



COMMONWEALTH OF VIRGINIA

Commission on Youth

# **Court-Appointed Counsel for Parents in Child Welfare Cases**

November 17, 2014

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# Study Mandate



- In a letter received April 28, 2014, Senator George Barker requested that the Commission on Youth study court-appointed legal representation for parents in child welfare cases.
- Study will review Virginia's existing system for providing counsel in these cases and ascertain whether modifications or improvements to the system would advance Virginia's efforts to improve child welfare outcomes such as increased permanency rates.
- Commission on Youth designed a study plan to consider the implications of various policy options to improve Virginia's current process of providing court-appointed counsel for parents in child welfare dependency proceedings.

# Study Activities



- Site visits and stakeholder interviews
- National and state literature reviews
- Review federal legislation/statutes
- Review Virginia laws and regulations
- Identify concerns and solicit feedback on proposed recommendations
- Prepare draft findings and recommendations

# Identified Stakeholders



- Virginia Supreme Court/Office of the Executive Secretary/Court Improvement Program
- Guardians Ad Litem
- Defense Attorneys
- Virginia Juvenile Court Judges/Court representatives
- Advocacy organizations
- Commonwealth Attorneys
- Virginia Department of Criminal Justice Services, CASA
- Piedmont Court-Appointed Special Advocates (CASA) Program
- Virginia Indigent Defense Commission
- Vermont Parent Representation Center
- University of Virginia Law Clinic
- Virginia Poverty Law Center
- American Bar Association, Center for Family and the Law
- Family Members/Parents
- Local Departments of Social Services (DSS) representatives
- Virginia State Bar
- Virginia Bar Association



- Federal Laws
  - Child Abuse Prevention and Treatment Act of 1974
  - Adoption and Families Safe Act of 1997 (ASFA)
  - Fostering Connections to Success and Increasing Adoption Act of 2008
- Sources of National Trends
  - National Conference of State Legislatures
  - National Council of Juvenile and Family Court Judges
  - American Bar Association, Center for Family and Law
  - HHS Annual Child Welfare Outcomes
    - Ongoing challenge establishing permanency for foster care children within 24 months.

# American Bar Association Efforts



- In 2006, ABA published “Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases.”
  - States that have adopted *Standards of Practice*: Arkansas, Connecticut, District of Columbia, Georgia, Iowa, Massachusetts, North Carolina, North Dakota, Washington State, and Wyoming.
- In 2007, ABA established the “National Project to Improve Representation for Parents Involved in the Child Welfare System.”
  - In 2013, they conducted the Parent Attorney National Compensation Survey to analyze parent attorney pay structures, rates and supports.

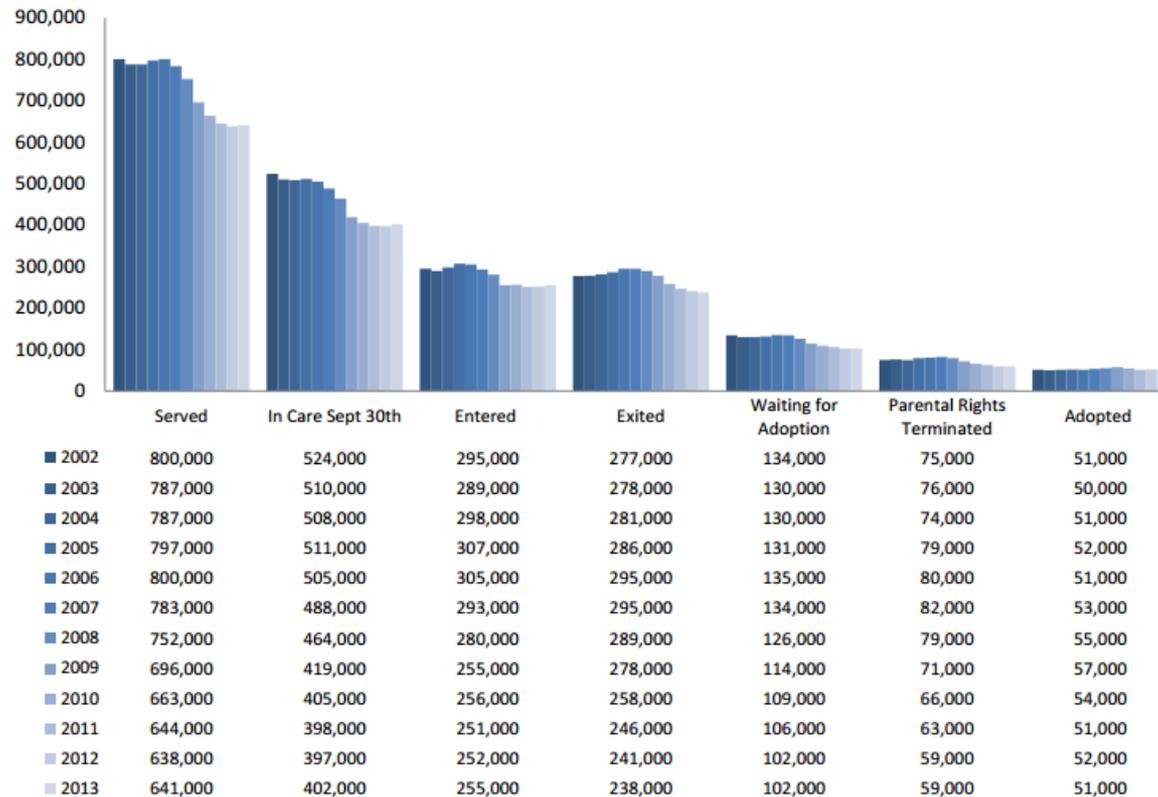
# National Trends



## Trends in Foster Care and Adoption: FFY 2002-FFY 2013

(Based on data submitted by States as of July 21, 2014)

Source: AFCARS data, U.S. Children's Bureau,  
Administration on Children, Youth and Families



# Virginia Child Welfare Statistics



- In Virginia there has been a 27% reduction in foster care population since 2009, mimicking the national trend.
- However, Virginia ranks at the bottom of states in percentage of youth that age out of foster care and in the average waiting time (16.4 months) between termination of parental rights and finalization of adoption.
- In Fiscal Year 2013, DSS reported 6,205 founded cases of abused and neglected children and 4,999 children in foster care.
  - Forty-eight percent of the foster care children were between the ages of 13 and 19.

Source: [http://www.acf.hhs.gov/sites/default/files/cb/children\\_in\\_care\\_2013.pdf](http://www.acf.hhs.gov/sites/default/files/cb/children_in_care_2013.pdf).

Source: <http://vaperforms.virginia.gov/indicators/healthfamily/fosterCare.php>.

Source: [http://www.dss.virginia.gov/files/about/reports/children/cps/all\\_other/2013/Fact\\_Sheet\\_SFY13.pdf](http://www.dss.virginia.gov/files/about/reports/children/cps/all_other/2013/Fact_Sheet_SFY13.pdf).

Source: [http://www.dss.virginia.gov/files/about/reports/children/foster\\_care/2013/monthly\\_snapshot/Snapshot\\_FC\\_2013\\_12.pdf](http://www.dss.virginia.gov/files/about/reports/children/foster_care/2013/monthly_snapshot/Snapshot_FC_2013_12.pdf).

# Other States' Initiatives



- **Washington State:** Office of Parent Representation began in 2000
  - Feb. 2011 Study: “Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care”
    - Evidence that improving quality of parent representation leads to increase in all permanency options (reunification, kinship, adoption, foster care).
- **New York:** Center of Family Representation
- **Michigan:** Detroit Center for Family Advocacy
- **Vermont:** Vermont Center for Parent Representation
- **Massachusetts:** Massachusetts Committee for Public Counsel Services, Children and Family Law Division



- The Court Improvement Program:
  - Issues and updates “A Handbook for Parents and Guardians in Child Dependency Cases.”
- The Federal Court-Appointed Special Advocate (CASA) Program:
  - First established in Virginia in 1986.
  - Role of CASA volunteers: Investigate the case, submit to the court a written report, monitor the case, assist the Guardian Ad Litem, and report suspected neglect or abuse of a child.
- Training:
  - For initial certification, all court-appointed attorneys for juvenile and domestic relations (JDR) cases are required to complete a total of 10 training hours of continuing legal education (CLE), 4 of which pertain to representing juveniles.

# Child Dependency Case Timeline



- Child Dependency Case Timeline in Juvenile and Domestic Relations District Courts
- Presentation by Lelia Baum Hopper, Director, Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia

# Virginia Parents' Court-Appointed Counsel



- Appointment:
  - Sections 16.1-266(D)(2), 16.1-267 and 19.2-159 of the *Code of Virginia*
- Compensation ( § 19.2-163 and *Chart of Allowances*):
  - \$120 per child or appealable case in District Court
  - \$158 per child or appealable case in Circuit Court
    - Waivers not available



# Identified Findings & Recommendations

# Identified Finding 1



- **Finding 1:** Compensation of court-appointed counsel for parents in child dependency cases in Virginia often does not reflect the amount of time and effort put forward by an attorney.
  - Explanation: The compensation rate is capped at \$120/\$158 per appealable order. A waiver is not available, and cases typically require more than one hearing.

# Proposed Recommendations



**Recommendation 1:** Remove the statutory cap on fees for court-appointed counsel for parents in child welfare cases, and instead allow for the same hourly rate payment structure as Guardian Ad Litem are compensated.

- or -

**Recommendation 2:** Allow court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation above the current cap in termination of parental rights cases.

# Identified Finding 2



- **Finding 2:** Lack of specialized training, support, and defined best practices for parents' court-appointed counsel were all highlighted by stakeholders as being potential obstacles to quality representation.
  - Explanation: The current training created by Virginia Court Improvement Program provides comprehensive training for attorneys that serve as Guardian Ad Litem for children and parents. However, attorneys serving as court-appointed counsel for parents in child welfare cases are not required to meet any additional qualifications.

# Proposed Recommendations



**Recommendation 3:** Request that Virginia’s Court Improvement Program assess the possibility of providing training specifically for court-appointed counsel representing parents in child welfare cases.

**Recommendation 4:** Adopt the 2006 ABA “Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases” in Virginia to establish best practices for court-appointed counsel for parents in child welfare cases.

# Proposed Recommendations



**Recommendation 5:** Request the Supreme Court of Virginia, Office of the Executive Secretary, Court Improvement Program commission the ABA Center on Children and Law to conduct a comprehensive assessment of Virginia's system of parental representation in child welfare cases.



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# Public Comment:

Public comment must be received by 5:00 p.m. Friday, November 28, 2014.

Submission instructions available online at ([vcoy.virginia.gov](http://vcoy.virginia.gov)) after the meeting and in the back of the room.