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Fast-Track Regulation Agency Background Document

Agency name	Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) Chapter citation(s)	6 VAC35-150-335
VAC Chapter title(s)	Regulation for Nonresidential Services
Action title	Initiate a fast-track regulatory action to remove the 90-day deadline for completing truancy diversions
Date this document prepared	September 21, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.

This regulatory action seeks to amend the existing diversion provision set out in 6VAC35-150-335 of the Regulations for Nonresidential Services to remove the 90-day deadline currently imposed on youth alleged to be truant pursuant to a complaint filed in accordance with § 22.1-258 of the *Code of Virginia* and subject to a truancy diversion plan. Generally, when an intake officer in a juvenile court service unit exercises the authority to divert an eligible offense, the diversion supervision shall be limited to 120 days under the existing regulation. According to the same regulatory provision, however, truancy diversions are limited to 90 days. This 90-day restriction reflects language that existed in the *Code of Virginia* until July 1, 2020. As of July 1, 2020, Chapter 753 of the 2020 Acts of Assembly removed this 90-day statutory cap. The department now seeks a corresponding regulatory amendment to remove the 90-day limitation contained in 6VAC35-150-335 in order to reflect this statutory change.

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.

This form uses only those acronyms defined in the “definitions” section of the regulation.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On September 16, 2020, the Board of Juvenile Justice (board) authorized the submission of a fast-track regulatory action to amend 6VAC35-150-335 (diversions) in the chapter titled, Regulation for Nonresidential Services. The amendment will remove the provision limiting the maximum period for completing a diversion plan or program to 90 days.

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 Executive Order 14 (as amended, July 16, 2018), “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.”

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

The proposed amendment reflects a statutory change enacted during the 2020 legislative session that removed the 90-day statutory deadline for completing truancy diversions (Chapter 753 of the 2020 Acts of Assembly). Prior to the legislative change, § 16.1-260 of the Code imposed a 90-day deadline for completing a truancy diversion plan. The Department of Juvenile Justice (department) lobbied for a statutory amendment to remove this 90-day cap in order to align the timeframes for completing truancy diversions with the 120-day regulatory deadline imposed for other eligible diversions pursuant to 6VAC35-150-335. Although the 90-day statutory deadline is no longer in place, the impetus for the regulatory change is not a legislative mandate. The legislation that precipitated this request merely removed the 90-day cap, and did not establish a new cap, nor did it direct the board to amend or repeal the established timeframes in the board’s regulations. Instead, by removing the statutory deadline for completing truancy diversions, the legislation granted the department broad discretion to retain, increase, or decrease the timeframe for completing truancy diversions.

On September 16, 2020, the board voted in favor of DJJ’s request to remove the 90-day cap on truancy diversions set out in 6VAC35-150-335. Eliminating this cap will subject all diversion plans, including those applicable to truancy offenses, to a 120-day time limit. The department does not expect this rulemaking to be controversial. Section 16.1-260 of the Code formed the basis for the 90-day cap, and the proposal to amend this statute met with unanimous support in both the House and Senate. Furthermore, allowing a 120-day period for truancy diversions is consistent with the maximum period permitted for diversions for more serious misdemeanor offenses.

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.

The promulgating entity is the board. Section 16.1-233 of the Code directs the board to promulgate regulations pertaining to the appointment and function of court service staffs and related supportive personnel “to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth.”

Additionally, the board is entrusted with general, discretionary authority to adopt regulations by § 66-10 of the Code, which authorizes the board to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.”

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’s intended to solve.

Section 16.1-260 of the Code sets out the statutory rules intake officers must follow when diverting eligible juvenile offenses. Currently, the statute allows an intake officer to delay the filing of a petition for a complaint alleging a child is in need of services, supervision, or delinquent, provided: 1) the alleged offense is not a violent juvenile felony; and 2) the juvenile has not had a previous felony offense diverted or has not been adjudicated delinquent for a previous felony offense. An intake officer who exercises the option to divert an eligible juvenile offense must develop a plan for the juvenile, which may include restitution, community service, treatment, and other alternatives that the juvenile must accomplish. Prior to July 1, 2020, § 16.1-260 established a 90-day deadline for completing the diversion plans for eligible truancy offenses, but did not impose any deadlines for other eligible diversions. Based on the statutory language, the department’s regulatory provision addressing diversions, set out in 6VAC35-101-335, sets a 90-day cap on truancy diversion plans and a 120-day cap for all other offenses eligible for diversion.

During the 2020 legislative session, the department lobbied for legislation that would remove the 90-day statutory cap for completing the truancy diversion plan to enable the department to align its truancy diversion cap with the 120-day regulatory cap already in place for other diversions. The General Assembly voted unanimously in support of striking the statutory 90-day limitation, effective July 1, 2020.

Because the statute is now silent regarding the time limit for completing any eligible diversion, truancy or otherwise, and because 6VAC35-150-335, consistent with the stricken legislative language, sets the maximum time limit for truancy diversion plans at 90 days, the court service units remain subject to the 90-day cap on truancy diversion plans until the regulation is amended.

The department considers a regulatory change to remove the 90-day cap on truancy diversion plans necessary to assist youth eligible for diversions in successfully completing their plans. According to data maintained by the department, of the 2,872 truancy complaints that were assigned a diversion plan between Fiscal Year 2017 and Fiscal Year 2019, only 66.7% were completed successfully, compared to the 84.7% success rate for all other diverted complaints. The department believes the lower success rate for truancy diversions might be attributable to the shorter diversion period. Extending the time period for

truancy diversions will give court service unit staff additional time to monitor the child and family's progress toward completing the plan and the youth additional time to meet the plan's requirements.

The General Assembly has demonstrated the Commonwealth's commitment to using diversion in appropriate circumstances in § 16.1-227 of the *Code*. That provision explains one of the purposes of the statutes governing juvenile and domestic relations district courts: that is to divert from the juvenile justice system (to the extent possible, consistent with the protection of public safety), those youth "who can be cared for or treated through alternative programs." Having these diversion opportunities in place reduces the number of petitions that must be filed, and therefore, reduces the likelihood of a youth getting further and unnecessarily entrenched in the juvenile justice system. These diversion opportunities are futile if the CSU staff responsible for administering and monitoring the resident's progress towards completing the plan and the youth responsible for carrying out its directives do not have sufficient time to meet these obligations. Amending the regulation to remove this 90-day cap will address this issue.

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.

The proposal amends 6VAC35-150-335(A) by striking the regulatory language that imposes a 90-day cap on diversions for truancy offenses. In so doing, the proposed amendment extends the maximum diversion period for truancy offenses to 120 days.

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 department expects this regulatory proposal to benefit the public by increasing the number of successful truancy diversions. Extending the timeframe for truancy diversions an additional 30 days makes it more likely that the youth subject to this diversion plan will successfully complete the diversion program, thereby reducing truancy in the Commonwealth. Successful completion of a truancy diversion plan also eliminates the need for the intake officer to file a petition. By reducing the number of petitions filed, the proposal supports the department's continued transformation efforts to reduce deeper system involvement for low-risk youth. Decreasing the number of petitions filed with the court also will benefit the juvenile courts by decreasing their workload and dockets. The department also hopes that an increase in successful truancy diversions will generate a decrease in crimes that may result indirectly from truancy.

The proposal is not expected to disadvantage 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.

Currently, no federal laws or regulations address the timeline for diverting a truancy offense.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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

The department is not aware of any other state agencies that will experience a disproportionate material impact because of this regulatory amendment.

Localities Particularly Affected

The department does not expect the proposal to have a disproportionate negative impact on any localities. At least one locality (City of Petersburg, 11th District Court Service Unit) has reported that the lower truancy diversion success rates are likely attributable to the shorter diversion periods for youth in the City of Petersburg and believes the proposed regulatory amendment will significantly benefit youth alleged to be truant in that district. The 11th CSU unit is one of only a few units that reported success rates for truancy diversion below 50% in Fiscal Years 2018 through 2020.

Other Entities Particularly Affected

The department is not aware of any other entities that will experience a disproportionate material impact as a result of this regulatory amendment.

Economic Impact

Pursuant to § 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 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;</p>	<p>Although the proposed change will increase the duration of truancy diversion plans, which may result in additional costs for state-operated and locally operated court service units, the</p>
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<p>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>department does not have sufficient information to estimate the costs that will result from this regulatory change. The department believes it can accommodate any fiscal impact associated with this increase using existing 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 change has the potential to impact the Office of the Executive Secretary of the Supreme Court; however, the proposal is not expected to have a material fiscal impact on the court system's resources.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The department hopes the proposed change will increase the number of successful diversions for trancies. The department's transformation plan supports the use of diversion to address low-level offenses and to prevent youth from deeply penetrating the juvenile justice system, and this proposed change will support that approach.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>Currently, DJJ's regulatory requirements apply to two locally operated court service units (Fairfax County and Arlington County) and the proposed change may impact both CSUs. The department does not have sufficient information to estimate the costs that will result from this regulatory change; however, any additional costs borne by these localities are likely to be de minimis and may be addressed with existing resources.</p> <p>Additionally, the proposal may impact local school divisions, departments of social services, community services boards, and other local public agencies to the extent these entities are a party to the truancy diversion plan.</p> <p>The proposed change is likely to reduce the number of petitions filed in local juvenile courts, which may have a minimal positive revenue impact.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change will allow the two locally operated court service units to extend the diversion period for truancy diversions to 120 days. Presumably, this will give juveniles alleged to be truant in each locality additional time to complete their truancy diversion plans, which could increase the number of successful truancy diversions and may result in a decrease in the number of trancies in those localities. The change also may reduce the number of youth who penetrate the juvenile justice system and may result in a decrease in crime within the jurisdiction. Local courts will likely reap the benefit of a reduction in truancy petitions.</p>

Impact on Other Entities

<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>The department expects the proposal to impact youth adjudicated in need of supervision for truancy, the parents or legal guardians of such youth, and program and service providers included as part of the truancy diversion plans.</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 business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> 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>The department does not have sufficient information to determine the number of youth, parents, and program or service providers that may be impacted by this regulatory change.</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:</p> <ul style="list-style-type: none"> 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>The department does not have sufficient information to determine the projected costs and fees for service providers who may be impacted by this regulatory amendment.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The department hopes that this regulatory change will ultimately reduce truancy across the Commonwealth, which is likely to result in a reduction in crime. Presumably, the proposal will also decrease the number of truancy petitions filed with the juvenile court, thereby reducing the likelihood that youth will further penetrate the juvenile justice system.</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.

One viable alternative to amending the regulation is to leave the regulation as currently written. This approach is unfavorable because the department would likely continue to see a disparity in the rate of successful truancy diversions as compared to diversions for other eligible offenses. Additionally, the existing regulatory treatment would continue to promote inequities between youth who are alleged truant and youth who have committed more serious offenses.

The department expects this proposal to impact small businesses only to the extent they provide services or programs as part of the diversion process. The department is not aware of any less costly alternatives for such businesses that would achieve the purpose of the regulatory change.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B 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.

Although the department considered several regulatory alternatives in lieu of the proposed amendment, none were sufficient to address the disparities between successful truancy diversions and other eligible diversions. Establishing less stringent compliance or reporting requirements, or consolidating or simplifying these requirements would be insufficient because the intake officers and youth alleged to be truant would continue to be subject to the 90-day requirement for completing truancy diversions. Similarly, establishing performance standards for small business to replace the operational standards in this regulation or exempting small businesses from its provisions would have no bearing on the issue.

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.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency’s regulatory flexibility analysis stated in 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 Kristen Peterson, Regulatory Coordinator at the Department of Juvenile Justice, PO Box 1110, Richmond, Virginia 23218-1110; (804) 588-3902 (phone), 804-371-6497 (fax) and Kristen.Peterson@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.

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 existing VAC Chapter(s) and the proposed regulation. If 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
6VAC-35-150-335	N/A	Currently, when an intake officer diverts an eligible juvenile offense, the maximum diversion period shall not exceed 120 days. Juveniles alleged to be truant pursuant to a complaint filed in accordance with § 22.1-258 of the <i>Code</i> are subject to a maximum 90-day diversion period.	The proposal removes the 90-day cap on truancy diversion plans, thus imposing the same 120-day deadline for completing a truancy diversion that is required for all other offenses eligible for diversion. Removing this 90-day limitation gives youth alleged to be truant an additional 30 days to complete the requirements established in their diversion plans.