



Virginia
Regulatory
Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Board of Corrections
VAC Chapter Number:	6 VAC 15-40-10
Regulation Title:	Minimum Standards for Jails and Lockups
Action Title:	Amend
Date:	July 25, 2001

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

Amendments to the regulation will address operational and supervision issues relating to the opening of regional jails, as well as other jails and lockups within the Commonwealth. Issues to be addressed in the regulation will be in the areas of staff training, reporting, inspections and review schedules. The proposed regulation will clarify medical evaluation requirements, supervision standards, and inmate classification. Parts of the text of the regulation have also been revised for clarity and ease of use.

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.

Section 53.1-68 of the Code of Virginia mandates that the Board of Corrections prescribe regulations to govern the administration and operation of local correctional facilities. Section 53.-131 of the Code of Virginia mandates that the Board of Corrections prescribe regulations to govern local work release, educational, and other rehabilitative programs. The Office of the Attorney General has certified that the board has the statutory authority to promulgate the proposed regulation under section 53.1-5 of the Code of Virginia and that it comports with applicable state and/or federal law.

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.

The Board of Corrections seeks to amend it's current Minimum Standards for Jails and Lockups. Since the adoption of the current regulation in 1995, there have been a significant number of regional jails opened. The supervision of inmates in those facilities, as well as other jails within the Commonwealth, is direct versus linear and the current standards do not address this type of supervision.

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.

The following substantive changes are being proposed:

6 VAC 15-40-90 Content of personal inmate records.

“Victim notification when required” has been added to the list of required inmate records to be maintained. “All medical orders issued by the facility’s medical authority” has been deleted from the list.

6 VAC 15-40-120 Classification.

This section requires a facility to use an objective classification system for inmates, including housing and custody levels; data collection instruments; and an administrative review process.

6 VAC 15-40-160. Written procedures for eligibility criteria.

Changes the title to “Written procedures for release program eligibility criteria”. It requires written procedures outline eligibility criteria include “electronic monitoring”.

6 VAC 15-40-280. Availability and administration of educational services.

Requires that written policy, procedure and practice include a written agreement with the local school authority for the provision of special education.

6 VAC 15-40-390. Training and competency of staff.

Changes the requirement that only one security staff person per shift be competent in administering CPR, to requiring all certified security staff be trained and competent in CPR by a recognized certifying agency. The training shall be documented.

6 VAC 15-40-450. Suicide prevention and intervention plan.

Changes requirement that procedures be reviewed by a medical or mental health authority from every six months to every 12 months.

6 VAC 15-40-530. Standards for food service equipment and personnel.

Adds the requirement that the Virginia Department of Health(VDH) will conduct an inspection every 12 month and that written VDH inspection reports will be on file with the facility administrator.

6 VAC 15-40-640. Reading of inmate mail.

Changes the title to “Incoming General Correspondence”. Re-words the entire section to allow incoming inmate general correspondence to be opened, searched and possibly read in accordance with United States Postal Regulations. All incoming legal correspondence shall be opened and searched in the presence of the inmate.

6 VAC 15-40-660. Access and expense of telephone facilities.

Adds the statement, “except where safety and security considerations are documented.”

6 VAC 15-40-670. Delivery of emergency messages to inmates.

Deletes the sentence, “When possible the jail chaplain shall be notified of an immediate family member’s death or serious illness.”

6 VAC 15-40-800. Accounting of inmate expenditures and receipts of money.

Clarifies accounting procedures and requires that the facility provide the inmate with a copy of their itemized account upon reasonable request.

6 VAC 15-40-810. Return of inmate property and funds.

Adds the statement “when practical” to include contingency that the inmate is released on a non-work day.

6 VAC 15-40-820. Conduct.

Amends “policy and procedures” to “policy, procedure and practice”; changes “major and minor violations” to “sanctions for rule violations”; deletes using prohibition of the use of food as a disciplinary measure.

6 VAC 15-40-830. Discipline.

Changes title to “Inmate Handbook”. Moves entire “Discipline” section to 6 VAC 15-40-831. Requires that incoming inmates be informed of, receive and sign for copy of rules of conduct, sanctions and procedures governing discipline.

6 VAC 15-40-831.

New section titled “Discipline”. It lists the minimum procedural requirements when an inmate is deprived of good time or placed on disciplinary segregation.

6 VAC 15-40-832.

New section titled “Sanctions”. It lists the minimum procedural requirements when an inmate is punished for less severe disciplinary offenses.

6 VAC 15-40-910. Searches of facility and inmates.

Changes “written policy and procedures” to “written policy, procedure and practice” and adds a sentence that these documents are not made available to inmates.

6 VAC 15-40-920. Policy for searches of contraband.

Deletes the requirement for the policy to be reviewed every 12 months.

6 VAC 15-40-940. Tools culinary items and cleaning equipment.

Changes the title to “Tools and culinary items”. Deletes the reference to cleaning equipment in the section text.

6 VAC 15-40-960. Functions of duty post.

Requires that “position descriptions” clearly describe the functions of the duty post.

6 VAC 15-40-970. Restriction of physical force.

Changes “self-protection” to “justifiable self-defense” and adds “orderly operation of the facility” to the list of justifiable reasons. Adds the sentence, “In no event is physical force justifiable as punishment”.

6 VAC 15-40-1030. Assessment of inmate in administrative segregation or disciplinary detention.

Requires a documented assessment by medical personnel and that the medical evaluation include vital signs.

6 VAC 15-40-1050. Institution inspection.

Entire section deleted.

6 VAC 15-40-1080. Emergency situations.

Entire section replaced with requirement for fire prevention practices and written emergency plans that will include responses to specific fires and emergency situations. Requires that all staff review the emergency plans every 12 months and that the reviews are documented.

6 VAC 15-40-1100. Food service and fire safety inspection.

Changes title to “Fire safety inspection” and deletes reference to food service in text.

6 VAC 15-40-1110. Fire prevention practices.

Deletes this section. Stricter requirements for fire prevention practices incorporated into 6 VAC 15-40-1080.

6 VAC 15-40-1130. Master plan for safe and orderly evacuation.

Deletes this section. Stricter requirements for emergency practices incorporated into 6 VAC 15-40-1080.

6 VAC 15-40-1190. Housing.

Changes title to “Housing of Juveniles”. Some text in this section moved to create sections 6 VAC 15-40-1191 and 6 VAC 15-40-1192.

6 VAC 15-40-1191. Separation.

New section.

6 VAC 15-40-1192. Contact.

New section.

6 VAC 15-40-1350. Incident report.

Changes reporting to the “appropriate Regional Administrator” to the “Local Facilities Unit”. Reporting timeframe is changed from “within 24 hours” to the “end of the next work day”.

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.

Recommendations of the proposed regulatory action will amend internal procedures. The primary advantages that these regulations provide to the general public are that they set forth standards, procedures, and requirements that serve to protect the safety and welfare of the general public by providing more comprehensive guidance for administering programs in jails and lockups. The regulations also secure the public safety and welfare by enhancing methods of inmate control while providing flexibility in daily operations and clarifying regulatory requirements for localities and regions. There are no anticipated disadvantages to the public or Commonwealth.

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.

The proposed regulation will affect 23 regional jails, 66 local jails and 22 lockups in the Commonwealth. There is no estimate of fiscal impact, however anticipated costs are expected to be minimal and primarily associated with staff time, and variable from locality to locality.

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.

6 VAC 15-40-10 Definitions.

Delete definitions – “Appropriate heating”, “Major violations” and “Minor violations”

Amend definitions – “Disciplinary detention” to include misconduct and/or violations of regulations; add “emergency plans” to “Fire prevention practices”; add “electronic” records to “Permanent record” and “Policy and procedures manual”

Add definitions – “Good time”; “Medical authority”; “Universal precautions”; and “Work day”

6 VAC 15-40-90 Content of personal inmate records.

“Victim notification when required” has been added to the list of required inmate records to be maintained. “All medical orders issued by the facility’s medical authority” has been deleted from the list.

6 VAC 15-40-120 Classification.

The section adds requirements to be followed if a facility uses an objective classification system for inmates, to include housing and custody levels; the use of data collection instruments; and an administrative review process.

6 VAC 15-40-150. Inmate Participation.

The title is changed to “Inmate Exercise” and excludes work programs from this section.

6 VAC 15-40-160. Written procedures for eligibility criteria.

Changes the title to “Written procedures for release program eligibility criteria”. It requires that written procedures outlining eligibility criteria for participation include “electronic monitoring”.

6 VAC 15-40-280. Availability and administration of educational services.

Requires that written policy, procedure and practice include a written agreement with the local school authority for the provision of special education.

6 VAC 15-40-370. Receiving and medical screening of inmates.

Change the words “assessment of” to “screening”. Change the word “infections” to “communicable diseases”

6 VAC 15-40-380. Inmate access to medical services.

Change “procedures” to policy, procedure and practice”. Delete from this section the list of procedures to follow for communicable disease control (NOTE: the information has been included in another document specifically addressing medical and disease control procedures)

6 VAC 15-40-390. Training and competency of staff.

Changes the requirement that only one security staff person per shift be competent in administering CPR, to requiring that all certified security staff be trained and competent in CPR by a recognized certifying agency. The training shall be documented.

6 VAC 15-40-450. Suicide prevention and intervention plan.

Changes requirement for procedures to be reviewed by a medical or mental health authority from six months to 12 months.

6 VAC 15-40-470. Written policy and procedure required.

Changes the title to “Medical co-payment.”

6 VAC 15-40-530. Standards for food service equipment and personnel.

Adds the requirement that the Virginia Department of Health(VDH) will conduct an inspection every 12 month and that written VDH inspection reports will be on file with the facility administrator.

6 VAC 15-40-550 through 580. Food service program.

Deletes the statement “requirements as set forth by the Virginia Department of Corrections”

6 VAC 15-40-640. Reading of inmate mail.

Changes the title to “Incoming General Correspondence”. Re-words the entire section to allow incoming inmate general correspondence to be opened, searched and possibly read in accordance with United States Postal Regulations. All incoming legal correspondence shall be opened and searched in the presence of the inmate.

6 VAC 15-40-650. Notice of seizures of mail contraband.

Deletes the words “and challenge” from the sentence allowing the sender to appeal the seizure of contraband. Deletes the words “as the inmate desires” from the statement addressing returned legally authorized property.

6 VAC 15-40-660. Access and expense of telephone facilities.

Adds the statement, “except where safety and security considerations are documented.”

6 VAC 15-40-670. Delivery of emergency messages to inmates.

Deletes the sentence, “When possible the jail chaplain shall be notified of an immediate family member’s death or serious illness.”

6 VAC 15-40-800. Accounting of inmate expenditures and receipts of money.

Clarifies accounting procedures and requires that facility provide the inmate with a copy of the itemized account upon reasonable request.

6 VAC 15-40-810. Return of inmate property and funds.

Adds the statement “when practical” to include contingency that the inmate is released on a non-work day.

6 VAC 15-40-820. Conduct.

Amends “policy and procedures” to “policy, procedure and practice”; changes “major and minor violations” to “sanctions for rule violations”; deletes using prohibition of the use of food as a disciplinary measure.

6 VAC 15-40-830. Discipline.

Changes title to “Inmate Handbook”. Moves entire “Discipline” section to 6 VAC 15-40-831. Requires that incoming inmates be informed of, receive and sign for copy of rules of conduct, sanctions and procedures governing discipline.

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6 VAC 15-40-910. Searches of facility and inmates.

Changes “written policy and procedures” to “written policy, procedure and practice” and adds a sentence that these documents are not made available to inmates.

6 VAC 15-40-920. Policy for searches of contraband.

Deletes the requirement for the policy to be reviewed every 12 months.

6 VAC 15-40-940. Tools culinary items and cleaning equipment.

Changes the title to “Tools and culinary items”. Deletes the reference to cleaning equipment in the section text.

6 VAC 15-40-960. Functions of duty post.

Requires that “position descriptions” clearly describe the functions of the duty post.

6 VAC 15-40-970. Restriction of physical force.

Changes “self-protection” to “justifiable self-defense” and adds “orderly operation of the facility” to the list of justifiable reasons. Adds the sentence, “In no event is physical force justifiable as punishment”.

6 VAC 15-40-1030. Assessment of inmate in administrative segregation or disciplinary detention.

Requires a documented assessment by medical personnel and that the medical evaluation include vital signs.

6 VAC 15-40 1040. Supervision of inmates.

Changes “around the clock supervision” to “24-hour supervision”.

6 VAC 15-40-1050. Institution inspection.

Entire section deleted.

6 VAC 15-40-1070. Prohibition of inmate control over other inmates.

Changes “written policy” to “written policy, procedure and practice”.

6 VAC 15-40-1080. Emergency situations.

Entire section replaced with requirement for fire prevention practices and written emergency plans that will include responses to specific fires and emergency situations. Requires that all staff review the emergency plans every 12 months and that the reviews are documented.

6 VAC 15-40-1100. Food service and fire safety inspection.

Changes title to “Fire safety inspection” and deletes reference to food service in text.

6 VAC 15-40-1110. Fire prevention practices.

Deletes this section. Stricter requirements for fire prevention practices incorporated into 6 VAC 15-40-1080.

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6 VAC 15-40-1191. Separation.

New section.

6 VAC 15-40-1192. Contact.

New section.

6 VAC 15-40-1350. Incident report.

Changes reporting to the “appropriate Regional Administrator” to the “Local Facilities Unit”. Reporting timeframe is changed from “within 24 hours” to the “end of the next work day”.

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.

In reviewing the Minimum Standards for Jail and Lockups, the board considered whether there was a less burdensome alternative. The regulations need to be in place in order to comply with statutory requirements and to clarify language. The board believes that failure to adopt these changes will allow outdated requirements to remain in the regulations and block inclusion of new standards that address sound correctional practices.

Public Comment

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

Following publication of NOIRA, there were no public comments received. During the final phase of the regulatory process, the board will consider all comments received during the public comment period.

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 board and the Department of Corrections made a considerable effort to identify and clarify unnecessary and/or confusing language in the regulation. The board submits that the proposed regulations are more clearly written and understandable for the regulants and the public.

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.

The regulations will be reviewed during the Board’s normal course of regulatory review that in no case shall exceed three years from the effective date of these regulations.

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.

Recommendations of the proposed regulatory action will amend internal procedures, which should have no impact on the authority ad rights of parents, economic self-sufficiency, marital commitment or family income. If, during the final public comment period, a potential impact is identified, the board will take any recommendation for revisions into consideration.