



Virginia Department of Planning and Budget **Economic Impact Analysis**

6 VAC 35-170 Regulation Governing Minimum Standards for Juvenile Information Requests from and Research Involving Human Subjects within the Department of Juvenile Justice

Department of Juvenile Justice

Town Hall Action/Stage: 5429/8823

July 29, 2020. Revised 8/18/2020 to make a technical correction.

Summary of the Proposed Amendments to Regulation

External researchers seeking data on incarcerated minors under the supervision or custody of the Department of Juvenile Justice (DJJ) must adhere to the application and review process established in 6 VAC 35-170. The Board of Juvenile Justice (Board) proposes to amend this regulation to remove provisions that are no longer valid, address data requests submitted through the Virginia Longitudinal Data System (VLDS), and impose additional data security requirements. The Board also seeks to make a number of amendments to simplify the language and clarify existing requirements to reduce confusion amongst regulants.

Background

The Board proposes to make several changes to this regulation at the recommendation of DJJ staff; in particular, the coordinator of external research maintained a log of frequently asked questions and issues raised by researchers who sought access to DJJ data. The most substantive changes are summarized as follows:

1. In the interest of simplicity, the Board wishes to shorten the title of the regulation to *Regulation Governing Juvenile Data Requests and Research Involving Human Subjects*;
2. The Board seeks to amend two existing definitions to clarify existing policy. First, the definition of “human subject” would be amended to also include an individual who is “under the care, custody or supervision of a facility or program regulated by [DJJ or the

Board],” as well as an individual who is “employed in or provides contractual services to a juvenile correctional center or other facility or program regulated by [DJJ or the Board] and who is or who is proposed to be a subject of human research.” That is, any research that directly involves DJJ staff or contractors and any youth under their authority at any facility either directly run by or contracted by DJJ would be considered “human research.”

The Board also seeks to amend the definition of “legally authorized representative” to fully clarify that “for the purposes of this chapter, ‘legally authorized representative’ shall not include an official or employee of the institution or agency conducting or authorizing the research.” Although the current definition includes the statement, “No official or employee of the institution or agency conducting or authorizing the research shall act as a legally authorized representative,” DJJ reported that “Some researchers believed that this definition meant that DJJ could provide consent on behalf of juveniles, as if they were a ‘ward’ of the state.”

3. The Board also seeks to clarify 6 VAC 35-170-65 (section 65), which lays out the process for external researchers to use when seeking case specific data, by adding two new definitions and updating procedural language. First, the Board proposes to add a definition of “internal committee” to mean “the committee established by the department pursuant to 6 VAC 35-170-65 to oversee de-identified case specific data.” Second, the Board would add a definition of “sensitive data” to mean “data, the compromise of which, with respect to the confidentiality, integrity, or availability, could have a material adverse effect on agency programs or the privacy to which individuals are entitled.”

These definitional changes, when used in conjunction with certain identifying information listed in section 65, would clarify which data elements would be considered sensitive data and would therefore have to be removed for the data to be considered de-identified. These identifiers include names, dates of birth, postal street addresses, telephone numbers, email addresses (a proposed addition to the list), social security numbers, and medical record numbers. Thus, the amendments serve to clarify the existing process: that once the coordinator of external research ascertains that the data request does not include any sensitive data, the director would then designate an internal committee to review the proposal and make a written recommendation to the director.

The Board seeks to further amend section 65 to specify that any request for sensitive data would require a review by the Human Research Review Committee (HRRC). Once again, the Board is not amending the process so much as explaining the circumstances that would warrant HRRC review. Further the Board seeks to clarify that the director could make an exception if the request was for only a limited number of the identifiers listed above, provided the researchers agree to the confidentiality requirements as stated in 6 VAC 35-170-40.

4. DJJ is one of several agencies that participates in the Virginia Longitudinal Data System (VLDS), which has prompted questions from researchers using the VLDS portal as to how requests submitted via the VLDS are evaluated vis-à-vis the existing regulation. Hence, the Board proposes to add a new section explicitly addressing VLDS requests.

The Board seeks to add a definition of “Virginia Longitudinal Data System or VLDS” to mean “a data system that provides de-identified case-specific data from participating agencies to qualified researchers through a process that involves submission of requests and approval or denial by each sponsoring agency from which data are sought in an effort to create usable information for policy and generate cross-agency research.”

The new section 6 VAC 35 170-67 titled “VLDS requests” would essentially require researchers using the portal to comply with the same requirements as they would for a request directly submitted to DJJ. However, rather than go through review and approval by the director or an internal committee, the chair of the HRRC would have the primary responsibility for reviewing and approving requests made through the VLDS portal. Moreover, the data being requested would need to already be available in the VLDS database. By addressing the requirements and process in a separate section, the Board seeks to provide clear and simple directions for researchers choosing to adopt this route for accessing data.

5. The Board proposes to repeal 6 VAC 35-170-62 (Review and approval of aggregate data requests) and replace it with 6 VAC 35-170-55 with the same title. This change is intended to clarify how this process works in relationship to section 60, which prohibits any research involving a case specific data request or human research request from beginning until “all reviews required by this chapter have been completed and the

principal researcher receives a copy of the research agreement signed by the director.” Moving the section regarding aggregate data before section 60 is intended to distinguish between aggregate data requests in the proposed section 55, and case specific data requests or human research requests in section 60, and to clarify that aggregate data requests fall outside the requirements in section 60. The actual process of reviewing and approving aggregate data requests would not be changed.

6. The Board proposes to add a new section 6 VAC 35-170-69 titled “Minor amendment to data requests” to allow researchers to submit amendments to existing data requests as long as the scope of the original data request or research proposal remains unchanged. DJJ staff offered the following examples of minor amendments: revising the recruitment method due to low enrollment (e.g. putting up a recruitment poster in a court service unit office when that method was not previously used), revising the wording of a question previously considered confusing, or changing the order of questions on a survey for better flow. The section would allow the chair of the HRRC to conduct an expedited review of the amendment, and would not require the director or internal committee to review the amendment.
7. The Board proposes to add a new section 6 VAC 35-170-230 titled “Written procedures” that requires DJJ to establish written procedures for requesting approval of a research proposal by a DJJ unit head. DJJ may also use written procedures to provide additional guidelines for the submission, approval, and review of research proposals or data requests. The proposed section also serves to notify regulants that these procedures may be accessed through DJJ’s website.¹ Compliance with these procedures would not be required, but they would serve to streamline the process for researchers who choose to use them.
8. The Board seeks to add a subsection to section 190 “Committee reports required,” which would require that the HRRC post a summary of approved human research projects, unless the research is explicitly protected under the Virginia Freedom of Information Act.
9. Throughout the regulation, the Board proposes to make explicit exactly which parties within DJJ would be responsible for making decisions regarding data requests and for

¹ See <http://www.djj.virginia.gov/pages/admin/data-research-requests.htm> for details.

communicating those decisions in writing to the principal investigators making the request.

Estimated Benefits and Costs

The proposed amendments would help streamline the process for different types of data and research requests, clarify the requirements for each type of request, and identify the relevant DJJ personnel who would be responsible for reviewing and approving each type of request. The proposed amendments would not create new costs for researchers requesting data or human research, while continuing to safeguard the privacy and protection of incarcerated juveniles and/or staff at DJJ facilities. Since the requirements themselves are no more onerous or restrictive than they were before, and to the extent that researchers seeking data are able to better understand and follow DJJ procedures, both the researchers and DJJ staff stand to benefit.

Businesses and Other Entities Affected

The proposed amendments would affect researchers at universities or private non-profit organizations or foundations that conduct social science research in facilities operated (or sub-contracted) by DJJ. The proposed amendments do not introduce any additional costs to conducting such research.

Small Businesses² Affected

Small businesses are unlikely to be affected by the proposed amendments. The proposed amendments create no new costs.

Localities³ Affected⁴

The proposed amendments do not disproportionately affect any specific localities, nor do they introduce new costs for local governments.

² Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

³ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

Projected Impact on Employment

The proposed amendments are unlikely to affect employment.

Effects on the Use and Value of Private Property

To proposed amendments would not affect the value of private property. Real estate development costs would not be affected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.