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Proposed Regulation 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 to Add Provisions Pertaining to Community Placement Programs
Date this document prepared	November 4, 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Regulation Governing Juvenile Secure Detention Centers establishes the minimum standards with which facility administrators and staff at secure juvenile detention centers must comply. The existing regulation addresses personnel and staffing requirements, the physical environment, facility safety and security, residents' rights, program operations, health care, and behavior management for juvenile detention centers operating predispositional programs solely or both predispositional and postdispositional programs.

The Department of Juvenile Justice (department) seeks to amend this regulation 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 used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"CPP" means community placement program.

"JCC" means juvenile correctional center.

"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. The NOIRA was submitted to the Registrar of Regulations on May 17, 2024, and the public comment period ended on July 17 with no comments. On November 1, 2024, the board authorized the department to initiate the Proposed stage of the standard regulatory process for this action.

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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

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 and certified by the department director 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 evaluated by the department’s Quality Assurance Unit. The purpose of this regulatory action is to eliminate this gray area and promote consistency by establishing minimum regulatory requirements for these programs, thus ensuring their assessment by the same Certification Unit that audits other juvenile residential programs. The department’s goal in making this change is to protect the health, safety, and welfare of CPP residents by ensuring that these programs receive the same type and level of scrutiny that all others do.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

All of the provisions in this action are new. The proposed text:

- Establishes a regulatory definition for “community placement program” in 6VAC35-101-10;
- In Sections 1280 and 1290, establishes criteria for JDCs and alternate providers to accept placements in CPPs, including written agreements with the department and documentation on the JDC’s department-issued certificate;
- In Section 1300, establishes basic eligibility criteria for youth to participate in CPPs;
- In Section 1310, establishes the minimum requirements for the agreement between the department and the CPP provider, as discussed in Sections 1280 and 1290.
- In Section 1320, requires CPPs to have written program descriptions and describes the required elements of the descriptions;
- In Section 1330, requires each CPP to assign a case manager to provide services to CPP residents;
- In Section 1340, requires the CPP case manager to collaborate with the department to maintain each CPP resident’s individual service plan;
- In Section 1350, establishes requirements for progress reporting from CPPs; and
- In Section 1360, establishes requirements for release from CPPs.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

The purpose of these amendments is to eliminate the disparate oversight CPPs have received and bring them under the same certification process currently in place for all other residential programs overseen by the department. This has the advantage for the Commonwealth and for the regulated entities of providing clarity and consistency across residential programs. For members of the public who have children in CPPs, these changes will help ensure that their child's program is subject to the same scrutiny as youth in other residential settings. Since the department's Certification Unit already audits all of the Commonwealth's 24 JDCs, this change will not create an undue burden for the department, nor will it excessively burden the JDCs which operate CPPs. Further, there are no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

Conditions of confinement for committed youth are subject to federal constitutional requirements as well as applicable federal laws and regulations (e.g., the Americans with Disabilities Act of 1990, the Americans with Disabilities Amendments Act of 2008, 42 USC §12101, and the Prison Rape Elimination Act of 2003). The proposed regulation generally imposes requirements consistent with these provisions.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agency will be particularly affected by this regulatory change.

Localities Particularly Affected

JDCs operate CPPs by choice and enter freely into the associated agreements with the department. The proposed regulatory provisions will apply only to those JDCs wishing to operate CPPs in their facilities. As of the date of this document, six JDC's operate CPPs: Blue Ridge, Chesterfield, Newport News, Prince William, Shenandoah Valley, and Virginia Beach.

Other Entities Particularly Affected

No other entities will be particularly affected by this regulatory change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>Nominal. The cost of program monitoring and applicable documents will be absorbed internally through existing systems and staff resources.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The proposed changes are not expected to impact any other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The proposed changes seek to improve consistency in the operation of CPPs, aligning them more closely with other facilities and programs certified by the department. This added consistency is intended to help JDCs and the department operate more effectively, which, in turn, may reduce recidivism throughout the Commonwealth.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>Reported on Table 2 of the ORM Economic Impact form.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Reported on Table 2 of the ORM Economic Impact form.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Locally and regionally operated juvenile detention centers will be affected.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small</p>	<p>The 24 locally and regionally operated juvenile detention centers will be affected</p>

<p>business means a business entity, including its affiliates, that: a) is independently owned and operated, and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>Discussed in Tables 1a, 3, and 4 on the ORM Economic Impact form.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Discussed in Tables 1a, 3 and 4 on the ORM Economic Impact form.</p>

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 quantifiable impact on small businesses.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

These proposed changes will have no impact on small businesses. All current CPPs are operated by JDCs, which are run by local or regional commissions and do not rely on small businesses for their operation. While the proposed text makes mention of the requirements private providers would have to follow, these requirements are designed to safeguard CPP residents in the future should DJJ ever decide to engage private providers to operate any CPPs. DJJ has no current plans to do so.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

These regulatory changes establish the minimum regulatory requirements for community placement programs and are necessary to protect the health, safety, and welfare of the committed juveniles who participate in them and to comply with the Code of Virginia and Executive Order 19. CPPs need these requirements to eliminate the gray areas in how they are currently evaluated, to establish a basis for them to be certified as other facilities and programs are, and to help ensure the provided services are effective.

The department received no public comment concerning this regulatory change during the NOIRA public comment period. The department has kept the regulation as simple and straightforward as possible and has sought to leave most current practices unchanged. The new provisions will not overlap, duplicate, or conflict with any federal or state law or regulation but will complement existing provisions in the chapter. This language is all new and has not been impacted by technology or other factors.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

No public comment has been received in any form.

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.

The Department 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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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 23218-1110, telephone: 804-807-0486, fax: 804-371-6497, email: Kenneth.Davis@djj.virginia.gov. 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 this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
101-10		This section contains all of the definitions for this chapter.	Add a definition for community placement programs as follows: “Community placement program” or “CPP” means a direct care residential program for committed juveniles in a juvenile detention center or other department-approved setting, established by written agreement with the department.
N/A	101-1280	N/A	This new section establishes the minimum requirements for juvenile detention centers (JDCs) to operate community placement programs (CPPs). The new provisions require that, in order to operate a CPP, the JDC must be approved by the department to operate the CPP, said approval to be documented on the certificate issued by the department to the JDC. The CPPs capacity must be included in the overall facility capacity. Finally, the JDC must have a written agreement with the department in accordance with the requirements in (new) section 1310. Since CPPs house committed (state-

			responsible) youth, it is imperative that the department approve of any JDC wishing to house CPP residents. Requiring certification of JDCs to provide CPPs ensures that CPPs are subject to similar scrutiny as other juvenile facilities and programs, thus furthering the goal of protecting the residents' health, welfare, and safety. Section 1310 will be discussed under that section.
N/A	101-1290	N/A	This proposed section establishes the minimum requirements for providers other than JDCs to operate CPPs. Those requirements include department approval, a written agreement with the department, and compliance with the provisions of 6VAC35-101. These provisions share the intent of protecting residents' health, welfare, and safety. The requirement to follow 6VAC35-101 is meant to ensure that CPP youth receive the same level of care and services as other youth housed at the JDC.
N/A	101-1300	N/A	This new section establishes that only youth committed to the department pursuant to Code of Virginia §§ 16.1-278.8 or 16.1-285.1 may be placed in a CPP. The programs and services provided by CPPs are intended only for committed youth, and this section clarifies that point.
N/A	101-1310	N/A	This section establishes a requirement that any JDCs or private providers operating CPPs must have a written agreement with the department. Further, it details nine areas the agreement must address: (i) the criteria for which juveniles the program will serve, including age; (ii) serious incident reporting; (iii) the provision of health care services; (iv) residential programming, including staffing ratios and housing; (v) mental health services transition planning; (vi) the disposition of records pertaining to CPP youth; (vii) written department approval for any portion of work the program subcontracts; (viii) the process for removing a juvenile from a CPP, and; (ix) the terms for terminating the agreement. The purpose of separate written agreements for each CPP provider is to maintain flexibility for each provider while establishing and clarifying expectations for each program. Delineating the areas the agreements must address helps ensure the

			agreements consider the program components the department deems to be the most important for the health, safety, and welfare of CPP youth and for the effective functioning of the program.
N/A	101-1320	N/A	This proposed section requires CPPs to have a written statement describing the program's philosophy, residential program, behavior management program, provision of services, educational and employment services, case management, and family engagement. This written statement is intended to help the department assess each program's appropriateness for CPP youth and determine which youth are best suited to which CPP.
N/A	101-1330	N/A	This section requires each CPP to have a case manager assigned to provide services to CPP residents. This provision is intended to ensure that CPP youth are not "lost in the shuffle" among other JDC youth. Among other duties, case managers oversee the individual service plan developed by the department for every juvenile committed to its care.
N/A	101-1340	N/A	This new section requires the case manager referenced in 6VAC35-101-1330 to collaborate with the department to maintain individual service plans developed for each resident in accordance with 6VAC35-71-790.
N/A	101-1350	N/A	This section requires the CPP to prepare and distribute to the department written progress reports on each CPP resident's progress at least every 90 days. The report must include (i) progress toward meeting the objectives of the individual service plan, (ii) educational progress; (iii) family involvement, and (iv) continuing needs. In addition, each report must include the date it was developed and the name of the person who developed it. Because CPP youth are in state custody, the department is responsible for their progress toward service plan and educational goals as well as their family involvement and evaluation of their continuing needs. This requirement ensures the CPP keeps the department informed on these matters so the department can recommend or take corrective action if a resident's progress is not satisfactory.
N/A	101-1360	N/A	This proposed section sets forth that CPP residents shall be released only

			upon written approval by the department. Because CPP youth are in state custody, this ensures the department retains control over releases.
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements
N/A	N/A	N/A	N/A

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage
N/A	N/A	N/A	N/A