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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Criminal Justice Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	6 VAC20-70
<b>Regulation title(s)</b>	Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections
<b>Action title</b>	Enhance Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections
<b>Date this document prepared</b>	December 29, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

The Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections defines noncustodial employees and identifies the training requirements for this type of employee. Additionally, the regulation identifies the timeline for completion of training and the grading and administrative requirements.

This regulation was last amended in July of 1987. A periodic review was commenced on October 19, 2015. The Department has conducted a comprehensive review of this outdated regulation and proposed amendments will update relevant Code citations and regulatory language and clearly outline, increase, and enhance the training requirements for noncustodial employees.

## Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

Virginia Department of Criminal Justice Services and the Criminal Justice Services Board

9.1-102.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;...

...9. Establish compulsory minimum entry-level, in-service, and advanced training standards, as well as the time required for completion of such training, for persons employed as deputy sheriffs and jail officers by local criminal justice agencies, correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and juvenile correctional officers employed at a juvenile correctional facility as the term is defined in § 66-25.3;...

§ 19.2-81.2.

A. A correctional officer, as defined in § 53.1-1, who has completed the minimum training standards established by the Department of Criminal Justice Services, or other noncustodial employee of the Department of Corrections who has been designated to carry a weapon by the Director of the Department of Corrections pursuant to § 53.1-29 of the Code and who has completed the basic course in detention training as approved by the Department of Criminal Justice Services, may, while on duty in or on the grounds of a correctional institution, or with custody of prisoners without the confines of a correctional institution, detain any person whom he has reasonable suspicion to believe has committed a violation of §§ 18.2-473 through 18.2-475, or of aiding or abetting a prisoner in violating the provisions of § 53.1-203. Such detention shall be for the purpose of summoning a law-enforcement officer in order that the law-enforcement officer can arrest the person who is alleged to have violated any of the above sections.

B. Any employee of the Department of Corrections having the authority to detain any person pursuant to subsection A hereof shall not be held civilly liable for unlawful detention, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so detained, whether such detention takes place within or without the grounds of a correctional institution, provided that, in causing the detention of such person, the employee had at the time of the detention reasonable suspicion to believe that the person committed a violation for which the detention was undertaken.

C. It is the purpose and intent of this section to ensure that the safety, stability, welfare and security of correctional institutions be preserved insofar as possible.

§ 53.1-29

It shall be lawful for any correctional officer and any noncustodial employee who has been designated by the Director of the Department, and who has completed the basic course in firearms for correctional officers as approved by the Department of Criminal Justice Services, to carry and use sufficient weapons to prevent escapes, suppress rebellion, and defend or protect himself or others in the course of his assigned duties.

**Purpose**

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

This regulatory action is essential to protect the health, safety, and welfare of the citizens to ensure noncustodial employees who have been designated by the Director of the Department to carry a firearm and detain individuals have the proper training. Proper training in the handling and discharging of firearms and detaining individuals reduces the risk of serious injury or death to noncustodial employees, correctional officers, inmates, and the general public.

**Substance**

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

**6VAC20- 70-10 Definitions**

- Add the term and definition for "approved training academy"

**6VAC20-70-20 Compulsory minimum training standards for noncustodial employees**

- Increase training categories and the number of training hours required
- Direct individuals to the DCJS website to view performance objectives
- Address firearms training

**6VAC20-70-25 Approval Authority**

- Create a new section addressing approval authority

**6VAC20-70-30 Applicability**

- Language is added to clarify who is required to complete the compulsory minimum training standards

**6VAC20-70-40 Time required for completion of training**

- Language is added to address what training is required for individuals who have separated from the Department of Corrections and those who left noncustodial employee or corrections officer status.

**6VAC20-70-50 How compulsory minimum training standards may be attained**

- Changed the term approved training school to approved training academy
- Add the language "on post"

**6VAC20-70-60 Approved training schools**

- Clarifying days as calendar/business days

**6VAC20-70-70 Grading**

- Remove the language stating "testing and retesting as may be necessary"
- Remove the language in section C and put it in 6VAC20-110 Administrative Requirements

**6VAC20-70-80 Firearms**

- Repeal the firearm requirements they will be listed in 6VAC20-20

**6VAC20-70-85 Institutional In-Service for Noncustodial Employees**

- New section listing the required hours and topics for in-service training

**6VAC20-70-90 Firearms In-Service for Noncustodial Employees**

- Remove language addressing dates for recertification. This regulation was last amended in 1997. The dates referenced are no longer applicable.
- The requirements for annual firearms training have been identified and the language instructs readers to view the DCJS website to view the firearms courses.

**6VAC20-70-100 Failure to comply with rules and regulations**

- No revisions

**6VAC20-70-110 Administrative requirements**

- Renumber the subsections you can't have 1 without a 2
- Add language removed from section C of 6VAC20- 70 Grading

**6VAC20-70-120 Effective date**

- Revise with a current date

**6VAC20-70- 130 Adopted: October 12, 1979**

- Repeal

**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.*

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There are no viable alternatives to this regulation. The Code of Virginia requires noncustodial employees of the Department of Corrections who have been designated to carry a weapon by the Director of the Department of Corrections pursuant to § 53.1-29 and who have the authority to detain an individual pursuant to 19.2-81.2 to complete the basic course in firearms for correctional officers and basic course in detention training. Both courses must be approved by the Department of Criminal Justice Services.

This regulation will have no impact on small businesses.

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency’s contact if you’re interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Barbara Peterson-Wilson, 1100 Bank Street, Richmond, VA 23219, phone number (804) 225-4503, fax number (804) 786-0410 and [Barbara.Peterson-Wilson@dcjs.virginia.gov](mailto:Barbara.Peterson-Wilson@dcjs.virginia.gov)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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

### Periodic review and small business impact review report of findings

*If this NOIRA is the result of a periodic review/small business impact review, use this NOIRA to report the agency's findings. Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the 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.*

**Periodic Review**

1) Summary of all comments received during the public comment period following the publication of the Notice of Periodic Review.

Commenter	Comment	Agency response

No comments were received during the public comment period.

2) Indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Rules Relating to Compulsory Minimum Training Standards for Noncustodial Employees of the Department of Corrections 6VAC20-70 meets the criteria set out in Executive Order 17 (2014), and is necessary for the protection of public health, safety, and welfare. It is outdated and therefore revisions are necessary to adequately protect public safety and welfare. There are outdated Code references which diminish the understandability of this regulation.

3) In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of:

(1) The continued need for the regulation;

The Code of Virginia requires noncustodial employees of the Department of Corrections who have been designated to carry a weapon by the Director of the Department of Corrections pursuant to § 53.1-29 of the Code and who have the authority to detain an individual to complete the basic course in firearms for correctional officers and basic course in detention training. Both courses must be approved by the Department of Criminal Justice Services.

(2) The nature of complaints or comments received concerning the regulation from the public;

No comments were received during the public comment period.

(3) The complexity of the regulation;

The regulation with the proposed amendments will be clearly written and easily understandable.

(4) The extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and

The regulation does not overlap, duplicate or conflict with federal or state statutes or regulations.

(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.

This regulation was last amended in July of 1987. The training requirements for noncustodial employees are outdated and insufficient.