

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

**6 VAC 20-70 – Rules Relating to Compulsory Minimum Training Standards for
Noncustodial Employees of the Department of Corrections
Department of Criminal Justice Services
Town Hall Action/Stage: 4511/7809
April 13, 2017**

Summary of the Proposed Amendments to Regulation

The Criminal Justice Services Board (Board) proposes to amend its regulation governing training for certain noncustodial employees of the Department of Corrections (DOC)¹. Specifically, the Board proposes to: 1) update definitions and other regulatory text to make the regulation easier to read and understand, 2) increase initial training requirements from eight hours to 80 hours and newly require 40 hours of in-service training every biennium, 3) require that initial training be completed within 12 months of designation², 4) allow the Director of the Department of Criminal Justice Services (DCJS) to grant an extension of that time limit, 5) set rules for re-entering a noncustodial position, and 6) allow DCJS the authority to suspend specific training modules.

Result of Analysis

Benefits likely outweigh costs for all proposed changes.

¹ This regulation only governs noncustodial employees who, by their appointment, are authorized to carry a weapon and detain individuals. This category of noncustodial employees comprises wardens, assistant wardens, regional operations chiefs, operations-logistics specialists, deputy directors of DOC and the Director of DOC.

² The Director of DOC designates noncustodial employees who may carry a weapon.

Estimated Economic Impact

Most of the regulatory changes proposed by the Board do not change any substantive requirement or duty for any entity but, instead, are aimed at making the regulatory text easier to read and understand. Changes to the definitions in the regulation, as well as language that notes what entities have approval authority over training standards, fall into this category of change. No affected entity is likely to incur costs on account of changes such as these. To the extent that the current regulation contains outdated definitions, or might be otherwise confusing or opaque, these changes will benefit readers by making the regulation more easily understood.

In addition to these clarifying changes, the Board proposes several substantive changes to this regulation.

Current regulation requires that noncustodial employees of DOC who are subject to this regulation³ complete eight hours of initial training; affected employees are not currently required by this regulation to complete any continuing in-service training. DCJS staff reports when this regulation was first promulgated, noncustodial staff positions were typically filled with DOC employees moving from custodial positions and, therefore, these individuals would have had extensive relevant training. DCJS staff further reports that noncustodial staff positions are no longer filled strictly from the ranks of custodial staff so the training requirements in this regulation are likely no longer adequate.

The Board now proposes to increase initial training for affected noncustodial employees to 80 hours of initial training and 40 hours of in-service training every two years. These new training requirements are roughly equal to the training hours that custodial staff are required by regulation to receive on firearms and detention. Although these proposed training requirements substantially increase the amount of training required by law, they will likely have little actual impact on DOC or affected employees. DOC staff report that, per DOC policy, affected noncustodial staff already have to complete 104 hours of initial training and 40 hours of in-service training every two years. Since DOC already requires training hours that match or exceed

³ DOC has many noncustodial employees who are not subject to this regulation because they are not authorized by the Director of DOC to carry a weapon or to detain people. Secretarial support staff, food service staff, counselors, buildings and grounds/maintenance personnel, agribusiness staff, teachers, nurses, doctors and psychologists in the employ of DOC are noncustodial staff but are not subject to this regulation because they would not be authorized to carry weapons.

the hours proposed by the Board, DOC is very unlikely to incur any additional costs on account of these proposed changes.

Current regulation requires affected noncustodial employees to complete their currently required eight hours of training within 120 days of the date of assuming their noncustodial position, and specifies that these employees may not carry a weapon until training is completed. Since initial training requirements will increase substantially under this proposed regulation, the Board proposes to extend the time allowed for initial training to 12 months while still requiring that training be completed before noncustodial employees are allowed to carry a weapon. This change will benefit both affected noncustodial employees and DOC as sufficient time will be allowed to complete the increased training required by the proposed regulation. No affected entities are likely to be harmed by this extension because noncustodial employees will still not be allowed to carry firearms until they are adequately trained. Benefits likely outweigh costs for this proposed change.

This proposed regulation will newly allow the Director of DCJS to grant extensions to the proposed 12 month time limit for training so long as there is a valid reason for the extension and so long as the agency administrator⁴ applies for the extension prior to the expiration of any time limit. Valid reasons for receiving an extension include: illness, injury, military service and special duty assignment required and performed in the public interest. This change will benefit affected non-custodial employees and DOC as it will allow both greater flexibility to complete training when it is interrupted by certain life circumstances. No affected entity is likely to incur costs on account of this proposed change.

The Board also proposes to newly specify that any noncustodial employee or custodial employee who separates from DOC's employ for 24 months or fewer must complete required in-service hours and annual firearms training when they are re-employed as affected noncustodial employees. Any individuals who have been separated from DOC's employ for greater than 24 months will be required to complete all required initial training when they are re-employed as affected noncustodial employees. DCJS staff reports that these proposed changes will make employment rules for noncustodial employees consistent with employment rules for custodial employees. These changes will likely benefit all DOC staff and inmates as it will provide greater

⁴ The agency administrator is the Director of DOC or his designee.

assurance that all staff who are authorized to handle weapons and detain people are adequately trained.

Current regulation allows DCJS to suspend or revoke approval of any training academy that is noncompliant or deficient but only allows DCJS the power to suspend or revoke approval for the whole academy. The Board now proposes to also allow DCJS to just suspend or revoke individual training modules. Board staff reports that from time to time law changes, court decisions or changes in best practices will make the curriculum of individual training modules obsolete or even erroneous. Right now, DCJS has no way to address this other than to suspend or revoke approval for the entire training academy if it is teaching such a module. Board staff reports that the Board is proposing this change so that DCJS can address problematic training within an academy without adversely affecting the whole academy. This change will benefit academies by limiting suspension and revocations of their operations to only cover specific deficiencies. This change will also benefit affected noncustodial employees as it will better forestall obsolete or erroneous training they might receive without impeding their ability to be trained in a timely fashion. Benefits likely exceed costs for this proposed change.

Businesses and Entities Affected

These proposed regulatory changes will affect training academies, noncustodial employees who are authorized to carry a firearm and detain individuals and DOC. DCJS staff reports that DOC currently only employs 42 noncustodial employees who would be subject to this proposed regulation.

Localities Particularly Affected

No localities will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment

These proposed regulatory changes are unlikely to significantly affect employment in the Commonwealth.

Effects on the Use and Value of Private Property

These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Real Estate Development Costs

These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

These proposed regulatory changes are unlikely to affect any small business in the Commonwealth.

Alternative Method that Minimizes Adverse Impact

No small businesses will be adversely affected by these proposed regulatory changes.

Adverse Impacts:

Businesses:

Businesses in the Commonwealth are unlikely to experience any adverse impacts on account of this proposed regulation.

Localities:

No localities are likely to incur costs on account of these proposed regulatory changes.

Other Entities:

These proposed regulatory changes are unlikely to adversely affect other entities in the Commonwealth.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of

businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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