



COMMONWEALTH OF VIRGINIA

Commission on Youth

Admission of Minors to a Mental Health Facility for Inpatient Treatment

Will Egen

September 19, 2023



- In a letter dated April 1, 2023, Delegate Rob B. Bell, Chair of the House Courts of Justice Committee, requested that the Commission on Youth review House Bill 1923, *Minors; admission to mental health facility for inpatient treatment*, proposed by Delegate Tata (HB 1923). The bill was written to make the following amendments to the *Code of Virginia*:
 - Increase from 14 years of age to 16 years of age the minimum age requiring the consent of a minor prior to his or her admission to a mental health facility for inpatient treatment.
 - Add addiction as a reason for a minor to be admitted to a mental health facility for inpatient treatment.

Interviewed Stakeholders



- Circuit Court Judge
- Department of Behavioral Health and Developmental Services
- disAbility Law Center of Virginia (dLCV)
- Division of Legislative Services
- Institute of Law, Psychiatry and Public Policy (ILPPP) at the University of Virginia
- Juvenile and Domestic Relations Court Judges
- National Alliance on Mental Illness (NAMI)
- Office of the Attorney General
- Office of the Executive Secretary of the Supreme Court of Virginia
- Office of the Secretary of Health and Human Resources
- Parents
- Psychiatric Residential Treatment Facility (PRTF)
- Psychiatric Society of Virginia
- Substance Abuse and Addiction Recovery Alliance (SAARA) of Virginia
- VBA Commission on the Needs of Children
- Virginia Association Of Community Services Boards (VACSB)
- Virginia Chapter of the American Academy of Pediatrics
- Virginia Hospital and Healthcare Association (VHHA)
- Virginia Poverty Law Center (VPLC)



- Reviewed 2014 and 2015 reports from the Joint Commission on Health Care on Minor Consent Requirement for Voluntary Inpatient Psychiatric Treatment and Minor Consent for Voluntary Inpatient Psychiatric Treatment.
- Identified statutes on inpatient treatment for mental health and substance use for the 50 states using Westlaw, Lexis, Fastcase, National Conference of State Legislatures (NCSL), and the Journal of Child & Adolescent Substance Abuse.
- Requested the National Alliance on Mental Illness (NAMI) Virginia send out survey questions on the age of admission and substance use to its members on behalf of the Commission on Youth.
- Met with officials from the Wisconsin Department of Health Services to discuss and learn about their Department's "Clients Rights" page.
- Staff attended a § 16.1-339 commitment hearing.

Substance Use Meeting in Norfolk



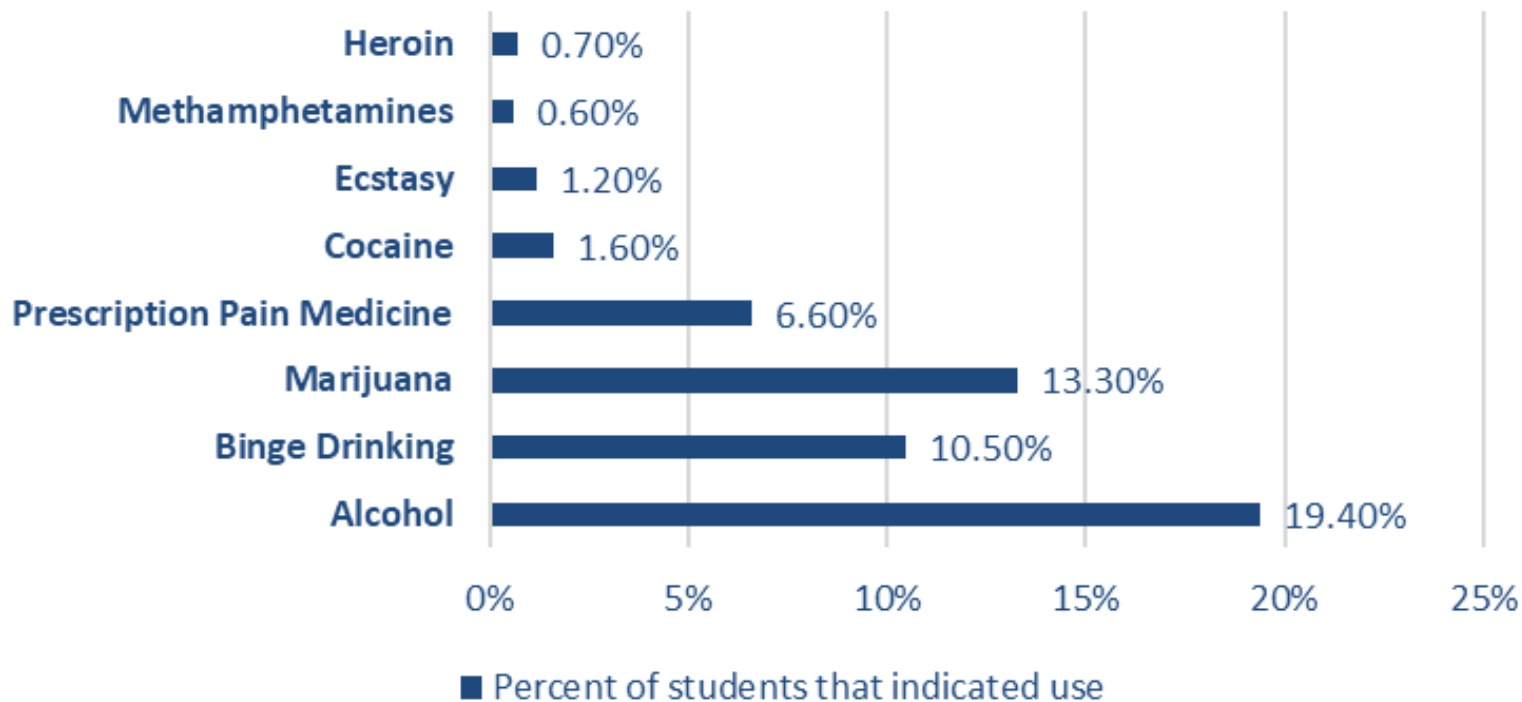
- On August 10, 2023 Commission staff attended a substance use meeting at Slover Library.
- In attendance were legislators, state and local agencies representatives, and parents and families.
- Discussed the barriers to accessing substance use treatment for minors:
 - Difficult to access inpatient treatment for young people who are not presently suicidal.
 - Location options and bed capacity of inpatient and residential treatment facilities.
- Discussed the need for more recovery options:
 - Expansion of recovery schools in Virginia.
 - Lack of peer mentors in the same age group.



- According to the 2021 Virginia Youth Survey regarding high school students in Virginia:
 - **38.2%** of students felt sad or hopeless every day for two weeks or more.
 - **20.5%** of students answered that they seriously considered attempting suicide, during the 12 months before the survey.
 - The percentage of students who strongly agree or agree that they feel good about themselves is **52.1%**.



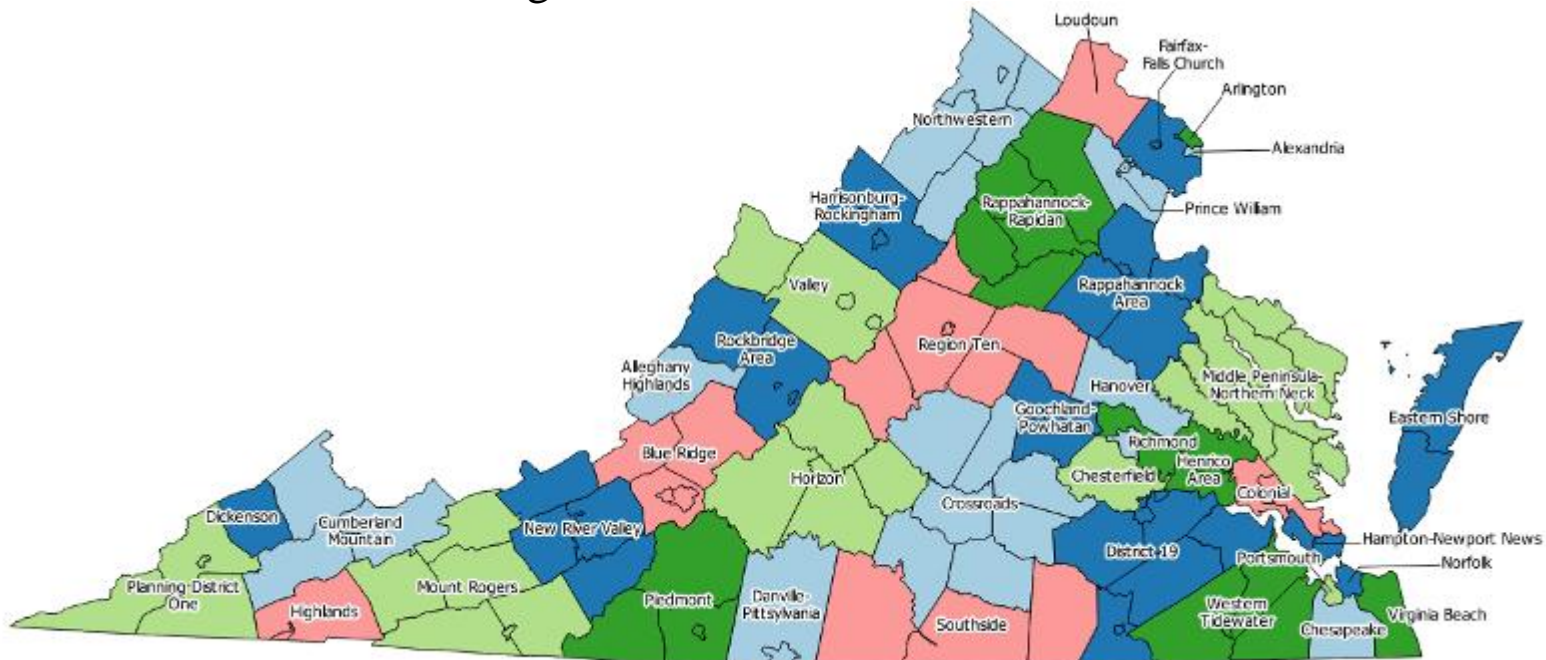
2021 Virginia Youth Survey: High School student substance use in the last 30 days



Community Services Boards in Virginia



- Virginia's community services boards (CSBs) are the primary point of entry into the Commonwealth's public behavioral health and developmental services system.
- CSBs help provide treatment for mental health issues, substance use and addiction, and intellectual and developmental disabilities for adults and children.
- There are 40 CSBs in Virginia.

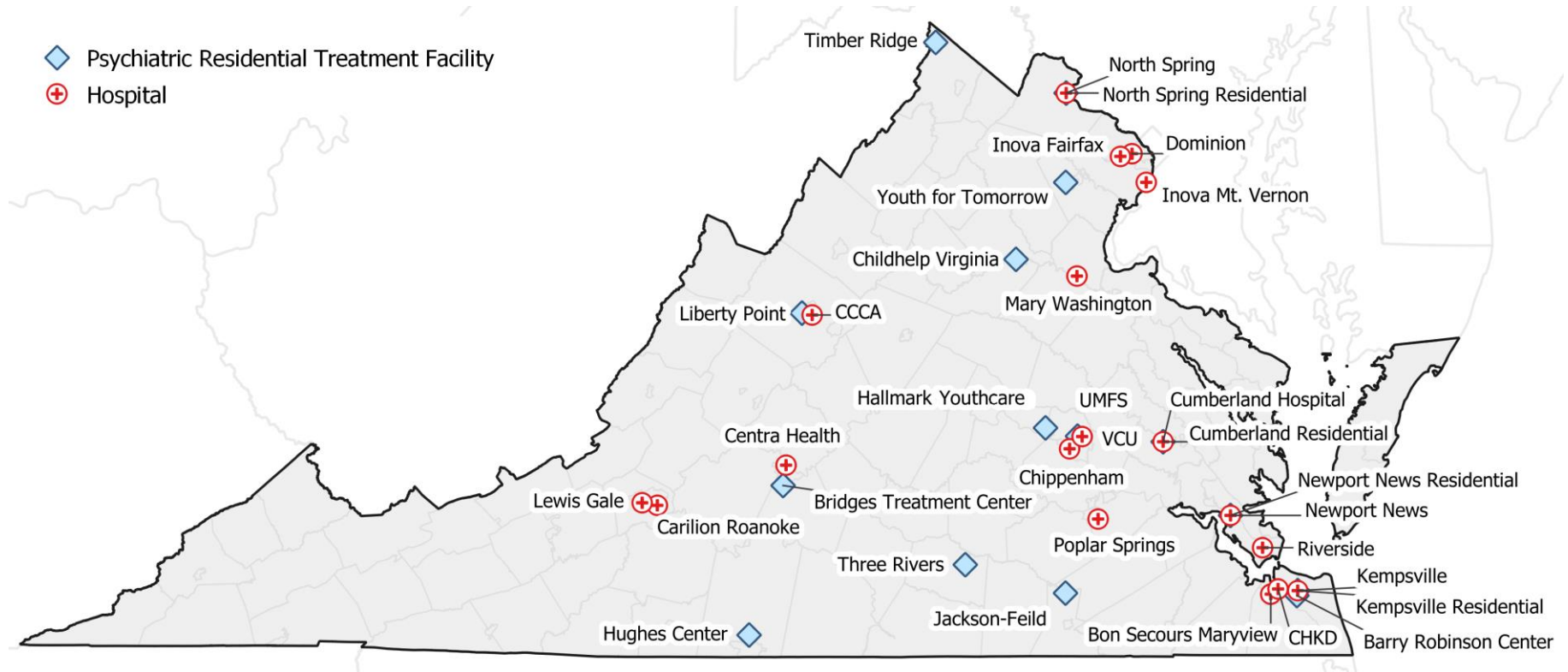


Children's Behavioral Health Service Array



- Acute **inpatient care** for mental health treatment needs occurs at a public or private acute care psychiatric unit of a hospital or free-standing psychiatric hospital. Substance abuse detox or substance abuse residential treatment can occur here.
- A step down from inpatient care is treatment at a **Psychiatric Residential Treatment Facility (PRTF)**. These facilities offer comprehensive treatment services, such as individual and group therapy and can offer crisis stabilization.
 - All PRTFs now include addiction and recovery as a treatment offering.

Locations of Psychiatric Hospitals and Residential Treatment Facilities for Minors in Virginia



Source: Graphic provided by DBHDS.

- There are approximately 600 licensed inpatient psychiatric beds for minors in Virginia.
- There are 18 PRTFs in Virginia.* Bed space varies by treatment (Ex. Hallmark Youthcare: 84 beds total. Substance abuse treatment: 14 Female beds and 12 Male beds).

Addressing Gaps In Substance Use Services



- Ex. Mount Rogers opened PATH CSU a 12-bed crisis stabilization unit for youth who are experiencing a behavioral health or substance abuse crisis opened July 2023 in Wythe County.
- DBHDS statewide needs assessment on adolescent substance use interviewed providers and heard:
 - There is a disjointed or nonexistent system of care, and overall lack of available substance use treatment for adolescents.
 - Higher levels of care, specifically inpatient treatment options designed for adolescent clients are needed.
 - A need for specialized treatment for youth with co-occurring mental health and substance use issues
- Issue: Need for more substance use integrated services; clinically managed medium intensity residential services (ASAM 3.5); medically monitored high intensity inpatient services (ASAM 3.7).



The Inpatient Treatment of Minors Laws and Issues



- **Relevant sections found under the Psychiatric Treatment of Minors Act, which governs all inpatient treatment of minors.**
 - *Code of Virginia* §§ 16.1-335 - 348.
- ***Code of Virginia* § 16.1-338** Parental Admission of Minors Younger than 14 and Non-objecting Minors 14 Years of Age or Older
 - “A minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. A minor 14 years of age or older may be admitted to a willing mental health facility for inpatient treatment upon the joint application and consent of the minor and the minor's parent.”
- ***Code of Virginia* § 16.1-339** Parental Admission of an Objecting Minor 14 Years of Age or Older
 - “A minor 14 years of age or older who (i) objects to admission or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 120 hours, pending the review required by subsections B and C, upon the application of a parent.”



- **Consent**
 - Voluntary, express, and informed agreement to treatment.
 - Given by a minor fourteen or older AND by a parent or legally authorized custodian.

- **Mental Health Facility**
 - Public or Private.
 - Operated or licensed by Department of Behavioral Health and Developmental Services.

- **Mental Illness**
 - “Substantial disorder of the minor’s cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgement or capacity to recognize reality or control behavior. May include **substance abuse**, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to include mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior.”



■ **Parent**

- Biological or adoptive parent “who has legal custody,” including either parent if custody is joint.
- Parent with whom the minor regularly resides.
- Person judicially appointed as legal guardian; or
- Person who exercises “rights and responsibilities of legal custody” by parent’s delegation or by law (Ex: Department of Social Services).

■ **Qualified Evaluator**

- Licensed psychiatrist or psychologist, or if unavailable:
 - Any mental health professional licensed through the Department of Health Professions: Clinical Social Worker; Professional Counselor; Marriage and Family Therapist; Psychiatric Nurse Practitioner; Clinical Nurse Specialist, and; Any mental health professional employed by a Community Services Board.



§ 16.1-338 (voluntary) and § 16.1-339 (objecting)

- The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment;
- The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment;
- If the minor is 14 years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and **[Only 16.1-338]**
- All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

§ 16.1-340 (ECO), § 16.1-340.1 (TDO), & § 16.1-345 (Involuntary)

- Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;
- The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and
- If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for mandatory outpatient treatment pursuant to § 16.1-345.2. **[Only 16.1-345]**

Initial Evaluation, Judicial Review, Commitment Timeframe



- **Initial Evaluation – Criteria for admission is recorded at this stage.**
 - § 16.1-338 (voluntary) – Private facility: Within 48 hours by a qualified evaluator. CCCA: Preadmission screening report by a CSB employee.
 - § 16.1-339 (objecting) – Qualified evaluator designated by CSB shall examine the minor within 24 hours.
- **Judicial Review**
 - No review necessary for § 16.1-338 (voluntary)
 - § 16.1-339 (objecting) – the facility shall file a petition to the JDR court no sooner than 24 hours and no later than 120 hours after admission. (This is also the admitting time.)
 - The judge shall appoint a guardian ad litem and counsel for the minor.
 - The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist.
 - The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor.
- **Commitment Timeframe**
 - Inpatient treatment of a minor hospitalized under either section may not exceed 90 consecutive days. (More leeway for §16.1-338 (voluntary))



- **Prior to 1976** – Virginia statute authorized the voluntary admission of minors on the request of the parent or any person standing in loco parentis to such minor.
- **1976** – *Code of Virginia* was amended to not distinguish between minors and adults for voluntary and involuntary commitment procedures.

Parham v. J.R., 442 U.S. 584 (1979) – “Notwithstanding a child's liberty interest in not being confined unnecessarily for medical treatment, ...parents -- who have traditional interests in and responsibility for the upbringing of their child -- retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse...Parents do not always have absolute discretion to institutionalize a child; they retain plenary authority to seek such care for their children, subject to an independent medical judgment.”



- **Psychiatric Inpatient Treatment of Minors Act (1990)** – 14 year old distinction for consent and revocation of consent is codified.
- **2008 law update** - Court shall appoint counsel for involuntary commitment proceedings for objecting minors 14 years or older.
- **Psychiatric Treatment of Minors Act (2010)** – Creates a stand alone juvenile commitment act.
- **2015 changes to *Code* §§ 16.1-338 and 16.1-339**
 - i) increase the time that a non-consenting minor 14 or older could be held in an inpatient mental health facility from 96 to 120 hours; (TDO is still 96 hours.)
 - ii) make the basis for judicial authorization, to continue hospitalization despite the minor's objection, consistent with the criteria for a voluntary admission of a consenting minor; and
 - iii) require that facility staff notify a parent immediately if their child 14 or older objects to further inpatient treatment while providing the parent with an explanation of the procedures for requesting continued treatment.



- ***Code of Virginia § 54.1-2969E***
 - A minor shall be deemed an adult for the purpose of consenting to:
 - Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse.
 - Outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

Code of Virginia Examples of Ages Where Minors Are Asked for Consent or Involvement



- Minor deemed as an adult in consenting for (§ 54.1-2969E):
 - Receipt of birth control, pregnancy or family planning services.
 - Treatment of venereal, infectious or contagious disease.
 - Authorization of disclosure of medical records (related to the items above).
- Emergency Services (§ 54.1-2969E):
 - A minor 14 year of age or older who is physically capable of giving consent must provide consent prior to receiving medical treatment in cases of a medical emergency, ... and no other authorized person is available to provide consent.
- Donating Blood (§ 54.1-2969H):
 - A minor 16 years of age or older may donate blood with the consent of a parent.
 - A minor 17 years of age may donate blood to a nonprofit, voluntary organization without parental consent.
- Foster Care Plan (§ 16.1-281): Age a child shall be involved in a plan changed from 14 to 12 in 2021.
- Age of majority (§ 1-204): 18 years of age.

Other States' Laws on Treatment Consent Authority



Type of Authority	Voluntary Inpatient Mental Health Treatment	Voluntary Inpatient Substance Abuse Treatment
Parent Consent Only	19 states & D.C.	9 states
Minor Consent Sufficient	13 states	23 states
Either Parent or Minor Consent	15 states	15 states
Both Parent and Minor Consent	4 states *Virginia	2 states *Virginia

Note: “Minor Consent Sufficient” refers to states that give the minor authority to admit themselves without parental consent.

Note: “Either Parent or Minor Consent” refers to states that have a specific clause in their statute stating parents can always admit their child.

Note: No specific law regarding voluntary inpatient substance abuse treatment was identified for Wyoming and Washington D.C.



States' minor age of consent categorized by age (Includes Minor Consent Sufficient, Either Parent or Minor Consent, and Both Parent and Minor Consent)

Age of Minor Consent	Inpatient Mental Health Treatment	Inpatient Substance Abuse Treatment
12 years of age	0 states	4 states
13 years of age	1 state	1 state
14 years of age	12 states *Virginia	6 states *Virginia
15 years of age	1 state	0 states
16 years of age	11 states	6 states
No specified age	7 States	23 States



States' minor age of consent categorized by age and type of authority regarding inpatient mental health treatment

Type of Authority	12 Years of Age	13 Years of Age	14 Years of Age	15 Years of Age	16 Years of Age
Minor Consent Sufficient	0 states	1 state	6 states	0 states	6 states
Either Parent or Minor Consent	0 states	0 states	4 states	1 state	5 states
Both Parent and Minor Consent	0 states	0 states	2 states * Virginia	0 states	0 states



States' minor age of consent categorized by age and type of authority regarding inpatient substance abuse treatment

Type of Authority	12 Years of Age	13 Years of Age	14 Years of Age	15 Years of Age	16 Years of Age
Minor Consent Sufficient	4 states	1 state	2 states	0 states	2 states
Either Parent or Minor Consent	0 states	0 states	2 states	0 states	4 states
Both Parent and Minor Consent	0 states	0 states	2 states * Virginia	0 states	0 states

State Laws Vary on Other Issues for Inpatient Treatment



- Whether a judicial hearing is required in cases when there is an objecting minor.
 - Some states only require a determination by an independent examiner.
 - Virginia requires a judicial hearing.
- Whether there is a waiting or holding period before a hearing.
 - Some states have no waiting or holding period until the hearing.
 - For states with waiting or holding periods, they vary from 3 to 21 days.
 - Virginia's holding period is 5 days.
- Whether the standard for admission after a minor's objection is the same as a voluntary or an involuntary commitment.
 - The standard for admission in Virginia is the same as voluntary commitment.

Mental Commitment Filings: Juvenile & Domestic Relations District Courts - Virginia



Court disposition data for all civil cases filed in all Juvenile & Domestic Relations courts under § 16.1-339 during CY2022

Age	Juvenile released to parent	Involuntarily committed	Continued Hospitalization	Withdrawn	Dismissed	Total
14	0	10	2	2	1	15
15	2	8	2	5	1	18
16	1	17	4	7	1	30
17	2	23	4	2	3	34

Total of 97 petitions

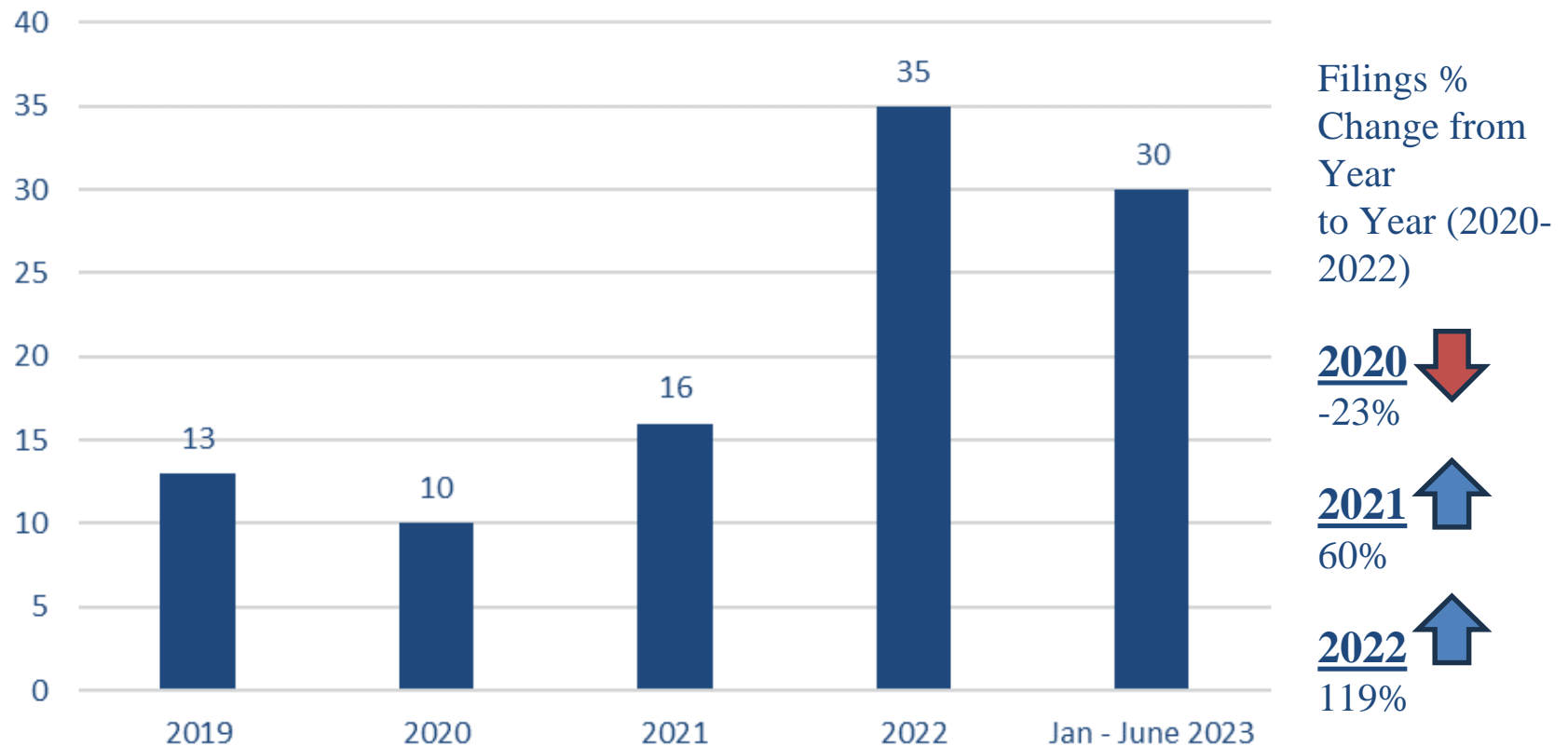
Source: Office of the Executive Secretary, Supreme Court of Virginia, Juvenile and Domestic Relations District Court case management system. Provided as entered by the clerks of court.

- Recent year numbers on TDO's executed for minors: FY21: 1895, FY22: 1902, FY23: 1915.

Mental Commitment Filings: Juvenile & Domestic Relations District Courts of Virginia Richmond



§16.1-339 Court Petition Filings from January 2019 through June 2023 in Richmond JDR Court



Accessibility of the Admission Process for an Objecting Minor 14 Years of Age or Older



- The admission process for an objecting minor 14 years of age or older is not easily accessible through a Google search.
- **“Can I make my 15 year old child get psychiatric treatment in Virginia?”** Google results:
 - A pamphlet put together and administered by Fairfax County.
 - The Psychiatric Treatment of Minors Act.
 - No link or direction to your local Community Services Board.
- **“Can my parents make me get psychiatric treatment at 15 in Virginia?”** Google Results:
 - Psychiatric Treatment of Minors Act.
- The Department of Behavioral Health and Developmental Services does not have public facing information on this topic on its website.



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IDENTIFYING SERVICES TO BE PROVIDED

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- Issue: Department of Social Services does not issue guidance on this topic for its LDSS foster care workers.
- Local departments work closely with their local CSBs, but improved guidance could prove useful when the state is acting in the role as parent.



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Client Rights: Minors

Learn about rights of the person receiving services as they pertain to minors. This information applies to those under 18 who are receiving treatment for a developmental disability, mental health illness, or substance use in Wisconsin.

Rights of minors

- [Admission to inpatient treatment](#)
- [Admission to outpatient treatment](#)
- [Discharge](#)
- [Medicines](#)
- [Records](#)

Rights pamphlets for minors

- [Rights of Children and Adolescent Patients in Inpatient Mental Health Facilities, P-20470](#) (PDF)
- [Rights of Minors in Inpatient Community Mental Health Facilities, P-20470A](#) (PDF)
- [Rights of Minors: Outpatient Behavioral Health Treatment, P-20470B](#) (Brochure)
- [Rights of Minors: Outpatient Behavioral Health Treatment, P-20470BF](#) (Flyer)

Mental health review officer process

Juvenile courts must name a mental health review officer to oversee outpatient treatment of children 14 years or older. This includes social services (except 24-hour care), treatment, and custody. ([Wis. Stat. § 51.14](#))



- Includes direct links to statutes broken down by category (developmental disability, mental health, substance abuse, detoxification).
- Answers to questions including:
 - What if the parent or guardian is unavailable or refuses to agree?
 - What authority and limitations do parents or guardians have over children in treatment settings?
 - May a child refuse treatment? (under 14? Over 14?)
 - What should happen during admission? And On what is admission based?
 - What is a petition for admission?
- Pamphlets on the admission process in three languages.



Draft Recommendations



Recommendation 1: Amend the *Code of Virginia* § 16.1-338 and § 16.1-339 to raise the age of minor objection from 14 to 16.

Recommendation 2: Amend the *Code of Virginia* §16.1-338 and § 16.1-339 to state the age of parent and minor consent for entering inpatient substance use treatment. The current law (14 for minor objection) is not explicitly stated but rather implied.

(and)

Amend the *Code of Virginia* to add clarifying language to §16.1-339 to state that if a minor is being granted admission to a willing facility under the application of a parent, then a temporary detention order (TDO) shall not be required under this section.



Recommendation 3: Request the Department of Behavioral Health and Developmental Services put together a work group with Virginia Association of Chiefs of Police, Virginia Sheriffs' Association, the Virginia Association of Community Services Boards (VACSB), the Virginia Magistrates Association, Office of the Executive Secretary of the Supreme Court of Virginia, and any other relevant stakeholders to consider options for the transportation of minors that can be admitted under §16.1-339, as is currently done for emergency custody orders and temporary detention orders as described in § 16.1-340.1. DBHDS shall make any recommendations to the Commission on Youth by November 1, 2024.



Recommendation 4: Request (or) Introduce a section one bill to require the Department of Behavioral Health and Developmental Services to provide a page on its website geared towards the public that describes the laws, options, and frequently asked questions as it relates to the Psychiatric Treatment of Minors Act. The information posted shall be done so with the assistance of mental health, substance abuse, and disability experts and advocates.

Recommendation 5: Request the Department of Social Services update guidance and have the Department of Social Services Director send a letter to local departments of social services describing the admission of minors to inpatient treatment process, including §16.1-339.



Recommendation 6: Request the Department of Behavioral Health and Developmental Services provide educational materials to the Psychiatric Society of Virginia, the Virginia Academy of Clinical Psychologists, and community services boards for further dissemination to their members on the voluntary and involuntary admission's process for minors to a mental health facility for inpatient treatment. DBHDS should consult the *Juvenile Law and Practice in Virginia* manual, Office of the Executive Secretary of the Supreme Court of Virginia training materials, and information provided by Virginia's medical schools.



Recommendation 7: Request the Department of Behavioral Health and Developmental Services work with CSBs to target American Rescue Plan Act (ARPA) and other available one time federal funds towards higher intensity substance use services for minors. These are services ASAM level 2.5 and higher.



Public Comment

Written public comment must be received
by 5:00 p.m.
on November 13, 2023.

Submission instructions are available
online (<http://vcoy.virginia.gov>)