



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department (Board) of Juvenile Justice
VAC Chapter Number:	6 VAC 35-150
Regulation Title:	Standards for Non-residential Programs Available to Juvenile and Domestic Relations District Courts
Action Title:	Amend
Date:	12 07 00

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

"The regulation establishes minimum standards for court service staffs and related supportive personnel so that 'uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth.' (§ 16.1-233 C of the Code of Virginia.)"

"The regulation also establishes standards for the development, implementation, operation and evaluation of the nonresidential community-based programs and services such as those established by the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq. Of the Code of Virginia)."

"The regulation seeks to balance the goal of establishing statewide minimum levels of service delivery with the goal of permitting program flexibility to meet diverse local circumstances. The regulation places increased emphasis on outcomes and effectiveness and less emphasis on the measurement of inputs or activities."

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The general authority of the Board of Juvenile Justice to promulgate regulations is found in Code of Virginia § 66-10 (6), which provides that 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 other laws of the Commonwealth administered by the Director or the Department."

The specific legal authority for regulations governing court services units is Code of Virginia § 16.1-233. C., which directs that "The State Board shall establish minimum standards for court service staffs and related support personnel and promulgate regulations pertaining to their appointment and function to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth."

The specific legal authority of the Board to promulgate regulations governing community-based programs available to the juvenile courts is found in Code of Virginia § 16.1-309.9.A., which directs that "The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation and evaluation of the range of community-based programs, services and facilities authorized by this article."

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

In announcing the periodic review of this regulation, the Department identified the following specific issues. Public comments are listed with the identified issue that the comment addressed.

ISSUE: Does the regulation ensure that "uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth"?

ISSUE: Does the regulation, particularly as applicable to intake and supervision, adequately protect the public safety?

ISSUE: Does the regulation succeed in balancing the goal of statewide minimum levels of service delivery with the goal of permitting program flexibility to meet diverse local circumstances?

ISSUE: Does the regulation appropriately focus on outcomes and effectiveness as opposed to the measurement of inputs or activities?

COMMENT: ... I especially like the reformatting of the standards in a 1) statement of policy; 2) statement of performance standards; and 3) where it can be determined/documentated. Some of us need to revise our manuals for upcoming certifications.

COMMENT: A standard to me is a statement representing something at the highest level that the organization stands for. It is the desired outcome. Policy and procedure are used as directives and methods to achieve the standard. ... A standard would be measurable. ... Policy and procedure would be reinforced ... or changed and/or new resources would be made available, whatever it [takes] to meet the standard.

ISSUE: Is the caseload requirement of 6 VAC 35-150-55 meaningful? Adequate?

COMMENT: It is meaningful to have a caseload standard but the current standard is not measured consistently through out the state. It helps to justify staffing levels. It was suggested [in internal discussions in the court service unit] that consideration should be given to a weight system since informal cases do not require the same amount of work as formal cases

COMMENT: The caseload requirement is meaningful to the extent that we have some parameters as to what is considered a reasonable number of cases to supervise adequately and efficiently.

ISSUE: Is standard 6 VAC 35-150-200 adequate to protect CSU staff and the public?

COMMENT: YES

COMMENT: Yes, in that the standard includes the office environment and field visitation. Specifics can be addressed through local policy and procedure.

ISSUE: Should 6 VAC 35-150-270 mention the automated intake information system?

COMMENT: NO

ISSUE: Should 6 VAC 35-150-270, or one of the following standards on intake, address the criteria for detention?

COMMENT: NO, the criteria is in the Code. Standards should reference code, not repeat it.

COMMENT: Yes, the standard should mention the automated intake information system. The information required per the standard should be documented in the narrative section of the intake automation system. The standard for criteria for detention is addressed in the Code of Virginia, and thus does not need to be included, but obviously could be. We have a form that we use as to the reason for confinement.

ISSUE: Should 6 VAC 35-150-310 be revised to reflect changes in the Code of Virginia regarding post-dispositional detention?

COMMENT: The current standard refers to the wrong code section. Two of the numbers are reversed. It should be section 284 not 248.

ISSUE: Should 6 VAC 35-150-310 address the issue of criteria or qualification for post-dispositional detention?

COMMENT: NO, the code is clear enough and adequate.

COMMENT: Post-dispositional detention is addressed in the Code of Virginia and the Code specifies the conditions of that placement and what needs to be done therein.

ISSUE: Should 6 VAC 35-150-335 et seq., governing probation, parole and other supervision, address the question of "intensive" supervision, including risk assessment or other criteria, and minimum standards of contact for juvenile under intensive supervision?

COMMENT: No not specifically, standard should say that policy has to address these areas. Then there is more flexibility to change as new programs and or ways of doing business change.

ISSUE: Should the regulation generally be revised to permit less frequent contact with lower risk juveniles while requiring more frequent contact with higher risk juveniles?

COMMENT: Again, should be in policy not standards.

COMMENT: This standard addresses informal supervision through the Intake process and local policy needs to address the specifics of what is to be expected in regards to case management. Supervision of probation, parole and intensive services is mandated by court order and thus lies the difference.

ISSUE: Should 6 VAC 35-150-350 include a requirement to petition the court to release a juvenile from probation after a given period of time? Should there be different timelines for different risk levels? For different adjudicated offenses?

COMMENT: We are already required to petition the court but there should not be any mandated time frames. It should be left up to the individual judges to set this policy. Otherwise we might be doing a lot of needless paperwork. Standards should not address any of these issues for probationers – it is a judicial matter. It could be applied to parolees.

COMMENT: No, there should not be a requirement to petition the court to release a juvenile from probation. Once the service plan objectives have been accomplished and documented in the case file then the supervisor has the obligation to check the file for accuracy. If the supervisor agrees that services have been provided and all goals accomplished then the case may be considered for release, and passed on to the Director for final authorization before asking a Judge to sign a request for release from probation supervision. No, there should not be different time lines in that there are other factors to consider other than the specific crime(s) committed. Family and community support may alter time requirements.

ISSUE: Should the family involvement plan required in part C be more closely integrated into the staffing process at the Reception and Diagnostic Center?

COMMENT: Not sure what you mean by "more closely integrated". Should be considered at RDC case staffing.

ISSUE: Should the report on the family's progress required in part D be more closely integrated into the facility's requirement to conduct a 90-day review of the ward's progress in the individualized treatment plan?

COMMENT: Not sure.

ISSUE: Should the written supervision plan required in part E. be tied more specifically to the ward's early release date, rather than to the "anticipated release date"?

COMMENT: Yes.

COMMENT: The Parole Unit for this CSU assumes that the early release date is the same as the anticipated release date.

ISSUE: Should 6 VAC 35-150-380 and related standards offer clearer guidance as to what kinds of violations merit sanctions in the community and what kinds of violations merit revocation of parole or a recommendation to the court regarding violation of probation?

COMMENT: Absolutely not, it is a judicial decision and policy that is decided by individual jurisdictions. It can be stated in standards that there will be local policy statements on violations that have been approved by the judge.

COMMENT: No, the standard should not offer clearer guidance as to what kinds of violations merit sanctions in the community [vs.] revocation, in that there are too many variables to consider. The local CSU policy can address and consider the needs of the Court and community when making those decisions.

ISSUE: What is the purpose of the 30-day contact with JCC staff and the 90-day contact with wards mandated by 6 VAC 35-150-420? Is there another way to accomplish the purpose?

COMMENT: Yes – by phone.

COMMENT: We would consider the purpose of the 30-day contact as an opportunity to exchange information. Currently the 30-day contact may be by telephone or written documentation. The 90-day requirement is face to face and we feel that a parole officer should see the juvenile in person. Relationships are established, and expectations should be addressed face to face.

ISSUE: Should the requirement established in 6 VAC 35-150-430 for the program to state the "methods and criteria for evaluating program effectiveness" (part 5) be expanded or made more specific? How?

COMMENT: NO

COMMENT: No, leave it up to the CSU to determine the criteria for evaluating program effectiveness.

ISSUE: The requirements for employee background checks appear to be based on similar requirements for employees of residential facilities, yet some of the required information is not

available to non-residential programs. Should 6 VAC 35-150-440 be revised to require only the information that can properly be obtained by non-residential programs?

COMMENT: No. We haven't found information that is not available. Individuals can request their own record checks and be required to give them to employers. A child protective check has to be mandatory and so is a criminal record check.

COMMENT: We do not need to relax standards on background checks. We are not sure we understand what information non-residential programs cannot obtain.

ISSUE: Should specific requirements be included in 6 VAC 35-150-510 and 520 to cover the sharing of information in Department data bases? What specific requirements should be included?

COMMENT: All information in the database should be handled in the same manner as all other confidential information per the requirements of the Code of Virginia.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation has the following specific goals:

1. To ensure that "uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth" (Code of Virginia Section 16.1-233 C);
2. to permit program flexibility to meet diverse local circumstances within the broad context of statewide minimum service levels;
3. to establish standards for programs and services based on measured outcomes and effectiveness rather than activities.

The Department's assessment is that the regulation is partly effective in ensuring uniform statewide services and in permitting program flexibility to meet local circumstances within statewide minimum service levels. A number of amendments are proposed to enhance the minimum level of services on a statewide basis and ensure more uniformity of services.

Despite the stated goal to emphasize outcomes and effectiveness (see goal #3 above), the regulation tends to measure activities of CSU personnel (e.g., making contacts with juveniles, preparing reports, etc., within given timeframes) rather than the impact of these activities on individual juveniles or on delinquency trends in the community. Although the regulation invites court service units to propose experimental standards that focus on outcomes or measure effectiveness (see 6 VAC 35-150-40), none have been proposed since the regulation was promulgated. The Department continues to seek appropriate standards that measure outcomes fairly, and will recommend such outcome-based standards once they have been developed.

The regulation appears to be clearly written and easily understood by the entities that are subject to this regulation.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

A major purpose of the regulation is to ensure that "uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth" (Code of Virginia Section 16.1-233 C). Inasmuch as the regulation governs both state-operated and locally-operated court service units, the only alternative that would achieve this purpose would be to statutorily mandate various services and service levels on the part of court service units. The Department's position is that the Code of Virginia should not be encumbered with the level of detail that is appropriately included in regulation.

As another alternative, the Department has, in fact, developed an operations manual to provide additional guidance to state-operated court service units. Such a manual will permit the Department to respond quickly to changes in technology, organizational structure, delinquency trends, and so on, within the broad framework established by the existing regulation. The operations manual, however, applies only to state-operated court services units, and so its adoption does not obviate the need for this regulation.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Department recommends that the regulation be amended.

Substance

Please detail any changes that would be implemented.

In a number of standards throughout the regulation, the Department recommends adding language that would require the court service unit to fulfill the underlying requirement in accordance with operating procedures issued by the Department. The purpose of these changes is to standardize court services to the greatest extent possible.

At 6 VAC 35-150-270 and 6 VAC 35-150-290, language is proposed that would specifically require the intake officer to make all required entries into the Department's Juvenile Tracking

System, as specified in the Department's Manual of Standard Operating Procedures for Court Service Units.

In many standards throughout the regulation, it is proposed to delete the phrase "written policy, procedure and practice shall provide". Proposed new 6 VAC 35-150-35 explains that, "although issued in the form of a regulation, these standards individually and collectively establish 'programmatic and fiscal policies' governing the operation of court service units and non-residential programs for which the Department is responsible, as provided for by § 66-10 of the Code of Virginia. Nothing in this regulation shall be construed to limit the Board's authority to establish additional or separate programmatic and fiscal policies for court service units or other non-residential programs in accordance with Code of Virginia § 66-10." In addition, the deletion of this phrase makes the regulation more outcome-oriented. Rather than focus on whether there are policies or procedures that aim at a certain outcome, the amended regulation focuses on the intended outcome.

6 VAC 35-150-420, regarding contacts during youth's commitment, is amended to provide that a probation officer "meet with the youth at least every 90 days during the youth's final 12 months of commitment, and make contact with the youth at least once every 90 days, either in person, by video conference or by telephone, prior to the youth's final 12 months of commitment." This change is intended to concentrate the parole officer's in-person efforts on the period of the juvenile's transition and preparation for release from direct care, while giving the parole officer broad discretion as to how to maintain contact with a committed juvenile during that period of the youth's incarceration that does not focus on reintegration into the community.

6 VAC 35-150-440, regarding employee and volunteer background check, is amended in recognition of the fact that many programs refer juveniles to various other agencies where the juveniles might have "direct contact" with employees and volunteers of the other agency, and such direct contact might be incidental or substantial. The new requirement is for employees who have substantial one-on-one contact to undergo the required background checks.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 has specific requirements for including a juvenile's family in the preparation and review of supervision plans, and requires probation and parole officers to complete a family involvement plan for committed juveniles. For example, as stated in 6 VAC 35-150-10, "a single supervision plan may include, as appropriate, specific plans for supervision during probation and parole, and for treatment of a youth and services for the youth's family during commitment."

6 VAC 35-150-350 provides that "when the youth resides in or is expected to return to the family home, the probation officer shall write a family involvement plan within 30 days of a committed youth's arrival at the reception and diagnostic center, after consulting with the youth's family, to involve the family with the youth during the youth's commitment, to prepare for the youth's release and, when appropriate, to work to change family members' behaviors."

6 VAC 35-150-330 provides that "when considering whether to remove a youth from his home for any reason other than to detain the youth, the youth's parents or guardians, if available, shall be included in making that decision."

The proposed amendments make no changes to these sections of the regulation.