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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 VAC35-210
VAC Chapter title(s)	Compulsory Minimum Training Standards for Direct Care Employees
Action title	Establish a new chapter setting out compulsory training standards for direct care and security staff employed in juvenile correctional centers
Date this document prepared	June 21, 2021

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 action seeks to create a new set of regulatory provisions that establish compulsory training requirements for direct care and security employees in juvenile correctional centers operated by the Department of Juvenile Justice (department). The new regulatory provisions satisfy Chapters 366 and 526 of the 2019 and 2020 Acts of Assembly, respectively, directing the State Board of Juvenile Justice (board) to establish compulsory minimum training standards for such staff and requiring the standards to include training on various topics involving pregnant residents. The proposed regulations also track existing and proposed regulatory provisions regarding initial and annual training requirements for direct care and security employees in juvenile correctional centers, as outlined in the Regulations Governing Juvenile Correctional Centers (6VAC35-71).

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.

DCJS means the Virginia Department of Criminal Justice Services
DHRM means the Virginia Department of Human Resource Management.

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 December 1, 2020, the board authorized the submission of a fast-track action to establish a new regulatory chapter, Compulsory Minimum Training Standards for Direct Care Employees (6VAC35-210), applicable to direct care employees in department-operated juvenile correctional centers.

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 provisions comply with legislation enacted during the 2019 and 2020 legislative sessions. Chapter 366 of the 2019 Acts of Assembly directs the board to 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 correctional officers in a juvenile correctional facility. Chapter 526 of the 2020 Acts of Assembly mandates that these training standards include the following training for such staff who may have contact with pregnant residents: (i) the care of pregnant women, (ii) the impact of restraints on pregnant residents and fetuses, (iii) the impact of being placed in restrictive housing or solitary confinement on pregnant residents, and (iv) the impact of body cavity searches on pregnant residents.

The department does not expect these regulatory provisions to generate controversy. The proposal complies with the statutory mandate by identifying the various training requirements and topics for direct care employees in state-operated juvenile correctional centers. The proposal was developed with consensus among representatives from the department’s Training and Development Unit, Division of Residential Services, and Executive Staff, and the department believes these minimum standards will ensure that entry-level and seasoned direct care and security staff are sufficiently trained to perform their roles competently and safely.

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 66-10(9) of the Code of Virginia vests the board with the authority to 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 juvenile correctional officers at a juvenile correctional facility and requires such training to address various topics related to pregnant residents.

Additionally, the board is entrusted with general, discretionary authority to adopt regulations pursuant to § 66-10(5) 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.

Although the board's existing Regulations Governing Juvenile Correctional Centers establish requirements for initial and annual training for direct care and security employees in juvenile correctional centers, for several years DCJS has had statutory oversight regarding training requirements for the department's direct care and security staff. When DCJS initially obtained this statutory authority, the department's “juvenile correctional officer” position resembled adult correctional staff positions, emphasizing a punitive, corrections-based approach for supervision. Since 2015, however, the department has been transforming its juvenile correctional center programming and philosophy to have a more therapeutic and rehabilitative focus. DJJ's direct care and security positions no longer align with the roles of correctional officers in adult facilities, nor to the law-enforcement positions overseen by DCJS. Acknowledging this transformation, in 2019, the department successfully lobbied legislation to transfer the authority and duty to develop training standards back to the department. In 2020, the General Assembly enacted legislation mandating that the standards also address certain practices regarding pregnant residents. The board now seeks to adopt a new regulatory chapter to comply with the 2019 and 2020 legislation. These new regulations are essential to meet the statutory directives and to ensure that direct care and security employees in state-operated juvenile correctional centers receive adequate, timely, and relevant training to execute their duties in juvenile correctional centers safely and efficiently. Additionally, the new regulations will ensure that staff are prepared to supervise any pregnant youth that may be assigned to a juvenile correctional center. Finally, the new regulations will authorize department staff to apply appropriate sanctions for direct care and security staff who fail to satisfy the training requirements.

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 department is recommending the following training requirements for inclusion in the new regulatory chapter, as summarized below:

- Section 20, limiting the new chapter's scope to apply exclusively to direct care and security employees in state-operated and certain privately operated JCCs;
- Section 30, requiring DJJ-approved instructors to provide the applicable training;
- Section 40, breaking down the 180 hours of training required for direct care and security employees to include a combination of academy and unit training, orientation, and staff observation, along with additional training regarding pregnant residents; establishing the required volume of annual training for such employees; and imposing advanced or specialized training before authorized staff may use certain equipment;
- Section 50, outlining the time requirements for completion of training;
- Sections 60 and 70, setting out testing and attendance requirements for the successful completion of training and establishing sanctions for staff who fail to meet such requirements;
- Section 80, directing the department to develop and the board to approve performance outcomes that identify the competencies and knowledge that should result from training; and
- Section 90, directing the department to maintain documentation for a three-year period demonstrating each applicable employee's compliance with these requirements.

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 proposed regulations are expected to provide numerous benefits to the public and the department. Ensuring that staff receive sufficient and proper training helps to reduce the number of facility incidents and creates an environment more conducive to resident growth and rehabilitation, which ultimately increases the likelihood of the resident's success after release. Applicants for direct care or security positions in JCCs will have clear guidance as to the expectations regarding training, which may decrease staff turnover and conserve training resources.

The department does not anticipate any disadvantages to the public or the Commonwealth associated with the proposed new regulation.

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.

The department is not aware of any federal requirements related to training for security staff or staff involved in the direct care of youth in juvenile correctional facilities.

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 due to the proposed regulatory requirements. Any changes experienced by DCJS would be attributable to the enabling legislation, and not the proposed regulatory requirements.

Localities Particularly Affected

The department does not expect the proposal to have a disproportionate impact on any localities. The regulatory provisions are applicable exclusively to state-operated or privately operated juvenile correctional centers and will apply specifically to staff in juvenile correctional centers. Locally or regionally operated juvenile detention centers are not subject to the proposed regulatory requirements.

Other Entities Particularly Affected

The department is not aware of any other entities that will experience a disproportionate material impact due to the proposed regulatory requirements.

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; 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>The department does not have sufficient information to estimate the costs or savings to DJJ resulting from these regulatory changes. The department believes the required changes to the training curricula, including new training regarding pregnant residents, can be absorbed with the department's 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>In its 2019 and 2020 fiscal impact statements analyzing the enabling legislation, DCJS predicted no material fiscal impact resulting from the transfer of authority back to DJJ. The department does not expect additional costs or impacts to DCJS or any other state agency.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Clarifying training requirements and directing DJJ to develop a separate, board-approved list of performance outcomes for applicable JCC staff will help JCCs operate more effectively and efficiently, which in turn, may reduce recidivism and help youth in these facilities successfully integrate and become productive citizens.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>The department does not expect these changes to result in any costs, savings, fees, or revenues for localities.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The department does not expect these changes to produce direct benefits to any localities.</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 proposed regulatory provisions may impact applicants for direct care and security positions in JCCs, as well as youth committed to DJJ. The proposed changes also could indirectly impact service providers and businesses contracting to serve committed youth. The department does not expect an impact for other individuals or entities.</p>
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<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 number of "other entities," including small businesses, that will be impacted by the proposed changes cannot be determined.</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 projected costs for individuals, businesses, or other entities resulting from these regulatory changes cannot be determined.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Having clear concise training requirements and an enhanced training program has the potential to increase staff competency and improve facility operations, which ultimately benefits committed youth, their families, and the community.</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 department could not conceive of an appropriate alternative to establishing the proposed regulatory chapter. Pursuing any other alternatives would render the department in violation of state law.

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.

The department considered several regulatory alternatives in lieu of the proposed new regulatory chapter, but none were sufficient to ensure the board's compliance with the statutory requirement. The compliance

requirements proposed in the regulation allow the department some flexibility with respect to testing and grading. The proposal directs the board to establish specific performance outcomes to measure the impact of required training, but gives the board flexibility regarding timeframes for implementation. Because small businesses are not subject to the proposed regulatory requirements, establishing performance standards for such businesses or exempting them from the regulatory requirements would have no impact.

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 (Board) 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 Kenneth Davis; 600 East Main Street, 20th Floor; Richmond, VA 23219; (804) 807-0486; 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.

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.

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

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements
10	Definitions: The proposed regulations include definitions for the following terms used throughout this	The proposed regulations mirror the definitions contained in the board-approved proposed	The proposed definitions are intended to clarify terms used in the regulation, thereby enhancing compliance.

	chapter: board, department, direct care employee, director, juvenile correctional center, mechanical restraint, mechanical restraint chair, protective device, and security employee.	amendments to the Regulations Governing Juvenile Correctional Centers (6VAC35-71-10) currently in process.	Because the definitions mirror existing regulatory definitions or those proposed in the JCC regulations, these amendments will have no additional impact.
20	Applicability: While the enabling legislation requires training standards applicable to “juvenile correctional officers,” DJJ has restructured these positions to fall under the general direct care and security classifications. The proposed applicability section limits the regulation’s scope to direct care and security staff in state-operated or privately operated JCCs, and not staff in alternative direct care or juvenile boot camp programs.	These applicability provisions are consistent with proposed amendments to the Regulations Governing Juvenile Correctional Centers currently in process, as well as the enabling legislation set out in § 66-10(9) of the Code of Virginia.	This applicability section clarifies the scope of the training requirements without altering the training structures and requirements for locally or regionally operated detention centers and other facilities that operate alternative direct care programs.
30	Training providers: The proposed regulations require agency-approved general instructors to provide all required training unless the regulation provides otherwise.	No similar provisions in existing law or regulations.	This section seeks to prevent direct care staff from pursuing training that DJJ has not sanctioned. The department has a formalized entry-level, in-service, and advanced training program in place for its direct care staff, and all current training complies with this requirement. Therefore, this proposal will have no significant additional impact.
40	Compulsory minimum training standards: The proposal directs applicable staff to complete a combined 180 hours of initial training, consisting of a minimum of 120 hours of DJJ-approved initial training already established by regulation, 24 hours of staff observation in the JCC administered by the Division of Residential Services, 36 hours’ training on a JCC housing unit, and an unspecified number of hours devoted to facility orientation. Direct care and	Pursuant to 6VAC35-71-150, each JCC employee must receive a basic orientation by the end of their seventh work day at the facility. The department’s proposed regulatory amendments to 6VAC35-71-160 (required initial training) also require initial training for direct care and security staff in the following areas: 1) emergency preparedness and response; 2) first aid and CPR; 3) the behavior management program; 4)	This section outlines the required areas and volume of training, consistent with proposed amendments to Chapter 71, for direct care and security employees. Though many of the proposed requirements are built into the existing training program for JCC direct care and security employees, the proposal imposes additional training regarding pregnant residents and a formalized plan for staff observation and unit field training. DJJ’s Training and Development Unit, Health Services Unit, and Division of

	<p>security employees also shall receive training conducted by medical staff regarding the general care of pregnant residents and the impact of certain practices such as restrictive housing and use of force on such residents. The training must be completed even if the JCC does not house any pregnant residents.</p> <p>Additionally, direct care and security employees shall complete at least 40 hours of DJJ-approved annual training, as set out in the proposed regulations that govern JCCs.</p> <p>Finally, the proposed standards mandate advanced or specialized training only for direct care and security employees authorized to use mechanical restraints, the restraint chair, or protective devices. Other specialized or advanced training shall be made available, but will not be required.</p>	<p>residents' conduct rules; 5) behavior interventions; 6) child abuse and neglect; 7) mandatory reporting; 8) appropriate professional relationships; 9) appropriate resident and staff interactions; 10) suicide prevention; 11) residents' rights, including prohibited actions; 12) standard precautions; 13) signs and symptoms and required responses in medical emergencies; 14) adolescent development; 15) procedures applicable to the employees' position and work profile; and 16) other DJJ, state or federally mandated topics.</p> <p>Per 6VAC35-71-170, required annual training topics for direct care and security employees include the topics identified in numbers 3, 6-12, and 16 above.</p>	<p>Residential Services will need to build this additional training into its curriculum and may need to adopt new procedures and protocol for the training's effective and safe implementation.</p>
<p>50</p>	<p>Time requirements for completion of training: The proposal instructs direct care and security employees to complete the initial 180 hours of classroom, field training, and orientation before working directly with residents unless at least one other employee who has completed all required applicable orientation and training is present and supervising the resident. Annual training must be completed in various enumerated topics, and first aid and CPR training must be completed as often as necessary to maintain certification. Advanced or specialized training must be</p>	<p>The proposal is consistent with 6VAC35-71-160 and 6VAC35-71-170.</p>	<p>Given the regulatory requirements currently in place directing initial and annual training before staff may work directly with residents or utilize certain equipment, the proposal is not expected to significantly change facility operations.</p>

	completed for applicable staff before applying mechanical restraints, the restraint chair, or protective devices.		
60	Attendance requirements, testing, and grading: The proposal requires direct care and security employees to successfully pass all administered tests, demonstrate mastery in physical restraint techniques, and achieve acceptable attendance (not missing 32 or more hours of training cumulatively during the first five weeks of initial training).	No similar provisions set out in current law or regulations.	The department's current procedures do not establish mandatory attendance or grading requirements for staff who are training to hold direct care or security positions. The proposal sets out plain, unambiguous attendance requirements and provides DJJ with clear guidance for assessing staff's readiness to serve in a direct care or security capacity in a JCC.
70	Failure to comply with minimum standards: The proposal provides that a trainee who fails to meet the minimum attendance or initial training requirements shall be removed from DJJ service and will need to repeat the application and training process for future eligibility. The proposal requires DJJ to comply with DHRM's applicable policies, rules, and regulations.	No similar provisions set out in current law or regulations.	This provision formalizes the department's current process for addressing JCC direct care and security staff who fail to meet the initial training requirements and is not expected to have a significant impact on facility operations.
80	Development and approval of performance outcomes: The proposal directs DJJ to develop, and the board to approve, a separate document describing the required topics for training and the knowledge and competencies an employee should demonstrate resulting from such training. The proposal gives the board the discretion to amend the Performance Outcomes and set a timeline for implementation.	No similar provisions set out in current law or regulations	This proposal allows the department to craft a document identifying the most pertinent topics direct care and security employees must learn and demonstrate before assuming their roles in a JCC and grants the board oversight of this document. The performance outcomes will provide clear guidance to the department's Training Unit, applicants, and staff preparing to serve in direct care and security positions.
90	Training Documentation: The proposal directs DJJ to retain the documentation demonstrating a trainee's compliance with these	This requirement is consistent with 6VAC35-71-30, which sets out the retention period required for documentation demonstrating	Because JCC staff are required to retain documentation demonstrating compliance with regulatory requirements for at least three years under existing

	requirements for at least three years.	compliance with the JCC regulation.	regulations, this provision will have no additional impact.
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