determine whether the requested information is protected by HIPAA or by the federal law on substance abuse treatment records.	Removes the requirement that the person responding to the request must determine whether the requested information is protected by HIPAA. The Office of the Attorney General has previously opined that the Department is not a HIPAA-covered entity. Amends language to clarify that health and substance abuse treatment records must be disseminated in strict compliance with the <i>Code of Virginia</i> and this regulation.
6VAC35-160-220		Once it is determined that a requester is entitled to juvenile record information, a designated individual must inform the requester of the fees associated with searching for and copying the records and must obtain the	Removes the requirement that a designated individual from a participating agency inform the requester of any fees associated with searching for and copying juvenile record information and obtain the requester’s consent to pay the fees associated with this request. This requirement is set out in the amended

		<p>requester’s consent to pay these fees. Generally requested records must be provided within seven days, unless a longer response time is required. Requires the participating agency to explain to the requester how to request the information from the appropriate source if the participating agency does not have access to the requested information.</p>	<p>6VAC35-160-180 and does not need to be repeated here.</p> <p>Amends the language to add a requirement that records containing sensitive information, such as names, dates of birth, social security numbers, and addresses be encrypted prior to electronic dissemination. This amendment is necessary to comply with the requirements in the ITRM Standards.</p> <p>Extends the deadline for providing requested records to 10 business days.</p> <p>Clarifies that a participating agency without access to the information requested need only tell the requester how to request the information from the appropriate source if the source is known to the participating agency.</p>
6VAC35-160-280		<p>Provides a mechanism for individuals or their representatives to challenge juvenile record information by submitting documentation to the VJJIS functional administrator. The challenger may briefly state how the information is alleged inaccurate. The VJJIS functional administrator must examine the record to determine whether a data entry error was made and must send a copy of the challenge form and other information to all agencies that could have originated the information under challenge if the source of the error cannot be determined.</p>	<p>Replaces functional proponent and VJJIS functional administrator with data owner as the person to whom documentation must be submitted when challenging juvenile record information, the person who examines the individual’s records to determine the source of the error, and the person who must ensure that the required change is made if any modification is required. This change is consistent with the change made in Section 10.</p> <p>Amends language to require that the statement an individual may make describing how the record is alleged inaccurate must be written.</p>
6VAC35-160-290		<p>Provides an administrative review procedure that allows individuals or their representatives who are dissatisfied with the results of a challenge to request in writing within 30 days an administrative review by the Director of DJJ.</p>	<p>Amends the language to clarify that the 30-day requirement denotes 30 calendar days.</p>
6VAC35-160-300		<p>Requires the VJJIS functional administrator to notify the affected participating agencies to remove the</p>	<p>Makes a technical amendment to the language by replacing “is determined to be correct” with “when the challenge has been resolved”.</p>

		required challenge designation from their files when juvenile record information that has been subject to a challenge is determined correct, as a result of the challenge or an administrative review.	
6VAC35-160-310		Requires that all records and identifying information associated with an expungement be destroyed in instances in which a court orders the expungement of an individual's juvenile records.	Expands the language to include instances in which the law requires the expungement of an individual's juvenile records. Current law sets out a procedure for the expungement of juvenile delinquency records if: 1) a juvenile has attained a certain age without acquiring additional charges; 2) the charges were dismissed; 3) the juvenile was adjudicated innocent and files a motion requesting the records be destroyed, or 4) certain other requirements are met.
6VAC35-160-320		Directs the VJJIS functional administrator to notify all participating agencies to purge their records of references to persons whose records have been ordered expunged.	Replaces VJJIS functional administrator with data owner, consistent with the change made in Section 10.
6VAC35-160-330		Requires paper versions of records ordered expunged to be destroyed by shredding, incinerating, pulping, or otherwise totally eradicating the record. Requires computerized versions of records ordered expunged to be deleted from all databases and electronic files to prevent the records from being accessed or recreated through ordinary use of VJJIS equipment or software.	Removes examples for methods of destroying paper records, as these methods are encapsulated in the definition for destroy in Section 10. Adds language to clarify that the required deletions are in accordance with the COV ITRM SEC 514-04.
6VAC35-160-340		Requires that the participating agency expunge juvenile record information within 30 days of receiving expungement instructions from the VJJIS functional administrator and notify the administrator once the records have been expunged.	Replaces the VJJIS functional administrator with the data owner as the person that gives expungement instructions to the participating agency and as the person the participating agency must inform after the records have been expunged. Amends the language to clarify that the 30-day requirement denotes 30 calendar days.

			Makes other technical changes.
6VAC35-160-350		Requires a participating agency to comply with an expungement order it receives directly from a court and to notify the VJJIS functional administrator, who must contact the appropriate court, determine the validity of the notification, and obtain a copy of the court order.	Replaces the VJJIS functional administrator with the data owner, as the person who must be notified of a court-ordered expungement. Removes the requirement that a copy of the court order be obtained by the VJJIS, and instead requires the data owner to contact the appropriate court and determine the validity of the notification.
6VAC35-160-355		Requires a participating agency to notify the VJJIS functional administrator when the agency disposes of records in that agency's physical possession, which enables the VJJIS to remove the information from VJJIS.	Replaces the VJJIS functional administrator with the data owner as the person who must be notified when a participating agency disposes of records in the physical possession of the agency.
6VAC35-160-390		Requires the Department to annually report to the Board on the status of the VJJIS.	Repeals this entire section. The Information Security Officer and the Virginia Information Technology Association monitors these practices and ensures that the Department is in compliance with the requirements contained in this regulation.