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Periodic Review Report of Findings

Agency name	Virginia Department of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC35-180
Regulation title	Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles
Date this document prepared	March 28, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

The following acronyms are used in this report:

"DJJ" means the Virginia Department of Juvenile Justice.

The following terms used in this form are not defined in this chapter.

"Postdispositional program" means a program in a detention center serving residents who are subject to a sentence or dispositional order for placement in the detention center for a period exceeding 30 days pursuant to subdivision A(16) of § 16.1-278.8 and subsection B of § 16.1-284.1 of the Code of Virginia.

"Virginia Juvenile Community Crime Control Act" means the Act set out in 16.1-309.2 et. seq. of the Code of Virginia under which state and local dollars are combined to establish and fund community-based juvenile justice programs according to a formula based on factors such as the number and types of arrests and average daily cost of serving a juvenile.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

The promulgating entity is the Board of Juvenile Justice (the board).

Code of Virginia § 16.1-293.1 requires the board, in consultation with the Department of Behavioral Health and Developmental Services, to promulgate a regulation that addresses the process for planning and providing post-release services for individuals identified as having a mental health, substance abuse, or other therapeutic treatment need who are committed to the Department of Juvenile Justice (the department) pursuant to § 16.1-278.8(A)(14) or placed in a postdispositional program. Additionally, pursuant to § 66-10, the board is granted broad authority to “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth.”

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Pursuant to 2.2-4007.1 of the Code, the department considered three alternatives for accomplishing the purposes of the regulation: 1) repeal the regulation; 2) retain the regulation as currently written and supplement the regulation with additional guidance, including, for example, facility procedures and guidance documents; and 3) amend the regulation. Ensuring that services are in place for individuals transitioning out of DJJ commitment or postdispositional program placement and who have substance abuse or other treatment needs is essential for the protection and safety of the general public and the youth who are transitioning from commitment or detention. These services are essential in guaranteeing that such youth are equipped with the tools necessary to thrive in the community and in reducing the likelihood of recidivism. Furthermore, pursuant to § 16.1-293.1, the board is required to promulgate regulations for postdispositional and committed juveniles identified as having a mental health, substance abuse, or other therapeutic treatment need. In the face of this statutory mandate, repealing the regulation is not a viable option.

Although the regulation is statutorily mandated and necessary to ensure affected juveniles are equipped for success following commitment or detention, it contains terminology, regulatory citations, and concepts that are now obsolete. Several concepts are not fully developed or adequately defined, which could create uncertainty among regulated entities. By current Executive Order 14, as amended July 16, 2018, “regulations shall be clearly written and easily understandable.” Retaining the regulation without removing these obsolete terms, correcting the erroneous citations, and otherwise addressing these deficiencies would tend to create confusion and inconsistency in the application of the regulation and may result in reduced compliance.

Amending the regulation will allow the board to address these concerns, while complying with its statutory mandate in §16.1-293.1.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Colleen Miller, disAbility Law Center of Virginia	-Although the current regulations require a juvenile’s family members, legal guardians, and caregivers and allow others with a legitimate interest to be invited to the facility case review, the regulations do not permit these parties to invite others who may have special knowledge or expertise regarding the juvenile to participate in the facility case review.	-The department shared these public comments with the board at the January 9, 2019, board meeting. The board agreed with the department’s recommendation that the regulation should be amended. The department will convene a work group to conduct a comprehensive review of the regulation and will consider these public comments at that time.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation meets most, but not all of the criteria set out in Executive Order 14, as amended July 16, 2018. The regulation helps to ensure that residents transitioning out of DJJ commitment or postdispositional placement who have substance abuse or other treatment needs have services and treatment available during and after their transition. These services are essential to combat recidivism and ensure the juvenile’s successful transition to the community, and therefore, are necessary to protect the public health, safety, and welfare.

The regulation also remains necessary to interpret the law. In enacting § 16.1-293.1, the General Assembly has declared that the statute mandating these mental health services transition plans requires further interpretation and guidance from the board. The board must continue to have regulations in place addressing these plans in order to comply with that statute.

The chapter is designed to achieve its intended objective of equipping juveniles who have substance abuse or other therapeutic needs and who are transitioning out of commitment or detention with the tools they need for successful transition. The regulation streamlines and coordinates case planning and service referral and promotes involvement in plan development by public or private agencies, parents, and other supports.

Although the majority of the regulation is clearly written, it contains references to terms and concepts that are obsolete and to regulatory citations that have since been repealed. Eliminating erroneous and obsolete citation references helps to ensure that regulations are understandable and promote consistent application, thereby increasing the likelihood of compliance.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

As part of its mandate pursuant to Code of Virginia § 2.2-4007.1 to conduct a periodic review of each regulation every four years, the department considered whether the regulation should be amended, repealed, or retained as is. The department asserts that amending the regulation is the best strategy for promoting consistency in application and compliance.

The department has not conducted a periodic review or amended this regulation since it took effect in 2008. Since that time, a number of other regulatory chapters cited in this regulation have undergone changes, rendering many of the citations contained in this regulation obsolete. The department and the detention centers under its regulatory purview have undergone a shift in philosophy from a more punitive-based to a more treatment-based approach. Much of the terminology utilized in this regulation does not align with this shift. Additionally, some of the concepts contained in this regulation are not fully developed and require additional clarification to ensure the regulation meets the criteria set out in Executive Order 14. Retaining the regulation as is would fail to address these concerns, which may promote inconsistency and reduce compliance.

Repealing the regulation would violate the statutory mandate requiring the board to promulgate regulations for postdispositional and committed juveniles identified as having a mental health, substance abuse, or other therapeutic treatment need.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be necessary to satisfy the statutory mandate in § 16.1-293.1. The department received one comment from the disAbility Law Center noting the importance and value of this regulation and encouraging the department to make a minor amendment to expand the authority to invite others to attend the facility case review meeting.

Although the regulation is not complex, the use of obsolete terms and erroneous or outdated regulatory citations may create confusion and result in inconsistent application of its provisions.

The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation is intended to apply in conjunction with other regulations including 6VAC35-150 (Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts); 6VAC35-71 (Regulations Governing Juvenile Correctional Centers); 6VAC35-101 (Regulations Governing Juvenile Secure Detention Centers); and 8VAC20-660 (Regulations Governing the Reenrollment of Students Committed to the Department of Juvenile Justice).

The regulation has not been reviewed since 2007. Since that time, the department has undergone significant transformation efforts that seek to safely reduce the use of the large, aging juvenile

correctional facilities; reform correctional and treatment practices within the facilities and with youth returning to communities; and develop plans to replace DJJ's currently shuttered facility with smaller, regional and treatment-oriented juvenile correctional centers and a statewide continuum of local alternative placements and services. Additional amendments may be necessary to ensure the regulation aligns with these transformation efforts.

Whether retained in its current version or amended, the regulation is not expected to have a significant economic impact on small businesses. The process set out in the regulation ensures that juveniles preparing for release from commitment or detention who have substance abuse or other therapeutic needs are matched with service providers that may include small businesses and, in that manner, may generate an economic gain for those providers.