



COMMONWEALTH OF VIRGINIA

Commission on Youth

Feasibility of Removing the Right of Appeal from JDR Court to Circuit Court in Certain Termination of Parental Rights Cases

December 5, 2017

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Background and Timeline



- During the 2016 General Assembly Session, Delegate Christopher Peace introduced House Joint Resolution 103. The resolution directed the Commission on Youth to study the adoption home study process.
- The Virginia Commission on Youth held an Advisory Group meeting on this study on September 7, 2016.
- The Advisory Group was convened to discuss ways to improve the home study process.
- One topic specifically addressed at the Advisory Group was the issue of multiple levels of appeals in termination of parental rights cases and how this may impede the adoption process.



Termination of Parental Rights

- Multiple levels of potential court appeals exist in a termination of parental rights proceeding.
- Appeals from Juvenile and Domestic Relations (JDR) Courts are heard on appeal as a right in Circuit Court de novo.
- An aggrieved party may further appeal the case as a right to the Court of Appeals. This appeal, however, is based on the record in the Circuit Court proceeding.
- “Two bites at the apple” slows down the court system and diminishes the important role the JDR judge plays in the foster care-to-adoption timeline in a termination of parental rights proceeding.

Possible Solution

- Assess the feasibility of making JDR a court of record for termination of parental rights.



Previous legislation

- The General Assembly looked at this issue in 2010. Del. Toscano introduced HB748. In summary, the bill provides that final orders involving the termination of parental rights are appealed directly to the Court of Appeals. The bill was carried over to the 2011 session by House Courts of Justice.

Previous Studies

- Department of Social Services published *Report on the Policies and Procedures Related to Expediting Adoptions* in 2007. “The de novo appeal remains a fundamental flaw in Virginia’s court procedures affecting permanency...”
- *The Family Court Pilot Project* (1993) “Trial court decisions in child and family-related cases should be appealed on the record as a matter of right to the Court of Appeals. The right of a trial de novo on appeal in such cases should be abolished.”



Concerns related to overhaul

- Training of judges on evidentiary requirements, more judges, and court reporters. Change would be costly.
- Implementation issues: One type of case is being selected over others. What would be appealable and when?

Current system and balancing interests

- Having an additional step allows parents more time to improve their current situation.
- The *Code of Virginia* § 16.1-283.2 now allows for the restoration of parental rights under certain circumstances.
- Section 16.1-296, “When an appeal is taken in a case involving termination of parental rights...the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the appeal.”
- Virginia values the sanctity of parental rights.

Recommendation to study this issue



- At the December 6, 2016 the following recommendation was approved by the Commission on Youth:

Request the Virginia Bar Association's Commission on the Needs of Children study the implications of the removal of the right to appeal, to Circuit Court from Juvenile and Domestic Relations District Court, certain cases involving termination of parental rights. Relevant Code of Virginia Section: (§ 16.1-296(D)).

As part of this study, look to the concept of having Juvenile and Domestic Relations District Courts become courts of record for matters involving child custody and termination of parental rights. This could be accomplished by requiring court reporters be present in these specific proceedings with appeals going directly to the Virginia Court of Appeals.

- This year, the Commission on Youth sent a letter to the VBA Commission on the Needs of Children to report findings and recommendations by November 1, 2017.



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Thank You

Questions Comments?

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