



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department (Board) of Juvenile Justice
VAC Chapter Number:	6 VAC 35-30
Regulation Title:	REGULATIONS FOR APPROVING JUVENILE RESIDENTIAL FACILITIES AND FOR STATE REIMBURSEMENT OF LOCAL JUVENILE RESIDENTIAL FACILITY COSTS
Action Title:	Amend the regulation to accommodate statutory changes, and expand the scope to cover approval, as well as reimbursement, of juvenile residential facilities to hold children.
Date:	April 10, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation historically has provided a basis for the Board of Juvenile Justice to approve construction and renovation of juvenile residential facilities when the sponsoring locality has requested reimbursement from the Commonwealth. A fundamental change embodied in the proposed amendments is the Board's assertion of its right and duty to set construction standards for juvenile residential facilities--whether or not the locality or other sponsor intends to seek

reimbursement from the Commonwealth--in keeping with the statutory authority given to the Board in Virginia Code § 16.1-249 A (3) and (4),.

Thus, the proposed revisions to the regulation will provide an additional, clearly articulated and reasonable basis for the Department to approve certain facilities, pursuant to Code of Virginia Section whether or not the locality seeks reimbursement for the project from the Commonwealth.

In addition, the regulation is revised to accommodate statutory changes since the regulation was promulgated. The major change appears in Code of Virginia §16.1- 309.5, which now states that "no such reimbursement shall be made ... unless the plans and specifications, including the need for additional personnel therefor, have been submitted to the Governor and the construction has been approved by him." Changes to the regulation provide a process that includes the Governor's approval of the Board's endorsement of a reimbursement for construction costs.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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 "[t]o 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 of the Board to promulgate regulations governing reimbursement of construction costs for juvenile residential facilities is found in Code of Virginia § 16.1-309.5 (C): "The Board shall promulgate regulations to include criteria to serve as guidelines in evaluating requests for such reimbursements and to ensure the geographically equitable distribution of state funds for such purpose."

Additional statutory authority for approval of juvenile residential facilities is provided in Virginia Code § 16.1-249, which provides in paragraph A that "If it is ordered that a juvenile remain in detention or shelter care pursuant to § [16.1-248.1](#), such juvenile may be detained, pending a court hearing, in the following places:

3. If a juvenile is alleged to be delinquent, in a detention home or group home approved by the Department;

4. Any other suitable place designated by the court and approved by the Department;”

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation is needed to provide a clear, consistent process for evaluating requests from localities for state reimbursement of local juvenile residential facility construction costs; to establish criteria for assessing needs and for setting priorities for construction projects; and to provide guidelines determining appropriate costs. The regulation also provides the basis for the Department's "Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities" which address technical matters of construction and furnishings.

By linking the process for reimbursing construction costs to the process of approving juvenile residential facilities (as authorized by Code of Virginia § 16.1-249 A (3) and (4)), the regulation treats all juvenile residential facilities equally, whether or not the facility's sponsor initially seeks reimbursement from the Commonwealth.

The goals of the regulation are to protect the public safety by securely confining those who are a threat to the public, to provide a safe and secure environment in which juveniles are protected from other inmates or from their own self destructive behavior; .and to ensure that expenditures to be reimbursed by the Commonwealth represent reasonable cost to the taxpayers.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

New section 6 VAC 35-30-35 directs the Department to publish guidelines governing submission of projects for review; the procedures for evaluating proposals and resolving differences between the sponsor and the Department; and the procedure for submitting materials to the Board.

Amended 6VAC35-30-40 (1) requires the Department to publish annually the deadlines for each stage in the reimbursement request process. Incomplete or late submissions will not be submitted to the board or other applicable authority during the current review cycle.

6VAC35-30-40 (2) is amended to accommodate the approval of the Secretary of Public Safety on behalf of the Governor (see Code of Virginia § 16.1-309.5.C.).

Amended 6VAC35-30-40 (3) clarifies that the next Board action is based on the planning study, including architectural and engineering drawings at the 15% complete stage. Again, provision is made specifically for review by the Secretary of Public Safety.

6VAC35-30-60.D is amended to clarify that sponsors may meet the requirements of the needs assessment in phases (and be reimbursed as each phase is completed) only if they request such an arrangement when the planning study is submitted.

6 VAC35-30-90, 6 VAC 35-30-100, 6 VAC 35-30-130 A, 6 VAC 35-30-130 C and 6 VAC 35-30-140 are amended to provide the regulatory basis for the Department's approval of detention homes and group homes under Code of Virginia § 16.1-249.A (3) and other places designated by the court under § 16.1-249.A (4), whether or not the sponsor will seek reimbursement from the Commonwealth for the project.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

1. The primary advantages to the public of adopting the proposed revisions are (i) the assurance that appropriately qualified personnel are reviewing construction and renovation plans to ensure that facilities meet minimum standards of construction and furnishings, so as to provide an appropriate, safe and secure environment to juvenile residents that is conducive to their treatment and rehabilitation; and (ii) the assurance that facility construction and renovation costs are reasonable and necessary. There are no known disadvantages to the public.
2. The primary advantage to the agency is a consistent framework for reviewing and evaluating construction and renovation proposals, with clear delineation of authority and responsibility. The primary advantage to the Commonwealth is that the regulation provides a framework for controlling construction and renovation costs that will ultimately be reimbursed from the state budget.
3. There are no known disadvantages to the general public. There is no significant disadvantage to sponsors of construction and renovation projects, who are accustomed to all kinds of regulatory oversight (e.g., for zoning and building code compliance) quite apart from the requirements of this regulation.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of

the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

- a. Adoption of the proposed revisions to the regulation will not increase or decrease the cost to the state to implement and enforce the regulation. The Department and Board of Juvenile Justice currently review and approve construction and renovation projects, and the proposed changes will not significantly change the costs of the processes already in place.
- b. Adoption of the proposed revisions will not increase or decrease the costs to localities for complying with the regulation. Again, current processes are modified, but not to the point of affecting the cost.
- c. Localities planning to build or renovate juvenile residential facilities, private providers planning to house juveniles who are served by Virginia’s juvenile justice system, and architectural and engineering firms serving as “sponsor’s representatives” will be affected by the proposed changes to the regulation.
- d. There is no way to estimate how many juvenile residential facilities might be built or renovated during the lifetime of the proposed regulation. Historically, construction and renovation projects come in waves, often depending on the availability of funds, changes in a locality’s juvenile population, and the condition of any existing facilities.
- e. There may be a fiscal impact on sponsors if the department exercises its authority, given in 6VAC35-30-210 (B) to require an administrative fee. The administrative fee would be determined based on a similar fee that the Bureau of Capital Outlay Management (at the Department of General Services) assesses on the Department for the administrative review that BCOM performs of the construction documents.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

6VAC35-30-10, Introduction, is updated to reflect changes in statute and agency organization and practice since the original regulation was adopted.

6VAC35-30-20. Definitions.

The abbreviation “ACA” is not defined, as the full term “American Correctional Association” will be spelled out completely whenever used in this regulation.

“Area allowance per bed” replaces the definition of ‘operating capacity.’

References to "Board standards" are updated.

The definition of "Local facility" is clarified to include juvenile residential facility intended to house primarily juveniles who are before intake on complaints or before the court on petitions alleging that the juvenile is a child in need of services, child in need of supervision, or delinquent,

The term "locality's representative" is replaced by "sponsor's representative" to recognize that private entities may sponsor facilities.

The term "operating capacity" is not used in the revised regulation; see new definition for 'area allowance per bed.'

"Planning study" is defined to include projected building and operating costs.

The definition for "Procedures" is updated.

"Project" is defined.

"Renovation" is defined to include security upgrades.

"Reviewing authority" is deleted and replaced by the revised final paragraph of 6 VAC 35-30-10. "Sponsor" is added to the definitions.

"Sponsor's representative" replaces the former "locality's representative."

6VAC35-30-30. The statutory references cited in the Legal basis are updated and expanded.

New 6 VAC 35-30-35 requires the Department to publish guidelines for submitting, reviewing and evaluating projects, resolving differences with the sponsor and submitting the proposal to the Board.

6 VAC 35-30-40 is amended to allow flexibility in setting due dates for each stage of the reimbursement request process, as determined by state budget policies. Paragraph 2 reorganizes material from the current regulation outlining the process for the initial submission of the needs assessment, to be followed by the completed planning study with an estimate of the total project cost, the amount of reimbursement requested, and a resolution from the locality or localities requesting reimbursement. New paragraph 5 describes how the Board will evaluate the planning study and the request for reimbursement.

6VAC35-30-50 is repealed. The preliminary review process is now substantially addressed in 6 VAC 35-30-40 (2).

6VAC35-30-60 is amended to include requirements for sight and sound supervision and to take into consideration the standards published by the American Correctional Association and the Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities. The reference to the Virginia Capital Outlay Manual are corrected to read "Construction and

Professional Services Manual for Agencies;" what constitutes "contingency" is clarified, and "furnishings and equipment" are related to the Board's "funding formula." Paragraph D clarifies that reimbursement may be made only as each approved phase is completed.

6VAC35-30-70. Paragraph A is expanded to illustrate some of the conditions that will qualify for high priority.

Minor clarifying changes are made to 6VAC35-30-80.

6VAC35-30-90, paragraph A, is amended to require that preliminary design documents be submitted to the department whether or not the sponsor will seek reimbursement from the Commonwealth. Paragraph B clarifies that the Department's Office of Capital Outlay Management will approve the documents based on compliance with the Standards for the Interdepartmental Regulation of Residential Facilities for Children and in consideration of the Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities.

6VAC35-30-100 is amended to require construction documents to be submitted to the department whether or not reimbursement is sought. Paragraph B specifies that the review will look at compliance with board standards, Code requirements, and the Guidelines for Minimum Standards in Design and Construction of Juvenile Facilities,

6VAC35-30-120 contains minor amendments regarding bids for projects for which reimbursement is sought.

6VAC35-30-130 Paragraph A is amended: architects must submit monthly inspection or progress reports to the department, whether or not reimbursement is sought.

Paragraph B requires prior approval of all substantive changes and accumulative change orders exceeding the Board-approved project budget, when reimbursement is sought.

Paragraph C makes clear that a department representative may visit the project site during the construction period to observe work in progress, whether or not reimbursement is sought for the project, and may require correction of any reduction in the quality of material or workmanship.

6VAC35-30-140. All projects, whether or not reimbursement is sought, are subject to a final inspection, and must provide copies of all regulatory agency letters verifying approval of the completed project.

6VAC35-30-160 and 6VAC35-30-170. Terminology and legal references are updated.

6VAC35-30-180, paragraph C clarifies that if the final amount of reimbursement requested is more than was initially recommended, the sponsor shall justify the cost increase and submit the adjusted reimbursement request.

6VAC35-30-190 clarifies that failure to comply with these regulations, in addition to other consequences, may result in failure to obtain Board certification or Department approval to house juveniles in the facility.

New 6VAC35-30-200 authorizes the Department to develop guidelines establishing minimum standards for the design and construction of juvenile residential facilities and sets minimum content requirements for the guidelines.

New 6VAC35-30-210 prescribes a process for reviewing and approving construction and renovation. Paragraph B authorizes the Department to require an administrative fee to support the review and approval process.

Alternatives

Please describe the specific 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.

The regulation is mandated by Code of Virginia § 16.1-309.5(C). Therefore, the only alternatives are between regulatory philosophies and between specific requirements to be included or excluded from the regulation.

The proposed regulation does not include engineering or other technical requirements for construction, but leaves these details (which are addressed in “guidelines” developed by the department) to be worked out between the sponsor and the department in a way that will allow alternative technologies and methods to accomplish basic goals in cost effective ways. This approach recognizes that juvenile detention homes do not all share the same program philosophy, face the same security needs, or enjoy the same financial and human resources that can make such a difference in the kind of facility a locality might choose to construct.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Extensive discussions took place among the Department of Planning and Budget, the Deputy Secretary of Public Safety and staff of the Department of Juvenile Justice, concerning the appropriate level and degree to which technical construction guidelines should be incorporated into the regulation. The proposed regulation reflects a consensus that the essential goals for construction of juvenile residential facilities should be stated in the regulation, while the technical specifications should be addressed in a guidance document. This arrangement ensures that minimum standards of construction will be met, while allowing flexibility to adapt to the particular circumstances of each project. That guidance document, referred to as “Guide Specs,” was revised beginning in April of 2000 through a consultation process that involved not only localities that were planning or constructing detention homes, but also current detention home administrators and representatives of architectural and engineering firms that often are involved in detention projects. During the course of the review and revision of the guide specs, comments were received from a number of A&E firms, as well as from the Department's own Capital Outlay unit.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The current regulation has been in effect since 1992. The regulation appears to have been understandable by the architectural and engineering firms, localities and other sponsors who have been subject to its provisions.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Consistent with Governor Warner's Executive Order 21, the agency proposes to initiate a review of the regulation four years from its effective date, and at that time to re-evaluate to determine if the regulation should be continued, amended or terminated. The review shall consider whether the regulation is accomplishing the stated goals to:

1. protect the public safety by securely confining juveniles who are a threat to the public,
2. provide a safe and secure environment in which juveniles are protected from other inmates or from their own self destructive behavior; and
3. ensure that expenditures to be reimbursed by the Commonwealth represent reasonable cost to the taxpayers.

Family Impact Statement

Please provide an 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 will have no direct impact, either positive or negative, on the institution of the family.