



Fast Track Proposed Regulation Agency Background Document

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| Agency name | Virginia Department (Board) of Juvenile Justice |
| Virginia Administrative Code (VAC) citation | 6VAC35-51 |
| Regulation title | Standards for the Interim Regulation of Children's Residential Facilities |
| Action title | Repeal of the Standards for the Interim Regulation of Children's Residential Facilities |
| Date this document prepared | February 18, 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 will repeal 6VAC35-51, the Standards for the Interim Regulation of Children's Residential Facilities. In 2008, this regulation replaced the Standards for Interdepartmental Regulations of Children's Residential Facilities (22 VAC 42-11) and addresses facility organization and administration, personnel, residential environment, programs and services, and disaster or emergency plans for all residential facilities regulated by the Department of Juvenile Justice (Department). It was intended to be a temporary chapter pending a comprehensive overhaul of all regulations governing facilities regulated by the Board of Juvenile Justice (Board). That review is complete with 6VAC35-41, governing juvenile group homes; 6VAC35-71, governing juvenile correctional centers; and 6VAC35-101, governing juvenile secure detention centers, (collectively referred to as the "new residential regulations") becoming effective on January 1, 2014.

Each of the new residential regulations contains a section titled "Previous regulations terminated" (6VAC35-41-30, 6VAC35-71-20, and 6VAC35-101-30) which states that Chapter 51 is replaced by the applicable new residential regulation. As such, Chapter 51 does not have any legal or operational effect.

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" means the State Board of Juvenile Justice.

"Department" means the Virginia 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.

November 13, 2013, the Board approved the Department's request to submit a Notice of Intended Regulatory Action to initiate the process to repeal the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51).

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.

Section 66-4 of the *Code of Virginia* creates the Board while § 66-10 states, 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.

The Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41); the Regulation Governing Juvenile Correctional Centers (6VAC35-71) and; the Regulation Governing Juvenile Secure Detention Centers (6VAC35-101) have been approved and finalized through the regulatory process and became effective on January 1, 2014. Each of the new residential regulations contains a section titled "Previous regulations terminated" (6VAC35-41-30, 6VAC35-71-20, and 6VAC35-101-30) which states that Chapter 51 is replaced by the applicable new residential regulation. As such, Chapter 51 does not have any legal or operational effect. Each of these regulations contains language that is specific to the type of facility. The Standards for the Interim Regulation of Children’s Residential Facilities contained language which addressed juvenile residential facilities generally and is no longer necessary.

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.

The Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41); the Regulation Governing Juvenile Correctional Centers (6VAC35-71) and; the Regulation Governing Juvenile Secure Detention Centers (6VAC35-101) became effective on January 1, 2014. Each of these regulations contains the following provision:

“This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities, (6VAC 35-51), and the Standards for Juvenile Residential Facilities, (6VAC35-140), for the regulation of all [named type of facility] as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for [named other types of facilities not regulated by the specific chapter], regulated by the board, until such time as the board adopts new regulations related thereto.” (6VAC35-41-30, 6VAC35-71-20, and 6VAC35-101-30)

The Standards for the Interim Regulation of Children's Residential Facilities remained in effect for the juvenile group homes, juvenile secure detention centers, and juvenile correctional centers, regulated by the Board, until January 1, 2014 when the new regulations become effective. Upon the regulations effective date, the three new regulations replaced the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51). As such, Chapter 51 does not have any legal or operational effect.

It is anticipated that the repeal of Chapter 51 will be noncontroversial as it has been superseded by new residential regulations.

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.

This regulatory action does not propose any new substantive provisions or substantive changes. The Standards for the Interim Regulation of Children's Residential Facilities, 6VAC35-51, will be repealed as new residential regulations have become effective and supersede the provision in Chapter 51.

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.*

Prior to January 1, 2014, when the Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41); the Regulation Governing Juvenile Correctional Centers (6VAC35-71) and; the Regulation Governing Juvenile Secure Detention Centers (6VAC35-101) became effective, facilities regulated by the Board were governed by both the Standards for the Interim Regulation of Children's Residential Facilities, (6VAC 35-51) and the Standards for Juvenile Residential Facilities (6VAC35-140), unless specifically exempted.

Chapters 51 and 140 were superseded by provisions in Chapters 41, 71, and 101, sections 30, 20, and 30 respectively. The facilities formerly regulated by the provisions in Chapters 51 and 140 are now governed by Chapters 41, 71, and 101, as applicable. Retaining Chapters 51 and 140 as active regulatory chapters could cause confusion for the regulated entities.

Repealing the Standards for the Interim Regulation of Children's Residential Facilities benefits the locally and regionally operated juvenile secure detention centers and locally operated juvenile group homes and halfway houses and state operated juvenile correctional centers. The new residential regulations govern specific types of juvenile facilities providing greater clarity of the regulatory requirements. In repealing the superseded regulatory chapter, confusion as to which active regulatory chapters are applicable to the facilities will be avoided.

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.

Not applicable: The Standards for the Interim Regulation of Children's Residential Facilities will be repealed.

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 the Standards for the Interim Regulation of Children's Residential Facilities is repealed.

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.

Not applicable: The Standards for the Interim Regulation of Children's Residential Facilities will be repealed and there is not an associated adverse impact on small business

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.

The repeal of Chapter 51 does not contain a new requirement or a change in requirements creating an anticipated economic impact. The substantive provisions of Chapter 51 were

superseded by the new residential regulations. As such, effective January 1, 2014, Chapter 51 does not have any legal or operational effect. The repeal will avoid confusion for the regulated entity as to which regulations have legal and operational effect.

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| Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board | Locally and regionally operated juvenile secure detention centers, locally operated juvenile group homes, and state operated juvenile correctional centers |
| Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. 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. | 4 state operated juvenile correctional centers 24 juvenile secure detention centers 19 juvenile group homes |
| Benefits expected as a result of this regulatory proposal. | Repealing the regulation allows for greater clarity of the regulatory requirements |
| Projected cost to the state to implement and enforce this regulatory proposal. | 0 |
| Projected cost to localities to implement and enforce this regulatory proposal. | 0 |
| All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. 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. | 0 |

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 Department considered not repealing Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51) and leaving the existing language in the Virginia Administrative Code or repealing the regulation through a standard regulatory action. A decision not to repeal 6VAC35-51 may have lead to confusion for the facilities regulated by the Department as the substantive provisions of Chapter 51 were superseded by new residential regulations. Repealing the regulation through a standard regulatory action was not an efficient process to repeal this regulation. The fast-track process has a single 30 day public comment period. The three stage process requires public comment periods of 30 days for the Notice of Intended Regulatory Action, 60 days for the proposed stage and 30 days for the final stage. As the regulation no longer has any legal or operational effect and has been superseded it is not anticipated that there will be opposition to repeal the regulation or to the use of the fast-track process.

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 repeal of 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.*

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

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change, intent, rationale, and likely impact of proposed requirements |
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| 10 through 1090 | | All sections, effective January 1, 2014, do not have any legal or operational effect. | Repeal the entire regulatory chapter. |

At present 6VAC35-51, the Standards for the Interim Regulation of Children's Residential Facilities does not have any legal effect because it has been superseded by the Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41); the Regulation Governing Juvenile Correctional Centers (6VAC35-71) and; the Regulation Governing Juvenile Secure Detention Centers (6VAC35-101). The three residential regulations became effective January 1, 2014 therefore; the repeal of 6VAC35-51 has no impact on a juvenile residential facilities ability to continue to operate and maintain compliance with all regulatory requirements.