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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Department of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6VAC35-101
VAC Chapter title(s)	Regulation Governing Juvenile Secure Detention Centers
Action title	Amend Regulation Governing Juvenile Secure Detention Centers
Date this document prepared	March 14, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Department of Juvenile Justice (department) seeks to amend 6VAC35-101 (Regulation Governing Juvenile Secure Detention Centers) to create provisions pertaining to community placement programs (CPPs). CPPs are structured residential programs that seek to place committed youth in smaller settings closer to their home communities to increase family engagement and facilitate a smoother transition back to the community after release. All these programs are operated at JDCs, where committed youth are housed in units separate from the rest of the JDC population. Because CPPs serve committed youth in JDC settings, these programs are not regulated explicitly by either 6VAC35-71 (Regulation Governing Juvenile Correctional Centers) or 6VAC35-101 and are not audited by the department's Certification Unit as the department's other residential programs are. Instead, CPPs have been governed since their creation in 2014 by agreements between the department and the participating JDCs and have been assessed by the department's Quality Assurance Unit. This treats CPPs differently than other residential programs, including postdispositional programs at the JDCs, and results in a different accountability structure for them. The department has determined that it would be in the best interests of CPP youth to establish regulations

to govern these programs in a manner more consistent with other residential programs. Because all the existing CPPs are operated at JDCs, the department deems it appropriate to add these new provisions to 6VAC35-101 rather than create a new chapter for them.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“CPP” means community placement program.
“JDC” means juvenile detention center.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

On December 13, 2023, the Board of Juvenile Justice (board) authorized the department to initiate a Notice of Intended Regulatory Action to begin the first stage of the standard regulatory process to amend 6VAC35-101 to create provisions pertaining to CPPs.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Section 66-13 of the Code of Virginia provides the Department with the authority to “receive juveniles committed to it by the courts of the Commonwealth” and to “establish, staff, and maintain facilities for the rehabilitation, training and confinement of such juveniles.” In addition, § 16.1-309.9 of the Code of Virginia requires the Department to “approve minimum standards for the construction and equipment of detention homes or other facilities and for food, clothing, medical attention, and supervision of juveniles housed in these facilities and programs.” The Board of Juvenile Justice (Board) is entrusted with general authority to promulgate regulations by § 66-10 of the Code of Virginia, which gives the Board the authority to “promulgate such regulations as may be necessary to carry out the provisions of [these titles] and other laws of the Commonwealth administered by the Director or the Department.”

The promulgating entity is the Board.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Since their creation in 2014, CPPs have been governed by written agreements between the department and various JDCs and have not been audited by the department's Certification Unit as other residential programs are. This is because the CPPs involve committed youth who are housed in JDCs and are not, therefore, explicitly covered by either the JCC or the JDC regulations. Instead, they have been audited by the department's Quality Assurance Unit. The purpose of this regulatory action is to eliminate this gray area and establish minimum regulatory requirements for these programs, thus ensuring their assessment by the same Certification Unit that audits other juvenile residential programs. The department's position is that making this change will ensure that the program serving this population of youth receives the same scrutiny as all others do.

The work group developing these provisions has not encountered any significant issues so far, but they are prepared to address any that may arise during this process.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The department intends for the regulation to:

- Establish a regulatory definition for community placement program;
- Establish criteria for JDCs and alternate providers to accept placements in CPPs, including documentation on the JDC's department-issued certificate;
- Establish basic eligibility criteria for youth to participate in CPPs;
- Require CPPs to have written program descriptions and establish minimum requirements for those descriptions;
- Address behavioral modification programs and documentation, case management services, and individual service plans in CPPs;
- Establish requirements for progress reporting from CPPs; and
- Establish requirements for release from CPPs.

In addition, the details of the programs and services provided by the CPP will continue to be governed primarily by written agreements between the CPPs and the department to allow maximum flexibility for all parties to address the needs of the youth served; however, the regulation will require that the programs operate only after a written agreement is in place and will establish minimum requirements for these agreements.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

The alternative to this regulatory change is the status quo, which is unsatisfactory because it leaves CPPs without the same Certification oversight as that of other juvenile residential programs regulated by the department. The new regulatory provisions will be minimal, and the department does not believe they will have any significant impact on small businesses.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA will not be used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board of Juvenile Justice is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Ken Davis, P.O. Box 1110, Richmond, VA 23218; phone (804) 807-0485; e-mail kenneth.davis@djj.virginia.gov; or fax (804) 371-6497. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.