



Proposed Regulation Agency Background Document

Agency name	Department of Criminal Justice Services
Virginia Administrative Code (VAC) citation	6 VAC 20 -260
Regulation title	Regulations Relating to Bail Enforcement Agents
Action title	Bail Enforcement Agent Regulations (New)
Document preparation date	July 19, 2006 – Revision October 19, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The regulation establishes a licensure process, licensure fees, compulsory minimum entry-level training standards including firearms training and qualifications, standards of conduct, and administration of the regulatory system. It outlines procedures for receiving complaints concerning the conduct of any person whose activities are monitored by the Board; procedures for conducting investigations; issuing disciplinary action; and revoking, suspending, refusing to renew a license, and provides an appeal process pursuant to the Administrative Process Act. **These proposed regulations are being resubmitted for executive branch review with an additional inclusion of a license reinstatement process as recommended by the Governor's office based on reservations presented by the Department of Planning and Budget.**

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legal authority to regulate bail enforcement agents is found in § 9.1-102 (47) of the Virginia Code, effective October 1, 2005, authorizing the Department, under the direction of the Board to “license and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.) of this chapter”. The Board shall adopt regulations that are necessary to ensure respectable, responsible, safe and effective bail enforcement within the Commonwealth pursuant to §9.1-186.2. The Office of the Attorney General has certified that the department has the statutory authority to adopt regulations pursuant to the Code of Virginia § 2.2-4011(A)(ii).

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

To promulgate the regulations for bail enforcement agents. The regulation establishes a licensure process to include a fingerprint based background check, licensure fees, compulsory minimum entry-level training standards, and administration of the regulatory system. It authorizes the department to receive complaints concerning the conduct of any person whose activities are monitored by the Board, to conduct investigations, to issue disciplinary action, and to revoke, to suspend, and to refuse to renew a license. These procedures are established to ensure respectable, responsible, safe and effective bail enforcement in the Commonwealth.

A public hearing will be held during the promulgation process, participation from individuals will be strongly encouraged.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

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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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of incorporating the changes presented in the proposed regulations is to continue to provide necessary public protection tasked through existing statutes. Another purpose of the amendments ensure a clear, concise set of regulations to use and understand thereby facilitating compliance.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The project code is 70080: As a special fund agency, the Private Security Services Section of DCJS must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to bail enforcement agents for necessary functions of regulations. On-going expenditures for the agency are related to compliance and enforcement as required under the law. These include conducting investigations and audits to ensure compliance of the Code and Regulations as well as the implementation and maintenance of a technical licensure database system.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Bail Enforcement Agents</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means 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.</p>	<p>There are currently 73 licensed bail enforcement agents.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Bail Enforcement Agents should not incur any additional fees as long as they maintain compliance with the Code and Regulations.</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.

There are no alternatives to the proposed regulatory action.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Regulation Site	Commenter	Comment/Issues/Recommendations	Agency Response
		Part I: Definitions	
6 VAC 20-260-10		Definitions	
6 VAC 20-260-10	Ed Becher	On definitions, remove “Combat Load no place in this regulation does it discuss combat loading of a shotgun.	The agency concurs.
6 VAC 20-260-10	B. E. McCrory, Jr.	I think there needs to be a definition of exigent circumstances (6VAC 20-260-260 C) or at least spell them out in that section.	This was taken directly from the Code. The agency believes it is too comprehensive to specifically define.
		Part III: Licensing Procedures and Requirements	
6 VAC 20-260-30		Bail Enforcement Eligibility	
6 VAC 20-260-30B	B. E. McCrory, Jr.	Make criminal history more stringent, at least the same requirements as found for Security officers under 6 VAC 20-171.	This would require legislative change.
6 VAC 20-260-40		Initial Bondsman License Application	
6 VAC 20-260-40A4	Melissa Seiler	Send the physical cards (fingerprint cards) to the State Police in the beginning to prevent kick back of unclassifiable prints. (versus scanning)	The agency does submit fingerprints to the State Police should there be difficulty in reading the prints. The State Police still will scan the prints for the National Criminal History Review.
6 VAC 20-260-60		Applications Sanction/Denial, Probation, Suspension and Revocation	
6 VAC 20-260-60B	B. E. McCrory, Jr.	What steps can DCJS take to insure that these applicants have not been sanctioned in other states?	This is handled during the application stage and the agency plans to further handle through the audit process.

		Part IV: Compulsory Minimum Training Standards for Bail Enforcement Agents	
6 VAC 20-260-190		Bail Bondsmen & Firearms training sessions	
6 VAC 20-260-190	Ed Becher	I make a recommendation that 6 VAC 20 171-365 Firearms Training Requirements be referenced. This will show the BEA more information as to the training program.	This section does reference the Regulations Relating to Private Security Services (currently 6 VAC 20-171). The firearms training session is fully detailed in the PSS regulations and referenced in all other regulatory programs. This enables the agency to change only one administrative code versus 4 regulatory programs should a change need to go into effect.
6 VAC 20-260-210		Bail Bondsmen & Firearms training sessions	
6 VAC 20-260-210 B6 &7	B. E. McCrory, Jr.	While armed security officers have had occasion to fire weapons, bail enforcement agents are more likely to need the firearm to protect themselves than security officers. Therefore, a 70% on the written test and 75% on the qualification score are too low. I recommend that the %'s be 80 for the written and 85 for the qualification.	The agency has not seen comprehensive statistical data that would support this premise. The agency strives to maintain consistency throughout all armed regulatory categories.
		Part V: Recordkeeping Standards and Reporting Requirements	
6 VAC 20-260-220		Reporting Standards and Requirements	
6 VAC 20-260-220	Melissa A. Seiler Jim Kelly Bail Bonding	Recommend 3- year retention of all records clients and reports. Also, it should be standard that all records be physically located in the Commonwealth for all clients that the BEA has contracted to recover.	Agree.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The regulations indirectly impact the family by providing a regulatory requirement that ensures respectable, responsible, safe and effective bail enforcement within the Commonwealth. This regulatory action will result in verifying the qualifications of the individuals providing bail enforcement services through criminal history records checks and training, to ensure competency and prevent deceptive or unsafe practices towards the family unit.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6 VAC 20-260-10		Delete Definition	Delete the definition for Combat Loading, not required in these regulations.
6VAC 20-260-10		Definition of Certified Training School	Change: “Certified Training School” to “Private Security Services Training School”
6 VAC 20-260-20 Fees		FEES: Firearms endorsement (Annually) \$ 10.00 Replacement photo identification \$ 15.00	Change to reflect increase as well as addition of a fee for In-Service Alternative Training Credit. Firearm endorsement (Annually) \$ <u>30.00</u> Replacement photo identification \$ <u>30.00</u> <u>In-Service Alternative Training Credit \$ 25.00</u> <i>As a special fund agency, the Private Security Services Section of DCJS must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to bail enforcement agents for necessary functions of regulations. On-going expenditures for the agency are related to compliance and enforcement as required under the law. The fees collected since the implementation of the regulations are not sufficient to support the program. <u>The fees for firearm endorsement and replacement photo ID have been increased and the fee for alternative in-service training credit has been included.</u></i>
6 VAC 20-260-20	6 VAC 20-260-20B	Fees	Add Reinstatement Fee procedures. <i>This new verbiage was added per recommendation from the Governor’s office based on reservations presented by the Department of Planning and Budget.</i>
6 VAC20-260-20 B	6VAC20-260-20C	Fees	Renumbering
6 VAC 20-260-30 B 2		Change for clarification	Add <u>Persons who are an employee</u> and remove employees at the beginning of the sentence.
6 VAC 20-260-40 A2		Initial License application requirements	Add: <u>Provide the address of a physical location in Virginia where records required to be maintained pursuant to 6 VAC 20-260-220 are kept and available for inspection by the department. A post office box is not a physical location.</u>
6 VAC 20-260-40 A2-4	6 VAC20-260-40 A2-5	Initial License Application	Renumbered

6 VAC 20-260-90 E.		License Renewal	Delete current sentence and insert : <u>Any renewal application received after the expiration date of a license shall be subject to the requirements set forth by the reinstatement provisions of this chapter. – This requirement is being added due to a recommendation from the Governor’s office based on a reservation provided by the Department of Planning and Budget (DPB) . This continues the inclusion of a reinstatement procedure.</u>
6 VAC 20-260-110 A-D		Reinstatement	Insert a reinstatement procedure for bail enforcement agents not renewing by their license expiration. <u>This requirement is being added due to a recommendation from the Governor’s office based on a reservation provided by the Department of Planning and Budget (DPB) . This continues the inclusion of a reinstatement procedure.</u>
6VAC20-260-110-360	6 VAC 20-260-120-370	Renumbering	Renumbering
6 VAC 20-260-120A.	6 VAC 20-260-130A	In Service Training	Add at the end of the paragraph: A. Each person licensed with the Department as a bail enforcement agent shall complete the compulsory in-service training standards within the last 12 months preceding the expiration date of licensure. <u>If in-service training is not completed by the expiration date of licensure, entry-level training will be required pursuant to initial licensure requirements pursuant to 6VAC 20-260-40.</u>
6 VAC 20-260-150 A.	6 VAC 20-260-160 A.	In-Service Training Exemption	Change to read: In-Service Training Credit
6 VAC 20-260-150	6 VAC 20-260-160 A.4	In Service Training Exemption	Add 4. <u>The applicable, non-refundable application fee.</u>
6 VAC 20-260-170	6 VAC 20-260-180	Training Extension	Delete the word Training and change to read <u>Renewal Extension</u>
6 VAC 20-260-170 A	6 VAC 20-260-180 A	Training Extension	Edit the first sentence for clarification to read: An extension of the time period to meet in-service training requirements <u>for renewal of a license</u> may be approved only under specific circumstances, which do not allow bail enforcement agents to complete the required <u>renewal</u> procedures within the prescribed time period.
6 VAC 20-260-170A3	6 VAC 20-260-180A3	Training Extension	Delete “or Foreign Service” and change to read <u>Military Deployment</u>
6 VAC 20-260-170B1	6 VAC 20-260-170C	Training Extension	Add: <u>except in the cases involving Military Deployment</u> to the end of the sentence
6 VAC 20-260-170C	6 VAC 20-260-180C	Training Extension	Add: <u>this requirement may be waived by the Department in cases of Military Deployment</u>
6 VAC 20-260-170	6 VAC 20-260-180 E	Training Extension	Add: <u>Approved extensions may only be granted for a period not to exceed 12 months.</u>
6 VAC 20-260-170	6 VAC 20-260-180 F	Training Extension	Add: <u>The bail enforcement agent shall be non-operational during the period of extension.</u>

6 VAC 20-260-180A	6 VAC 20-260-180	General Firearms training requirements	Remove the outline letter A.
6 VAC 20-260-180	6 VAC 20-260-190	General Firearms training requirements	Remove the word immediate from each sentence.
6 VAC 20-260-190A	6 VAC 20-260-200	Firearms (handgun/shotgun) entry-level training	Remove the outline letter A.
6 VAC 20-260-200A	6 VAC 20-260-210	Firearms (handgun/shotgun) retraining	Remove the outline letter A.
6 VAC 20-260-210 B1	6 VAC 20-260-220 B1	Bail Enforcement & Firearms training sessions	Edit the first two sentences to read: In a manner approved by the department, a notification to conduct a training session shall be <u>publicly accessible and</u> submitted to the department <u>upon request</u> . All notifications shall be received by the department, or postmarked if mailed, <u>posted</u> no less than seven calendar days prior to the beginning of each training session to include the date, time, instructors and location of the training session. Delete the next to the last sentence: Session notifications require no fee from the training school
6 VAC 20-260-210 B2	6 VAC 20-260-220 B2	Bail Enforcement & Firearms training sessions	Deleted submitted to the department in writing and received by the department and replace with the word <u>made</u> . Delete followed by a cancellation in writing as soon as practical from the end of the paragraph.
6 VAC 20-260-210 B4	6 VAC 20-260-220 B4	Bail Enforcement & Firearms training sessions	Delete the word “submit” after the word shall in the first sentence and replace with the word <u>maintain</u> . Insert and submit after the word roster and <u>upon request</u> after to the department. Delete the last two sentences of the paragraph.
6 VAC-20-260-220	6 VAC 20-260-230 E.	Reporting Standards and Requirements	Add E: <u>The bail enforcement agent shall retain, for a minimum of three calendar years from the date of a recovery, copies of all written documentation in connection with the recovery of a bailee pursuant to 6 VAC 20-260-250.</u>
6 VAC 20-260-240B	6 VAC 20-260-250 B15	Professional conduct standards	Add 15: <u>Provide false or misleading information to representatives of the Department.</u>
6 VAC-20-260-250	6 VAC 20-260-260 H	Recovery of bailees	Add: <u>H. A bail enforcement agent shall adhere to the recovery requirements pursuant to 19.2.149 of the Code of Virginia.</u>
6 VAC-20-260-250	6 VAC 20-260-260 I	Recovery of bailees	Add: <u>I. A bail enforcement agent must complete and maintain the information on the recovery of a bailee on a form prescribed by the Department.</u>
6 VAC-20-260-370	6 VAC 20-260-360	Court Review; appeal of final agency order	Amend to read A. The agency's final administrative decision (final agency orders) may be appealed. Any person affected by, and claiming the unlawfulness of the agency's final case decision, shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which

			<p>the party applying for review resides; save, if such party is not a resident of Virginia, the venue shall be in the city of Richmond, Virginia. The final administrative decision may be appealed pursuant to §2.2-4026 of the Code of Virginia.</p>
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