



**FINAL REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**

**The Use and Impact of
Relief of Custody on Care and
Support of Youth**

**COMMONWEALTH OF VIRGINIA
RICHMOND
2024**

MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH

Senate of Virginia

Barbara A. Favola, Chair
Dave W. Marsden
David R. Suetterlein

Virginia House of Delegates

Carrie E. Coyner, Vice-Chair
Joshua G. Cole
Karrie K. Delaney
Holly M. Seibold
Irene Shin
Anne Ferrell H. Tata

Gubernatorial Appointments from the Commonwealth at Large

The Honorable Mackenzie Babichenko
Rita Jones
Jessica Jones-Healey

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I. Authority for Study

Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to “study and provide recommendations addressing the needs of and services to the Commonwealth’s youth and their families.” This section also directs the Commission to “encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services.” Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to “undertake studies and to gather information and data ... and to formulate and report its recommendations to the General Assembly and the Governor.”

During the Commission on Youth’s 2023 “Improving Foster Care” study, the Commission did a comprehensive review of current foster care issues.

One of the issues raised by local departments of social services during the conducting of the foster care study was the increase use of relief of custody by a caretaker. Commission staff presented on this issue at its September 19, 2023 meeting and suggested that further exploration in this topic was needed. At its November 20, 2023 meeting, the Virginia Commission on Youth approved a recommendation regarding the reported increased use of relief of custody to discuss, review, and make recommendations regarding the practice.

The Commission adopted a study plan at its May 21, 2024 meeting on the Use and Impact of Relief of Custody on Care and Support of Youth directing the Commission on Youth to review concerns surrounding the increased use of temporary and permanent relief of custody to place a child in foster care.

II. Members Appointed to Serve

The Commission on Youth is a standing legislative commission of the Virginia General Assembly. The Commission has twelve member positions: six Delegates, three Senators, and three citizens appointed by the Governor.

2024 membership of the Virginia Commission on Youth is listed below.

Senator Barbara A. Favola, Arlington, Chair
Senator David W. “Dave” Marsden, Fairfax
Senator David R. Suetterlein, Roanoke County
Delegate Carrie E. Coyner, Chesterfield, Vice-Chair
Delegate Joshua G. Cole, Fredericksburg
Delegate Karrie K. Delaney, Fairfax
Delegate Holly M. Seibold, Fairfax
Delegate Irene Shin, Fairfax

Delegate Anne Ferrell H. Tata, Virginia Beach
Mackenzie Babichenko, Mechanicsville
Rita Jones, North Chesterfield
Jessica Jones-Healey, Smithfield

III. Executive Summary

During the Commission on Youth’s 2023 “Improving Foster Care” study, the Commission did a comprehensive review of current foster care issues.

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The Commission adopted a study plan at its May 21, 2024 meeting on the Use and Impact of Relief of Custody on Care and Support of Youth directing the Commission on Youth to review concerns surrounding the increased use of temporary and permanent relief of custody to place a child in foster care.

Commission on Youth staff conducted four roundtable workgroups across the state. The purpose of these roundtable workgroups was to get the local perspective on the use of relief of custody and receive potential recommendations for improvement. Following the roundtables, the Commission convened an Advisory Group of stakeholders to review the study’s findings and draft recommendations. This Advisory Group included the Department of Social Services, Department of Behavioral Health and Developmental Services, Department of Juvenile Justice, the Court Improvement Program, Juvenile and Domestic Relations District Court judges, Local Departments of Social Services, Community Services Boards, and other relevant stakeholders.

Draft study findings and recommendations were presented at the Commission’s October 22, 2024 meeting. The Commission received written public comment through November 21, 2024. After receiving public comment at the November 25, 2024 meeting, the Commission on Youth approved the following recommendations:

Recommendation 1:

Amend the *Code of Virginia* to standardize the pre-hearing “investigation” in § 16.1-277.02 (A) by requiring the local department of social services, at a minimum, put together a

written report on the history of the child and family.

The Department of Social Services shall create guidance for a template on what should be included in this written report. This template should include best practices, not limited to background on the full history of child and family (medical and mental health, legal, educational, information from providers), and the exploration of all relatives and fictive kin. Information on what services are being and have been offered to the child and family and potential use of a family partnership meeting should also be in the written report.

Recommendation 2:

Amend the *Code of Virginia* § 16.1-277.02 that when investigating a petition for Relief of Custody, the local department of social services shall refer the parent to the local Family Assessment and Planning Team (FAPT), but such referral will not interfere or delay such petition.

Recommendation 3:

Introduce a § 1 bill directing the Office of the Executive Secretary of the Supreme Court of Virginia to create a workgroup to determine the factors that a judge should consider for “good cause shown” for the petitioner's desire to be relieved of the child's care and custody.

Recommendation 4:

Amend the *Code of Virginia* to increase the standard of evidence for granting temporary Relief of Custody. Currently, temporary Relief of Custody requires “a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody.” Permanent relief of custody requires “a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child.” This amendment to the Code would change the language in § 16.1-277.02 (C) to: “a finding, based upon clear and convincing evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody.”

Recommendation 5:

Amend the *Code of Virginia* § 2.2-5211 and 2.2-5212 to clarify that children in need of services are eligible for Children's Services Act (CSA) parental agreements and community based services.

Recommendation 6:

Request that the Office of Children's Services work with local Children's Services Act

coordinators and the County or City’s appropriate public outreach specialist to create a strategy to publicize community based services or parental agreements to relevant local partners and agencies as a viable option for families before they reach the point of petitioning for Relief of Custody.

Recommendation 7:

Request the Department of Social Services create guidance or initiate regulatory changes to strengthen the ability of adoptive families to find and obtain services in their current locality if the family has moved localities after an adoption is finalized. The Department of Social Services shall report back on these changes to the Commission on Youth by November 1, 2025, including if any changes to the Code are necessary to fully support this recommendation.

Currently, under § 63.2-1220, “the Department shall furnish a document listing all post-adoption services available to adoptive families to the State Registrar of Vital Records for distribution to adoptive parents pursuant to § 32.1-261.” However, over time parents may lose track of this information or service availability may change.

Recommendation 8:

Request that the Department of Social Services in consultation with State partners, including the Virginia League of Social Services Executives, the Virginia Association of Licensed Child Placing Agencies, Family Focused Treatment Association, and other organizations representing licensed child placing agencies work with these organizations and their members to ensure that pre-adoption training emphasize trauma-informed parenting, and cover topics including:

- commonly-occurring mental health and neurodevelopmental conditions
- child and adolescent development
- building and utilizing support systems
- supports available to adoptive families
- specific mental and behavioral health needs of adopted youth

Recommendation 9:

Introduce a § 1 bill directing the Virginia Department of Education (VDOE) survey local education agencies (LEAs) to review i) how schools currently grant access to Local Departments of Social Services and Community Services Boards and other community-based providers and ii) what school-based mental health options are available at each LEA. Additionally, the results and feedback from this survey shall inform the continued development and improvement of guidelines for school professionals that support students

and families that connect them with community resources that provide mental and behavioral health services. VDOE shall report back any findings and recommendations based on their survey to the Commission on Youth by November 1, 2025.

Recommendation 10:

Request that the Department of Social Services with the Virginia League of Social Services Executives as a key stakeholder, compile and make available information gathered from local departments on best practices regarding collaboration between local agencies and judges regarding relief of custody. This should include details on the frequency of meetings, types of shared information, methods of communication, and recommendations for improving engagement. This recommendation aims to provide local departments with model examples of effective practices in place.

Recommendation 11:

Request that the Department of Juvenile Justice develop best practices to distribute to its court service units for when a parent comes in to intake desiring to petition for relief of custody to inform them of services available in their community.

Recommendation 12:

Request that the Department of Social Services, in consultation with State partners, including the Virginia Sheriffs' Association, Virginia Association of Chiefs of Police, and the Virginia League of Social Services Executives, develop and distribute best practices to members of the law enforcement community on alternatives to relief of custody when encountering families in crisis. The best practices should inform them of services available in their community to provide appropriate support and resources.

Recommendation 13:

Support the Office of the Executive Secretary in their efforts to access federal funds for Best Practices Courts' training and conferences.

IV. Study Goals and Objectives

During the Commission on Youth's 2023 "Improving Foster Care" study, the Commission did a comprehensive review of current foster care issues.

One of the issues raised by local departments of social services during the conducting of the foster care study was the increase use of relief of custody by a caretaker. Commission staff presented on this issue at its September 19, 2023 meeting and suggested that further exploration in this topic was needed. At its November 20, 2023 meeting, the Virginia Commission on Youth approved a

recommendation regarding the reported increased use of relief of custody to discuss, review, and make recommendations regarding the practice.

The Commission adopted a study plan at its May 21, 2024 meeting on the Use and Impact of Relief of Custody on Care and Support of Youth directing the Commission on Youth to review concerns surrounding the increased use of temporary and permanent relief of custody to place a child in foster care.

A. IDENTIFIED ISSUES

- Parents have the right under *Code of Virginia* §16.1-277.02 to petition for the relief of the care and custody of a child. If the petition is granted, the child is placed in the custody of a person with a legitimate interest, a licensed child-placing agency, or a local board of social services. The dispositional process for relief of custody is spelled out in §16.1-278.3.
- As stated in the petition for relief of care and custody Code section, “requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services.” Investigation by the Commission is necessary to determine how this process varies from locality to locality and how it is impacted by availability of services.
- Relief of custody petition cases do not always originate from ongoing child protective services involvement, but can occur because of failed adoptions, juvenile justice involvement, and unaddressed or continuing acute mental and behavioral health needs. Understanding the referral and reasons behind it is vital in getting the right help and services to the youth and family.
- Other options that are available for parents and youth to get services include, CSA parental agreements and noncustodial foster care agreements. Currently, the Office of Children’s Services is undergoing a review of parental agreements as part of a children in need of services (CHINS) workgroup.

B. STUDY ACTIVITIES

The Commission on Youth was tasked with carrying out the following study activities, according to the study mandate. Given the authority for study outlined above, Commission staff completed the study process, which involved the analysis of relevant statutes, other state laws, review of literature, and conducting four roundtable workgroups and convening an Advisory Group. The Commission on Youth completed the following study activities:

- Provide an overview of Relief of Custody in Virginia
- Convene an Advisory Group of relevant stakeholders
- Hold four regional roundtables to gather additional information
- Research state and federal laws and regulations on foster care, relief of custody and mechanisms to deliver services.

- Research and review relief of custody or similar procedures in other states.
- Develop recommendations as needed.
- Present findings and recommendations to the Commission on Youth.
- Receive public comment.
- Prepare final report.

V. Methodology

The findings and recommendations of this study are based on a number of distinct activities conducted by the Commission on Youth.

A. ROUNDTABLES AND ADVISORY GROUP

In order to accomplish the work of this study, the Commission on Youth assembled four regional roundtables of local stakeholders to investigate the use and impact of relief of custody in different areas of Virginia.

Regional Roundtables:

- Southwest: Wythe – June 24, 2024
- Central Virginia: Henrico – July 31, 2024
- Northern Virginia: Fairfax – August, 26, 2024
- Tidewater: James City – September 4, 2024

Local perspectives at each roundtable:

- Local Departments of Social Services
- Judges
- Local Children’s Services Act (CSA)
- Community Services Boards
- Schools/Local Education Agencies
- Private Providers
- Court Service Units
- Families
- Office of the Children’s Ombudsman

Following the four regional roundtables, the Commission convened an Advisory Group with state and local representatives to discuss and review draft findings and recommendations. The Advisory group was chaired by Senator David Suetterlein. The Advisory Group met on October 8, 2024.

The Advisory Group consisted of representatives from the following agencies and organizations:

- Commonwealth's Attorney
- Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia
- Court Service Unit
- DePaul Community Resources
- Family Focused Treatment Association - VA Chapter
- Guardian Ad Litem
- Henrico County Public Schools
- Juvenile & Domestic Relations District Court Judges (19th 23rd, 27th, 28th Districts)
- Local Department of Social Services (Wythe)
- Office of Children's Services
- Richmond Behavioral Health Authority
- Senate of Virginia
- Virginia Association of Community Services Boards
- Virginia Association of Licensed Child Placing Agencies
- Virginia Commission on Youth
- Virginia Department of Behavioral Health and Developmental Services
- Virginia Department of Education
- Virginia Department of Juvenile Justice
- Virginia Department of Social Services
- Virginia House of Delegates
- Virginia League of Social Services Executives
- Voices for Virginia's Children

B. RESEARCH AND ANALYSIS

Commission on Youth staff reviewed literature related to relief of custody, including documents from the Government Accountability Office, The U.S. Department of Health and Human Services, and various news publication sources. This literature review mostly included background information on how parents often use laws or actions to relinquish custody in order to obtain mental health treatment for their child.

In order to understand the approach in other states, staff reviewed programs in other states undertaken to prevent families from having to relinquish custody to access mental health services.

Staff also researched Virginia's laws and regulations on relief of custody, CSA parental agreements, and noncustodial foster care. Further staff solicited information from state and local agencies on how services are made available to children and families in Virginia. Interviews included the Office of Children's Services and the City of Alexandria Department of Community and Human Services.

Finally, Commission on Youth staff at the invitation of Marissa D. Mitchell, Henrico Juvenile and Domestic Relations District Court Judge, attended a hearing on a relief of custody petition.

These above research activities in addition to the roundtable meetings and Advisory Group informed Commission staff in preparing and presenting findings and recommendations to the Commission on Youth.

VI. Background and Analysis

A. RELIEF OF CUSTODY PROCESS

Parents and legal guardians have the right to petition for both temporary and permanent relief of care and custody of their children.¹ The relief of custody process is governed by two sections of the Virginia Code, and each section corresponds to a stage of the procedure: adjudication (§ 16.1-277.02) and disposition (§ 16.1-278.3). The adjudication phase is discussed below followed by an overview of potential dispositions.

Procedure Under Va. Code Ann. §§ 16.1-277.02 and 16.1-278.3

After parents have filed a petition, the request is “referred initially to the local department of social services (LDSS) for investigation and the provision of services.”² During the referral and investigation, LDSS determines “whether the provision of services will prevent placement” in foster care.³ The investigation protocol itself varies by locality and is significantly impacted by the availability of services.

Following the referral, the court will determine whether the petitioner should be relieved of custody at a hearing.⁴ LDSS, the child, the child’s caregiver, and other such parties have the right to present evidence and cross-examine adverse witnesses at the hearing. If the petitioners have requested temporary relief of custody, the court will grant the petition if “good cause [is] shown for the petitioner’s desire to be relieved of the child’s care and custody.”⁵ Here, the finding must be based upon a preponderance of the evidence.⁶ Petitioners that request permanent relief of custody must meet a higher threshold: the court must find—by clear and convincing evidence—that termination of parental rights is in the child’s best interests.⁷ If termination of parental rights is determined to be in the child’s best interests, the court may terminate petitioners’ parental rights

¹ *Code of Virginia* § 16.1-277.02 (A) (2023).

² *Id.*

³ Virginia Department of Social Services, Children and Family Services Manual, E. Foster Care, § 3.7.4 (September 2024), https://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/09_2024/section_3_entering_foster_care.pdf. [hereinafter Manual].

⁴ *Code of Virginia* § 16.1-277.02 (C).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

if it finds that “(i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services.”⁸ To evaluate, judges consider (a) the family’s service needs, including the safety of the child; (b) which services have been offered; (c) the family’s engagement in service planning; and (d) the response, if any, to the services that have been offered. Reasonable efforts are intended to facilitate the child’s return home, if possible.⁹

Potential Dispositions

If the court makes a finding for temporary or permanent relief of custody, it may enter one or more orders at the hearing on the petition, or within sixty days at a subsequent dispositional hearing. A brief description of each is listed below:

Preliminary Protective Order (§ 16.1-253)

At any point during a case, any party involved, including the court itself, may file a motion or petition for a preliminary protective order pursuant to § 16.1-253.¹⁰ The preliminary protective order is made in situations where it is deemed necessary to protect a child’s life, health, safety or normal development pending the final determination of any matter before the court.¹¹

Required Provision of Services

The judge may enter an order requiring a local social services board to provide services to the family and/ or child.¹² Local social services boards are charged with both preventing unnecessary removal of children from their families and reunifying families by provision of services.¹³ Where reunification or placement for adoption is not possible in a given case, the board must assure that the children are still cared for.¹⁴

Dispositional Alternatives

“The court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2 [Abused, neglected, or abandoned children or children without parental care].”¹⁵ These dispositional alternatives are listed under § 16.1-278.2 as follows:

⁸ *Code of Virginia* § 16.1-277.02 (C).

⁹ Manual, *supra* note 3, § 3.5.1.

¹⁰ *Code of Virginia* § 16.1-253 (A).

¹¹ *Id.*

¹² *Code of Virginia* § 16.1-277.02 (C)(2).

¹³ *Code of Virginia* § 63.2-319.

¹⁴ *Id.*

¹⁵ *Code of Virginia* § 16.1-278.3 (C).

a. Pursuant to § 16.1-278

A judge may order a governmental agency (at the state, county, or municipal levels) to provide services to the child and/ or their families according to state or federal law, or local ordinances.¹⁶ The judge is also “authorized to cooperate with and make use of the services of all public or private societies or organizations which seek to protect or aid children or families...”¹⁷

b. Remain with Parent

Courts may allow the child to remain in the home, subject to conditions or limitations the court chooses to impose.¹⁸

c. Limit or Prohibit Contact

As the court deems appropriate, it may limit or prohibit contact between the child and petitioner.¹⁹ The order can exclude individuals from the home for 180 days, and a hearing to determine the next steps (including an extension of the order) must take place within the first 150 days of the order’s entry.²⁰

d. Out-of-Home Placement & Parental Agreement

Judges are authorized to allow out-of-home placement while the petitioner retains legal custody.²¹ Under this arrangement, parents and local boards of social services or a public agency designated by the community policy and management team enter an agreement that specifies who shall assume caretaking responsibilities and how they are to be carried out.²² Before entering this order, a court must find that (1) reasonable efforts have been made to prevent out-of-home placement, and (2) continued placement in the current environment would be contrary to the welfare of the child.²³

e. Transfer Legal Custody

If a court opts to transfer legal custody and remove the child from the home, it must make the same two-part finding as described earlier in this section. Additionally, the court must find that there is no less drastic alternative to transfer of custody.²⁴ Examples include temporary kinship care, placement in foster care, and placement at a rehabilitative or treatment facility. Similarly, the court may transfer legal custody as described and

¹⁶ *Code of Virginia* § 16.1-278 (A).

¹⁷ *Code of Virginia* § 16.1-278 (B).

¹⁸ *Code of Virginia* § 16.1-278.2 (A)(2).

¹⁹ *Code of Virginia* § 16.1-278.2 (A)(3).

²⁰ *Id.*

²¹ *Code of Virginia* § 16.1-278.2 (A)(4).

²² *Id.*

²³ *Id.*

²⁴ *Code of Virginia* § 16.1-278.2 (5)(C)

additionally order the petitioner to participate in services or refrain from specified conduct.²⁵

f. Termination of Parental Rights

As described by section 16.1-278.3 (D), the court may terminate a petitioner's parental rights. Termination of parental rights requires a finding that, based upon clear and convincing evidence, doing so would be in the child's best interests.²⁶ Termination of parental rights orders must be accompanied by an order continuing or granting custody to (i) a board of social services or to a licensed child-placing agency, or (ii) a person with a legitimate interest.²⁷

B. ALTERNATIVES TO RELIEF OF CUSTODY

During its study on relief of custody, the Commission, its roundtables, and Advisory Group explored and discussed alternatives to relief of custody. The conversations on these alternatives focused on their intended use and applicability to various situations a caretaker might find him or herself in. These alternatives were discussed in addition to the provision of services for youth and families.

Entrustment Agreements

A temporary entrustment agreement may be used as an alternative to relief of custody. Generally, caregivers may voluntarily request that an LDSS office be given custody of children for a set period of time, where the goal is to either return the children home or for adoption planning.²⁸ Temporary entrustment agreements must also "specify the rights and obligations of the child, the parent(s) or guardians and the LDSS," including financial support and medical care.²⁹ The duration of the temporary entrustment agreements depends on the nature of the underlying situation, and they must be filed within a "reasonable period of time."³⁰ If the situation can be resolved within ninety days, then the child returns home. These short-term temporary entrustment agreements require documentation of a plan for services, but they do not require the use of the foster care service plan form.³¹ However, if the child has not returned home after eighty-nine days, then LDSS must petition for court approval of the entrustment agreement *and* the service plan.³² For longer-term temporary entrustment agreements (up to 180 days), the service plan should demonstrate "that reasonable efforts have been made to prevent removal and to return the child home and that

²⁵ *Code of Virginia* § 16.1-278.2 (6)

²⁶ *Code of Virginia* § 16.1-278.3 (D)

²⁷ *Id.*

²⁸ Manual, *supra* note 3, § 3.7.2.

²⁹ *Id.*

³⁰ *Code of Virginia* § 63.2-903(A).

³¹ See Manual, *supra* note 3, § 3.7.2.1.

³² *Id.* §§ 3.7.2.1–2.

continuation in the home would be contrary to the welfare of the child.”³³ Discussion at the roundtables noted that an entrustment agreements initial period of 90 days is a large factor in what limits its use.

Noncustodial Foster Care

Like temporary entrustment agreements, noncustodial foster care agreements are also executed between LDSS offices and caregivers. noncustodial foster care agreements allow caregivers to retain legal custody while a child is in an out-of-home placement.³⁴ Although the child is considered to be in foster care for that period, noncustodial foster care agreements prioritize provision of services and reunification as quickly as possible.³⁵ Before a noncustodial foster care agreement can be executed, however, LDSS will assess whether (1) leaving custody with the parent(s) or guardians is in the best interests of the child and will not place the child at risk; (2) the parent(s) or guardians will remain actively involved with the child during the placement; (3) the child will be able to return home within a reasonable timeframe (generally within a period of 12 months or less); and (4) there is no less restrictive alternative available through which the child can receive the level of supervision and services required.³⁶ As an alternative to relief of custody, it is not commonly used by LDSSs because these agreements are considered foster care cases.

CSA Parental Agreements

CSA Parental Agreements differ from noncustodial foster care agreements in that they are executed between caregivers and a public agency designated by a Community Policy and Management Team (CPMT), rather than LDSS.³⁷ These arrangements are implemented when a court or a Family Assessment Planning Team (FAPT) finds that a child should be placed outside their home in order to receive services (e.g., residential treatment).³⁸ Because LDSS is not the case manager, the children are not considered to be in the foster care system, even though the children are placed outside of their homes.³⁹ Therefore, the children are “not subject to the requirements, policies, and protocols (i.e., court hearings, title IV-E eligibility determinations, etc.) required” by the foster care system.⁴⁰ However, children can still receive foster care services because of the

³³ *Id.* § 3.7.2.1.

³⁴ *Id.* § 3.7.5.1.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Office of Children’s Services, User Guide for the Children’s Services Act 15 (Nov. 1, 2024), https://www.csa.virginia.gov/content/doc/CSA_User_Guide.pdf [hereinafter CSA User Guide]; Manual, *supra* note 3, § 3.7.5.2.

³⁸ FAPTs use checklists— including the Child and Adolescent Needs and Strengths (CANS)-Virginia Version—to determine eligibility of services. See Manual, *supra* note 3, § 5.3.3.1; CSA User Guide, *supra* note 37, at 16.

³⁹ See Manual, *supra* note 3, § 3.7.5.2.

⁴⁰ *Id.*

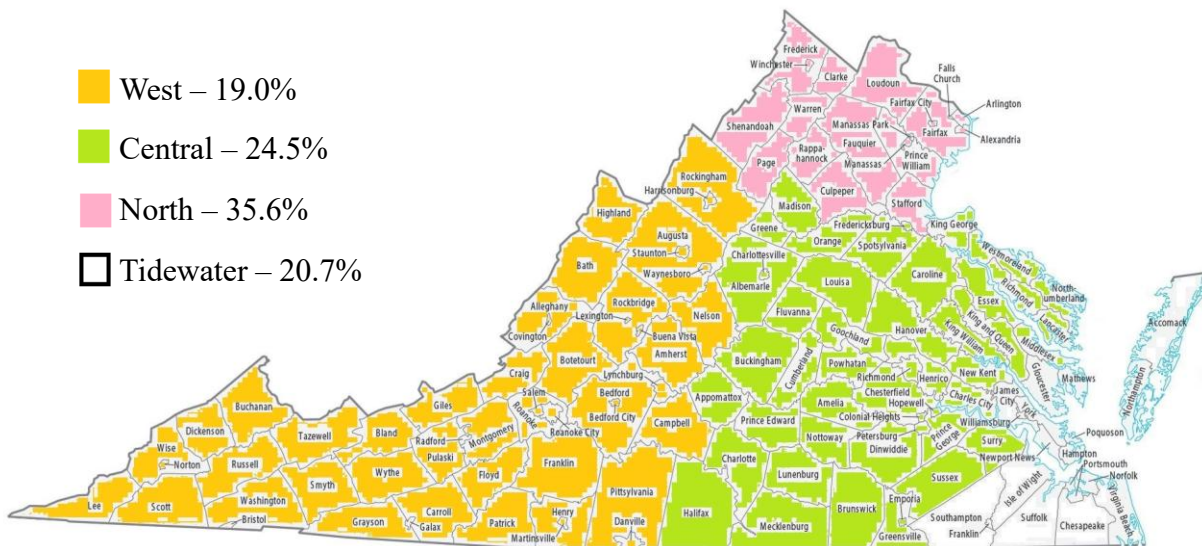
involvement of the FAPT and CPMT in executing the CSA Parental Agreement.⁴¹ CSA Parental Agreements and the services provided as a result of the FAPT were seen by the roundtables and Advisory Group as the most viable alternative to relief of custody. To that end the Advisory Group supported changing the *Code of Virginia* to clarify that children in need of services are eligible for Children's Services Act (CSA) parental agreements and community based services and working with CSA coordinators to publicize these services.

C. SCOPE OF RELIEF OF CUSTODY USE

The Office of the Executive Secretary of the Supreme Court of Virginia provided the Commission with data on use of relief of custody petitions filed between January 2019 and August 2024. The data provided included information on the number of petitions filed; instances of change in legal custody; number of petitions granted; number of petitions dismissed; and number of petitions transferred per locality for each of the six years.

Commission staff sorted Virginia's localities into four geographical regions: Western, Central, Northern, and Tidewater. This is illustrated on map 1 below with population breakdown by region. Commission staff analyzed data based on each region and year of the number of petitions filed for relief of custody.

Map 1: Population by Region⁴²



⁴¹ *Code of Virginia* § 63.2-905. See Manual, *supra* note 3, § 3.7.5.2, CSA User Guide, *supra* note 37, at § 5.3.2.2 for an example of the Parental Agreement Form.

⁴² Note: Population data based on 2020 census. University of Virginia Weldon Cooper Center for Public Service. (2023). Virginia Population Estimates. Retrieved from <https://coopercenter.org/virginia-population-estimates>.

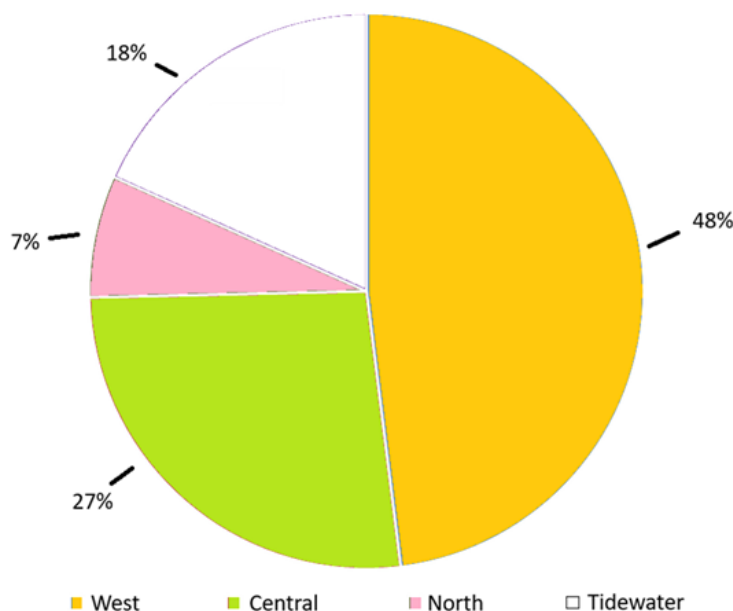
Overall, the West region, with 19% of Virginia’s population, had more petitions filed than any other region; nearly half of all petitions filed in the past six years originated in this area. Although the number of petitions filed generally declined in 2020, the number increased before peaking in 2023. Figure 1 below gives the total number of petitions filed between January 2019 and August 2024 by region.

Figure 1: Petitions Filed by Region and Year⁴³

	2019	2020	2021	2022	2023	Jan-Aug 2024	Total
West	193	118	144	137	176	145	913
Central	94	94	86	72	107	53	506
North	23	25	25	21	26	15	135
Tidewater	54	38	65	58	73	59	347
Total	364	275	320	288	382	272	1901

Chart 1 visually breaks down the percentage of petitions filed by region and Chart 2 visually demonstrates the change in petitions filed year by year by region.

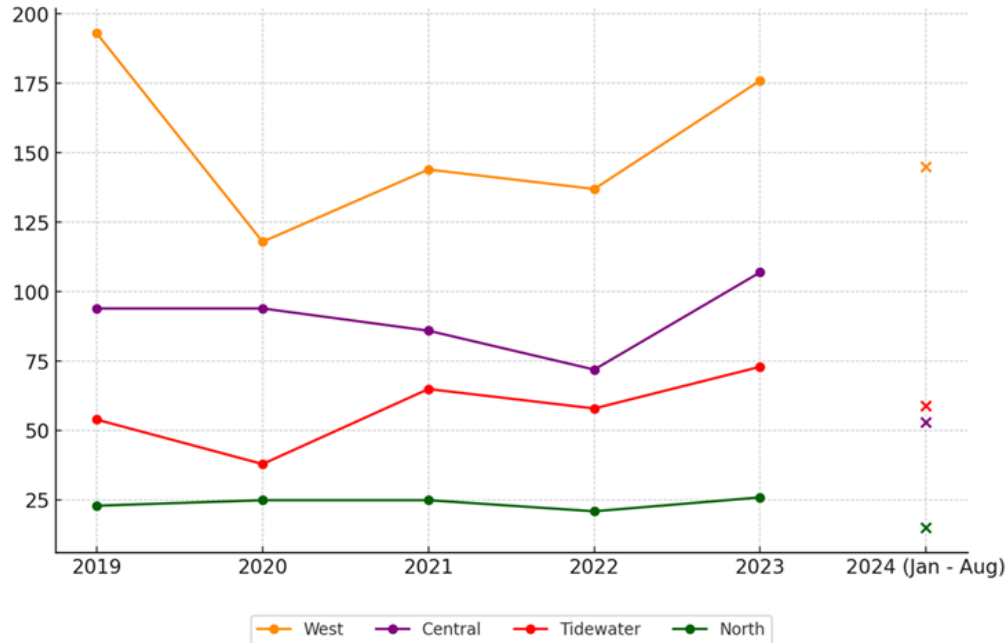
Chart 1: Petitions Filed by Region and Year (2019-August 2024)⁴⁴



⁴³ Note: Data from Office of the Executive Secretary, Supreme Court of Virginia, CY 2019-2024.

⁴⁴ *Id.*

Chart 2: Petitions Filed by Region and Year (2019-August 2024)⁴⁵



The number of petitions filed in the West region of Virginia is significantly higher than the other three regions, regardless of the year of filing. The cause may be related to the effects of the opioid crisis, higher poverty rates, and higher caseloads per social worker.⁴⁶ Regardless of potential causes, this finding aligns with anecdotal evidence from the roundtable discussions. As for the recent uptick in petitions being filed, while not definitive, discussion during the Commission on Youth’s roundtables suggested that the number of petitions filed post-COVID are higher due to the effects of the pandemic on mental health, funding to services, and accessibility of resources.

D. ANALYSIS

At-Risk Families and Underlying Causes

Members of all four roundtables called attention to the pattern of risk factors that make families more likely to become involved in the relief of custody process. Children who were (1) abused or neglected before coming to live in their current circumstances (including international adoptees);

⁴⁵ Note: Data from Office of the Executive Secretary, Supreme Court of Virginia, CY 2019-2024.

⁴⁶ Sabrina Moreno, *The Opioid Epidemic and Foster Care System are Colliding in Virginia*, Axios Richmond (Apr. 25, 2024), <https://www.axios.com/local/richmond/2024/04/25/virginia-opioid-epidemic-kinship-foster-care>; *Needs Assessment Tool for Drug Overdose and Related Outcomes*, Va. Department of Health (June 5, 2024), <https://www.vdh.virginia.gov/data/need-assessment-tool-for-drug-overdose-and-related-outcomes/>; HDPulse, *Social, Economic, & Cultural Environment: Virginia Poverty Map (Families Below Poverty)*, Nat’l Inst. of Minority Health & Health Disparities, <https://hdpulse.nimhd.nih.gov/> (last visited Dec. 1, 2024), (showing that the Southwest region of Virginia has a higher percentage of families below the federal poverty level relative to other areas of the Commonwealth).

(2) previously involved with the juvenile justice system; or (3) living with preexisting mental health or developmental conditions were described as the most vulnerable groups to later having petitions filed against them. Various roundtable participants also noted that most petitions tended to be filed when youth were approaching or undergoing puberty. Roundtable members also highlighted a pattern among those filing for petitions that most were not the children's biological parents. Instead, caregivers who ultimately petitioned for relief of custody were typically kin, fictive kin, or adoptive parents. If caregivers had unmanaged mental health or substance use concerns themselves, roundtable members noted that the likelihood of them eventually filing for relief of custody further increased.

During the roundtable discussions, stakeholders identified two overarching factors that create the circumstances in which caregivers petition for relief of custody: high levels of chronic stress, and lack of access to resources. When combined, the two factors escalated tensions between youth and caregivers; generally, as tensions increased, caregivers were more adamant in their desire to have the children removed from their homes.

Chronic Stress

The first factor, which is high levels of chronic stress, encompasses both internal and external challenges that families endure. The stress may result from difficulties “across life domains (such as work, [or] partner relationships...) and at other times [may arise from] the specific context of caregiving.”⁴⁷ Caregivers of children with high or complex support needs bear both the “primary responsibility” of parenting and “the added demands” of “advocacy, case management, and nursing tasks.”⁴⁸ The support needs in question can be “physical, developmental, behavioral, and/or emotional,” and can directly conflict with caregivers’ (and other family members’) needs.⁴⁹

Roundtable members highlighted tensions related to parenting children with complex trauma, which the groups of children identified earlier in this section are especially vulnerable to developing. Responses to complex trauma are patterns of behavioral, emotional, and cognitive dysregulation resulting from long-term exposure to traumatic experiences.⁵⁰ Just as exposure to

⁴⁷ Nathalie J.S. Patty et. al, *Conceptualizing Burnout from the Perspective of Parents of Children with Complex Care Needs*, 5 PEC Innovation (forthcoming Dec. 15, 2024), <https://www.sciencedirect.com/science/article/pii/S2772628224000736>.

⁴⁸ *Id.* See also R.L. Woodgate et. al, *Intense Parenting: A Qualitative Study Detailing the Experiences of Parenting Children with Complex Care Needs*, 15 BMC Pediatrics 1 (2015), <https://link.springer.com/article/10.1186/s12887-015-0514-5?>; S. Kirk & G. Glendinning, *Supporting ‘Expert Parents’—Professional Support and Families Caring for a Child with Complex Health Care Needs in the Community*, 39 Int’l J. Nursing Studs. 625 (2002), <https://www.sciencedirect.com/science/article/abs/pii/S0020748901000694>.

⁴⁹ Patty et. al, *supra* note 47. See also B.F. Page et. al, *The Challenges of Caring for Children Who Require Complex Medical Care at Home*, 23 Health Expect. 1144 (2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/hex.13092>.

⁵⁰ Va. Commission on Youth, *Collection of Evidence-Based Practices for Children and Adolescents with Mental Health Treatment Needs* 201–02 (9th ed. 2023) [hereinafter *Collection*].

short-term trauma can result in development of Post-Traumatic Stress Disorder (PTSD), living through prolonged traumatic circumstances can produce similar symptoms.⁵¹ Complex trauma has significant implications for brain development, cognition and executive function, ability to form and maintain relationships, emotional regulation, and identity formation.⁵² Therefore, classical PTSD symptoms often manifest alongside symptoms related to these areas, and this constellation is usually referred to as complex PTSD (cPTSD).⁵³ For instance, a child with cPTSD might have intense “unpredictable or explosive” emotional responses to stressors:

When the fear center—called the amygdala—of a child’s brain is activated, the child may experience a “fight, flight, or freeze” response in which brain resources are focused on survival. Most children experience fear and stress in small doses. However, an abused child who lives in a constant state of toxic stress, unpredictability, and fear is constantly in survival mode—which affects how the brain develops. The ability to control impulses and emotional responses . . . can develop more slowly when a child is constantly under stress.⁵⁴

Whether a person ultimately develops cPTSD after prolonged exposure to stressors depends upon their individual traits and background. However, circumstances that frequently result in cPTSD include ongoing abuse or neglect, witnessing harm to, or being separated from, loved ones, living in a constant state of fear or stress, and unpredictability in day-to-day life.⁵⁵ Experiencing events like these are all common in the foster care system. For instance, a child may be placed in foster care after being abused or neglected; in the process, they may be separated from their primary caregiver and siblings.⁵⁶ If there are not enough available beds, they may be shuffled from one temporary placement to another, which disrupts the child’s existing daily structure and makes it incredibly difficult to form a new one. Once a longer-term placement is secured, the children may struggle to form healthy attachments to their foster parents or kin caregivers.

As discussed above, children’s trauma responses can result in “behavior that can appear to...be out of character, difficult to understand, or irrational.” This is especially true when the children do not remember the source of the complex trauma, because complex trauma is often overlooked or misdiagnosed. Therefore, “caregivers of children displaying [complex trauma symptoms] often don’t understand why children behave the way they do, or why their tried-and-true parenting

⁵¹ *Collection*, *supra* note 50, at 202.

⁵² *Id.* at 208 (listing areas of functioning that are impacted by complex trauma and describing possible symptoms)

⁵³ *Id.* However, most children with cPTSD do not experience flashbacks or avoid related stressors, unlike individuals with PTSD. *Id.* at 209.

⁵⁴ *Id.* at 204.

⁵⁵ *Id.* at 202. Abuse and neglect include physical, sexual, and emotional maltreatment. *Id.*

⁵⁶ *Id.* at 202.

techniques don't work.”⁵⁷ Ultimately, difficulty recognizing cPTSD symptoms combined with additional caregiving demands related to cPTSD management can result in intense frustration, shame, and exhaustion. Recent psychological studies have begun to characterize this pattern as “parental burnout.”⁵⁸

Although conceptualizations of parental burnout vary, most models include “emotional exhaustion” and “emotional distancing” among their components.⁵⁹ ‘Emotional exhaustion’ typically relates to feelings of intense fatigue that arise from caring for a child with high/ complex support needs.⁶⁰ ‘Emotional distancing’ typically describes the tendency of burnt-out caregivers to emotionally disengage from their children to conserve their energy.⁶¹ This withdrawal often compounds the negative feelings associated with the exhaustion felt in the first phase: caregivers may feel frustrated, helpless, and guilty; they are at an increased risk for developing mental health issues, “suicidal ideation, substance abuse, domestic conflicts, [and] violence and neglect towards the child.” Discussion from the Commission’s roundtable meetings suggests that caregivers are most likely to petition for relief of custody when experiencing this second phase of parental burnout. In this phase, caregivers’ remaining energy is directed towards reliance on coping mechanisms and finding respite from the parenting role.

Barriers to Accessing Resources

The discussions from the roundtables yielded three primary reasons as to why petitioners cannot or do not seek out resources before filing for relief of custody: (1) lack of availability or access to services, (2) lack of awareness of existing services, or (3) intrinsic motivations for avoiding services.

All four roundtables highlighted the issues caregivers face in obtaining or accessing services. For instance, the shortage of mental health clinicians has resulted in sometimes six-month-long waitlists for services like Functional Family Therapy, which is effective in addressing issues that often lead to relief of custody cases. The high rates of burnout in the profession, coupled with the duration of training employee replacements, have both contributed to the dwindling number of private service providers who can assist families in their communities. When burnt-out caregivers are commonly faced with the prospect of waiting half a year before getting the services their families need, petitioning for relief of custody often seems to the custodians to be the much more straightforward option. Further, even if the services are available, families often face logistical

⁵⁷ *Collection, supra* note 50, at 201.

⁵⁸ Patty et. al, *supra* note 47.

⁵⁹ *Id.*; see, e.g., Isabelle Roskam et. al, *Exhausted Parents: Development and Preliminary Validation of the Parental Burnout Inventory*, 8 Front. Psych. 163 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5298986/>.

⁶⁰ Patty et. al, *supra* note 47.

⁶¹ Ashley Abramson, *The Impact of Parental Burnout: What Psychological Research Suggests About How to Recognize and Overcome It*, 52 Monitor on Psych. 36 (2021), <https://www.apa.org/monitor/2021/10/cover-parental-burnout>.

issues in attempting to access them. The cost of services, lack of reliable transportation, and having to take time off work to utilize the services all make it that much more difficult for families in crisis.

Secondly, caregivers often lack awareness of existing services or alternatives to relief of custody. During the first roundtable, participants indicated that caregivers were being advised to petition for relief of custody by private service providers and members of law enforcement, rather than to contact the LDSS, local CSA, or CSB.⁶² All four roundtables highlighted the important role that schools play in early detection of potential relief of custody cases, but that their ability to connect families to preventative services varies significantly by jurisdiction. Simply put, families are not being made aware of what options they have because information about relief of custody is often presented to them before information about services or alternatives. Members of the roundtables also made the point that many caregivers are under the misperception that services are only available to their child if he or she enters foster care.

Finally, caregivers' intrinsic motivations play a significant role in failing to voluntarily seek out services. When caregivers experience parental burnout, they are less likely to seek services when they feel intense guilt or shame for wanting a respite. Further, caregivers' capacity to think clearly about the future is limited by their overwhelming need for rest, and in many ways, their brains are operating in the same "survival mode" as the children they are caring for. Members of the third roundtable also noted that many caregivers expect the family support system to be child-centric, rather than one that encompasses the whole family unit. This expectation therefore also contributes to their reluctance to voluntarily engage with services.

Whether the barriers to accessing resources issues are lack of availability, lack of awareness, or the caregivers' motivations, in the roundtables, LDSS representatives emphasized that if a social worker is interacting with a caretaker for the first time after a petition has been filed, then it is usually too late to be effective. Caregivers are stressed to the point where they do not want to try services; they want the children out of their homes so that they can take a break.

Impact

The rest of the analysis focuses on the impact upon youth and on community stakeholders. The roundtables had detailed discussions on the impact relief of custody has on the youth as well as the consequences these petitions have on the community and youth serving agencies.

⁶² According to the roundtable members, caregivers often call 911 to get children to stop problematic or dangerous behavior because they hope appealing to an outside authority will frighten the children into obedience. When police are repeatedly summoned to address these issues, they eventually recommend that caregivers should "look into" relief of custody. See Appendix C.

Impact upon Youth

By statute, adolescents in relief of custody cases are entitled to be notified of the proceedings, to be provided with a copy of the petition, and to participate in the hearing(s).⁶³ During hearing proceedings, a child is often in the courtroom as their caregiver tells the court that they do not want the child in their homes or lives.⁶⁴

The impact of that testimony on children's psychological wellbeing cannot be understated, even if the children were not present in the room while it was given, the implication that a parental figure would willingly separate from the child has severe negative ramifications for mental health. Multiple participants from the roundtables voiced concern that 'relief of custody' is, in fact, closer to "abandonment" when it is not used as an absolute last resort. In psychological literature, abandonment is commonly conceptualized as "a situation where a child is intentionally left behind, openly or secretly, by a parent who has no intention of returning."⁶⁵ Rejection, especially from a primary caregiver, "is a highly traumatic experience for a child, as it implies a lack of interest and affection" from a parental figure.⁶⁶ The resulting trauma from this rejection often compounds the effects of preexisting trauma, and subsequent placement(s) in the foster care system only increase the risk of being exposed to still more traumatic circumstances.⁶⁷

Anecdotal evidence from roundtable participants indicates that these children do not fare well in the foster care system. The same cycle that prompted the caregivers to petition for relief of custody plays out with foster parents: a child's trauma response is triggered, the child acts out, the foster parents are not able to recognize or address it effectively. Eventually, the foster parents request that the child be placed elsewhere, the child is further traumatized, and the cycle continues in the next placements until the child has aged out of the system.

Impact Upon Community Stakeholders

The consequences of relief of custody extend well beyond the families involved in individual cases. Outside the family unit, the impact of relief of custody cases is felt first (and most strongly) by LDSSs and schools. As discussed above, if awareness of a child or a family is not raised by another agency, LDSS representatives are only first alerted to the fact that the family needs services when the family in question is already in crisis. This places the burden of de-escalating tensions, investigation, provision of services, coordinating referrals and case management, and (if necessary) securing an out-of-home placement for the child on the local department. Often, LDSS offices are already managing weighty caseloads while operating with limited staff. Balancing the

⁶³ *Code of Virginia* § 16.1-277.02(A).

⁶⁴ *Code of Virginia* § 16.1-277.02 (B).

⁶⁵ Marius Marici et. al, *Is Rejection, Parental Abandonment or Neglect a Trigger for Higher Perceived Shame and Guilt in Adolescents?*, 11 *Healthcare* 1724 (2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10298591/>.

⁶⁶ *Id.*

⁶⁷ *Id.*

additional responsibilities of relief of custody cases with their regular duties creates high levels of burnout and staff turnover, which then means that families are not able to receive the help that they need.

Schools also feel the adverse impacts of relief of custody cases. When a child initially enrolls as a new student, particularly those transferring from other jurisdictions, schools are often not made aware of the circumstances that lead to the original placement. This puts both school personnel and the children at a significant disadvantage: administrators and teachers may interpret trauma responses as intentional disobedience, and the children are disciplined instead of being redirected to appropriate services. This is especially critical when evaluating whether a student should be suspended or expelled. If a child cannot attend school, then their caregivers will burn out even faster with the child at home full-time. In essence, the relief of custody timeline will be accelerated, and LDSS will have an even smaller window in which to accomplish the tasks described in the preceding paragraph.

Finally, multiple roundtable participants highlighted the long-term community consequences of relief of custody cases. Most children involved in the cases are not adopted after being placed in foster care. Instead, they remain in foster care until they turn eighteen or in Fostering Futures to twenty-one, after which they typically stay in the same locality. If these adults had untreated mental health, behavioral, or substance use concerns as adolescents, they are likely to become more severe unless the adults consistently receive treatment. Even if the adults were receiving treatment or services while they were still in the foster care system, many private service providers stop the treatments after the child ages out, and often, without making transition plans for the clients. Therefore, as adults, these individuals are often left to navigate young adulthood without the services that they relied upon, and without a plan to coordinate services for the long-term. As a result, the responsibility to care for these members of the community falls to CSBs, crisis response units, and other social support systems.

VII. Findings and Recommendations

After presenting the findings and recommendations at the Commission on Youth’s November 25, 2024, meeting and receipt of public comment, the Commission approved and adopted the following recommendations:

Changes to the relief of custody court petition process:

Recommendation 1: Amend the *Code of Virginia* to standardize the pre-hearing “investigation” in § 16.1-277.02 (A) by requiring the local department of social services, at a minimum, put together a written report on the history of the child and family.

The Department of Social Services shall create guidance for a template on what should be included in this written report. This template should include best practices, not limited to background on the full history of child and family (medical and mental health, legal, educational, information from providers), and the exploration of all relatives and fictive kin. Information on what services are being and have been offered to the child and family and potential use of a family partnership meeting should also be in the written report.

Recommendation 2: Amend the *Code of Virginia* § 16.1-277.02 that when investigating a petition for Relief of Custody, the local department of social services shall refer the parent to the local Family Assessment and Planning Team (FAPT), but such referral will not interfere or delay such petition.

Recommendation 3: Introduce a § 1 bill directing the Office of the Executive Secretary of the Supreme Court of Virginia to create a workgroup to determine the factors that a judge should consider for “good cause shown” for the petitioner's desire to be relieved of the child's care and custody.

Recommendation 4: Amend the *Code of Virginia* to increase the standard of evidence for granting temporary Relief of Custody. Currently, temporary Relief of Custody requires “a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody.” Permanent relief of custody requires “a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child.” This amendment to the Code would change the language in § 16.1-277.02 (C) to: “a finding, based upon clear and convincing evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody.”

Clarify in the *Code of Virginia* and publicize information regarding Children’s Services Act (CSA) parental agreements and community based services:

Recommendation 5: Amend the *Code of Virginia* § 2.2-5211 and 2.2-5212 to clarify that children in need of services are eligible for Children's Services Act (CSA) parental agreements and community based services.

Recommendation 6: Request that the Office of Children’s Services work with local Children's Services Act coordinators and the County or City’s appropriate public outreach specialist to create a strategy to publicize community based services or parental agreements to relevant local partners and agencies as a viable option for families before they reach the point of petitioning for Relief of Custody.

Improve guidance and training on adoption and adoption disruption:

Recommendation 7: Request the Department of Social Services create guidance or initiate regulatory changes to strengthen the ability of adoptive families to find and obtain services in their current locality if the family has moved localities after an adoption is finalized. The Department of Social Services shall report back on these changes to the Commission on Youth by November 1, 2025, including if any changes to the Code are necessary to fully support this recommendation.

Currently, under § 63.2-1220, “the Department shall furnish a document listing all post-adoption services available to adoptive families to the State Registrar of Vital Records for distribution to adoptive parents pursuant to § 32.1-261.” However, over time parents may lose track of this information or service availability may change.

Recommendation 8: Request that the Department of Social Services in consultation with State partners, including the Virginia League of Social Services Executives, the Virginia Association of Licensed Child Placing Agencies, Family Focused Treatment Association, and other organizations representing licensed child placing agencies work with these organizations and their members to ensure that pre-adoption training emphasize trauma-informed parenting, and cover topics including:

- commonly-occurring mental health and neurodevelopmental conditions
- child and adolescent development
- building and utilizing support systems
- supports available to adoptive families
- specific mental and behavioral health needs of adopted youth

Survey on mental health access in schools:

Recommendation 9: Introduce a § 1 bill directing the Virginia Department of Education (VDOE) survey local education agencies (LEAs) to review i) how schools currently grant access to Local Departments of Social Services and Community Services Boards and other community-based providers and ii) what school-based mental health options are available at each LEA. Additionally, the results and feedback from this survey shall inform the continued development and improvement of guidelines for school professionals that support students and families that connect them with community resources that provide mental and behavioral health services. VDOE shall report back any findings and recommendations based on their survey to the Commission on Youth by November 1, 2025.

Increasing collaboration and providing models to local agencies:

Recommendation 10: Request that the Department of Social Services with the Virginia League of Social Services Executives as a key stakeholder, compile and make available information gathered from local departments on best practices regarding collaboration between local agencies and judges regarding relief of custody. This should include details on the frequency of meetings, types of shared information, methods of communication, and recommendations for improving engagement. This recommendation aims to provide local departments with model examples of effective practices in place.

Improving stakeholder best practices:

Recommendation 11: Request that the Department of Juvenile Justice develop best practices to distribute to its court service units for when a parent comes in to intake desiring to petition for relief of custody to inform them of services available in their community.

Recommendation 12: Request that the Department of Social Services, in consultation with State partners, including the Virginia Sheriffs' Association, Virginia Association of Chiefs of Police, and the Virginia League of Social Services Executives, develop and distribute best practices to members of the law enforcement community on alternatives to relief of custody when encountering families in crisis. The best practices should inform them of services available in their community to provide appropriate support and resources.

Support Best Practices Courts:

Recommendation 13: Support the Office of the Executive Secretary in their efforts to access federal funds for Best Practices Courts' training and conferences.

VIII. Acknowledgments

The Virginia Commission on Youth extends appreciation to the numerous stakeholders who participated in this study. A list of stakeholders who participated in the roundtable workgroups and the Advisory Group are included in the appendices of this report.

Also, a special thank you to Judge Marissa D. Mitchell, Henrico Juvenile and Domestic Relations District Court, for inviting Commission staff to listen in to a relief of custody petition hearing.

Finally, the Commission on Youth would like to recognize its law interns for their hard work and dedication to this study. Shannon Callaghan, William & Mary Law School, who assisted with the research and writing of this report. Rebekah Carico, The University of Richmond School of Law, who coordinated and assisted with the regional roundtables.

The Use and Impact of Relief of Custody on Care and Support of Youth

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The Use and Impact of Relief of Custody on Care and Support of Youth

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Commission on Youth Staff:

Amy Atkinson

Will Egen

Shannon Callaghan

The Use and Impact of Relief of Custody on Care and Support of Youth

Advisory Group Members

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Senate of Virginia - 35th District

Rita Jones, Owner and Director, We are Loving
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COMMONWEALTH OF VIRGINIA

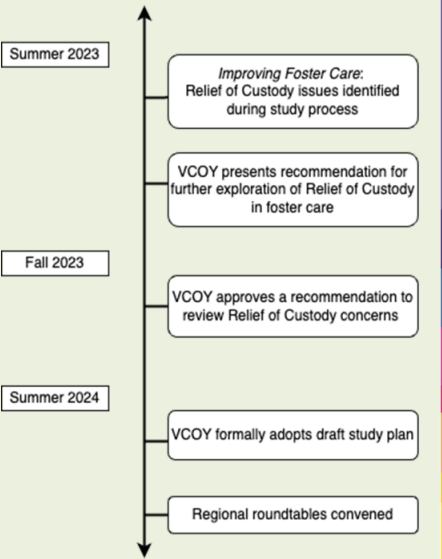
Commission on Youth

Relief of Custody

Will Egen, Senior Policy Analyst
August 21, 2024

STUDY PLAN: MANDATE





Timeline:

- Summer 2023:**
 - Improving Foster Care: Relief of Custody issues identified during study process
 - VCOY presents recommendation for further exploration of Relief of Custody in foster care
- Fall 2023:**
 - VCOY approves a recommendation to review Relief of Custody concerns
- Summer 2024:**
 - VCOY formally adopts draft study plan
 - Regional roundtables convened

- Review concerns surrounding the increased use of temporary and permanent relief of custody to place a child in foster care.
- Convene regional roundtables to assess concerns
 - Local DSS offices (LDSS)
 - Dept. of Juvenile Justice (DJJ)
 - Court Service Units (CSUs)
 - JDR judges & attorneys
 - Private service providers
 - Community Service Boards (CSBs)
 - Local school personnel
 - Impacted youth & caregivers
 - Advocacy groups

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STUDY PLAN: MANDATE (CONT.)



- The Virginia Commission on Youth approved a recommendation at its November 20, 2023 meeting regarding the reported increased use of relief of custody to discuss, review, and make recommendations regarding the practice:
 - Direct the Commission on Youth to review concerns surrounding the increased use of temporary and permanent relief of custody to place a child in foster care. The Commission shall convene an advisory group to assess this concern. This advisory group shall include the Department of Social Services, Department of Behavioral Health and Developmental Services, Department of Juvenile Justice, the Court Improvement Program, Local Departments of Social Services, Community Services Boards, and other relevant stakeholders.

3

STUDY PLAN: OVERVIEW



- Parents and caregivers have the legal right to petition for relief of custody of a child in their care under *Code of Virginia* § 16.1-277.02.
- Investigation by VCOY is needed to determine how relief of custody:
 - Varies from locality to locality
 - Is impacted by availability of services
- Understanding why families petition for relief of custody is vital:
 - Getting appropriate assistance and services to youth and families
 - Pursuing other available options (e.g., CSA parental agreements; non-custodial foster care arrangements)

4

NOMENCLATURE AND USE IN OTHER STATES



How do other states refer to Relief of Custody?

- Alabama: “relinquishment”
- Connecticut: “consensual termination of parental rights”
- Michigan: “voluntary relinquishment of parental rights”
- North Carolina: “relinquishment of minor for adoption”
- Tennessee: “voluntary surrender of parental rights”

5

RELIEF OF CUSTODY PROCESS



- There are two main *Code* sections for relief of custody.
 - Article 8. Adjudication: § 16.1-277.02. Petition for relief of care and custody.
 - Article 9. Disposition: § 16.1-278.3. Relief of care and custody.
- § 16.1-277.02. (A.) “Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate...Upon the filing of a petition for relief of a child's care and custody...the court shall appoint a guardian ad litem to represent the child...and shall schedule the matter for a hearing on the petition. Such hearing on the petition may include partial or final disposition of the matter.”

6

RELIEF OF CUSTODY PROCESS



- § 16.1-277.02. (A.) The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:
 1. The child, if he is 12 years of age or older
 2. The guardian ad litem for the child
 3. The child's parents, custodian or other person standing in loco parentis to the child
 4. The local board of social services
- (B.) Court hearing: "[Parties] shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf."

7

RELIEF OF CUSTODY PROCESS



- § 16.1-277.02. (C.) "At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody...If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child...The court may enter:
 1. A preliminary protective order pursuant to § 16.1-253;
 2. An order that requires the local board of social services to provide services to the family as required by law;
 3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or
 4. Any combination of these orders."

8

RELIEF OF CUSTODY PROCESS



- § 16.1-277.02. (C.) "Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection C1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services."

9

RELIEF OF CUSTODY PROCESS



UNDERLYING PETITION	
FOSTER CARE PLAN	Court Case No. _____
Relief of custody:	
<input type="checkbox"/> Based upon evidence presented upon adjudication of the petition filed pursuant to Virginia Code § 16.1-241 seeking relief of custody, THE COURT FINDS:	
<input type="checkbox"/> By a preponderance of the evidence, there is good cause for the petitioner's desire to be relieved temporarily of custody.	
<input type="checkbox"/> By clear and convincing evidence, granting the petition for permanent relief of custody is in the best interest of the child.	
<input type="checkbox"/> A separate ORDER FOR VOLUNTARY TERMINATION OF PARENTAL RIGHTS is attached and incorporated in this order.	
OR	
<input type="checkbox"/> The court adjudicated the petition filed pursuant to Virginia Code § 16.1-241 seeking relief of custody on _____ DATE	
<input type="checkbox"/> Upon disposition of the petition, THE COURT ORDERS:	
1. <input type="checkbox"/> Relief of custody is granted.	
2. <input type="checkbox"/> For partial disposition, temporary custody of the child is transferred to _____	
3. <input type="checkbox"/> For final disposition, custody of the child is transferred to _____	
PERIOD OF PROTECTIVE ORDER: _____	
Each non-agency party intending a change of address shall give 30 days advance written notice of such change of address to the court and other party pursuant to Virginia Code § 20-124.5. This notice shall contain the child's full name, the case number of this case, the party's new telephone number and new street address and, if different, the party's new mailing address. The notice shall be mailed by first-class or delivered to this court and to the other party.	
4. <input type="checkbox"/> A hearing shall be held on _____ DATE _____ TIME _____	
<input type="checkbox"/> for final disposition of the petition.	
<input type="checkbox"/> for the purpose of reviewing and approving a foster care plan, which shall be filed in accordance with Virginia Code § 16.1-281 by the public or private child-placing agency having placement responsibility for the child by _____ DATE _____	
5. <input type="checkbox"/> At this order, whether temporary or final, transfer legal custody of the child to a person with a legitimate interest, district court from DC-159, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY, is attached and incorporated in this order.	
6. <input type="checkbox"/> The court has reviewed the preliminary protective order entered in this case on _____ DATE _____ and <input type="checkbox"/> the order is dissolved or <input type="checkbox"/> a final CHILD PROTECTIVE ORDER - ABUSE AND NEGLECT, district court from DC-352, is attached and incorporated in this order.	
7. <input type="checkbox"/> The <input type="checkbox"/> parent _____ <input type="checkbox"/> parent _____ <input type="checkbox"/> parents _____	
<input type="checkbox"/> parent(s) shall provide the names and contact information for all persons with a legitimate interest to the local department of social services.	
<input type="checkbox"/> As this order transfers custody of the child, even temporarily, THE COURT FURTHER FINDS:	
1. That there is no less drastic alternative than transfer of legal custody as provided in this order.	
2. <input type="checkbox"/> As custody of the child is transferred to a local board of social services, that:	
a. <input type="checkbox"/> Continued placement in the home would be contrary to the welfare of the child, based upon:	
<input type="checkbox"/> the facts contained in the following document(s), which is (are) incorporated by reference:	
<input type="checkbox"/> sustained petition. <input type="checkbox"/> settlement agreement.	
<input type="checkbox"/> affidavit. <input type="checkbox"/> department of social services report.	
<input type="checkbox"/> the following facts:	
AND	
b. <input type="checkbox"/> Reasonable efforts <input type="checkbox"/> have been made <input type="checkbox"/> have not been made to prevent removal of the child from the home, based upon:	
<input type="checkbox"/> the facts contained in the following document(s), which is (are) incorporated by reference:	
<input type="checkbox"/> sustained petition. <input type="checkbox"/> settlement agreement.	
<input type="checkbox"/> affidavit. <input type="checkbox"/> department of social services report.	
<input type="checkbox"/> the following facts:	
OR	
<input type="checkbox"/> Reasonable efforts to prevent removal of the child from his or her home are not required pursuant to Virginia Code § 16.1-278.2 A 5.	
<input type="checkbox"/> Other: _____	

Note: Dispositional
Order form.
Includes Relief of
Custody.

10

RELIEF OF CUSTODY PROCESS



- § 16.1-277.02. (C.) “The court shall schedule a subsequent hearing within 60 days of the hearing held pursuant to this section: (a) to enter a final order of disposition pursuant to § 16.1-278.3 or (b) if the child is placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281.”
- (C1.) *Discusses standard for transferring custody of the child to a person with a legitimate interest.*
- (D.) *Discusses the use of an Adoption Progress Report when relevant.*
- § 16.1-278.3. Relief of care and custody. This section mainly restates the petition statute. Includes information on appeals.

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OTHER ALTERNATIVES



- **CSA Parental Agreement:**
 - Used by parents of children with severe emotional/behavioral problems in order to access residential treatment and not have to give up custody.
 - Court determines or FAPT uses CHINS checklist to determine eligibility for services.
- **Non-custodial Foster Care:**
 - A mechanism for parents to access out of home services for child and retain custody.
 - LDSS acts as the case manager.
 - Court is involved by reviewing CHINS petition, and arrangement is treated as a foster care case.
- **Temporary Entrustment Agreement:**
 - Parents voluntarily request that LDSS take custody of their child for a period of up to 180 days.
 - Goal is to return home or for adoption planning. The court approves a foster care plan when 90 days or longer.

12

BIG-PICTURE QUESTIONS



What is the petitioner seeking relief of custody trying to accomplish?

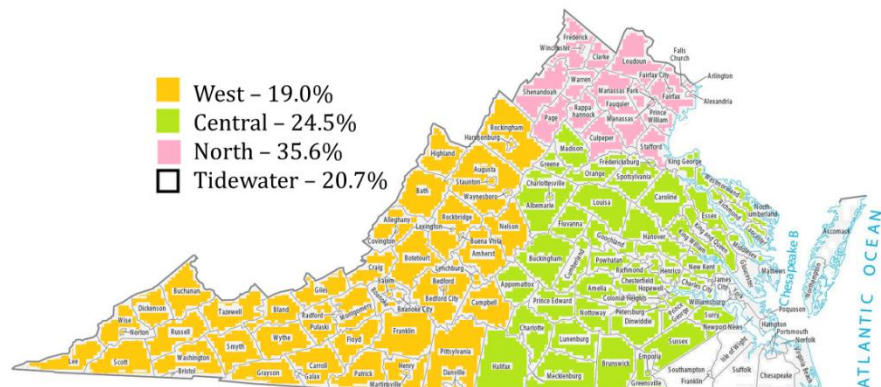
- Out of home placement
- Residential treatment
- Intensive in-home services
- Termination of parental rights
- Something else?

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JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



Relief of Custody Regions by Population



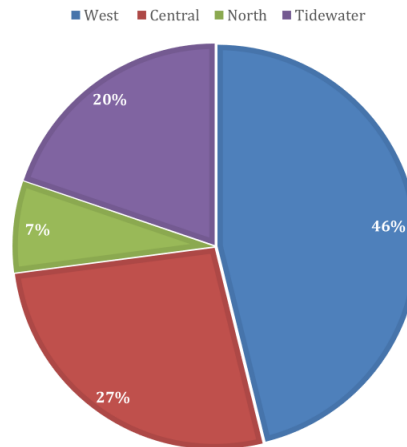
Note: Population data based on 2020 census. University of Virginia Weldon Cooper Center for Public Service. (2023). Virginia Population Estimates. Retrieved from <https://coopercenter.org/virginia-population-estimates>.

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JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



RELIEF OF CUSTODY PETITIONS FILED (REGION)



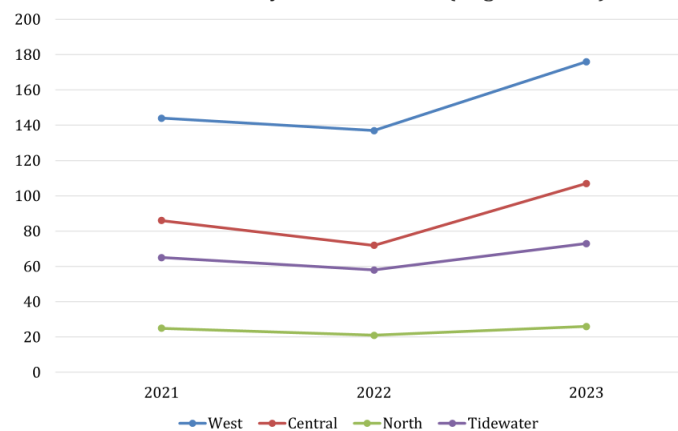
Note: Data from Office of the Executive Secretary, Supreme Court of Virginia, CY 2021-2023.

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JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



Relief of Custody Petitions Filed (Region x Year)



Note: Data from Office of the Executive Secretary, Supreme Court of Virginia, CY 2021-2023.

16

ROUNDTABLE DISCUSSIONS



- Social Services
- CSA
- Mental Health
- Schools
- Private Providers
- Families
- Judges



17

THEMES FROM PREVIOUS ROUNDTABLES



- By the time the petition is filed, it's usually too late
- Caregivers can only focus on getting quick fixes; not able to fully consider long-term consequences
- Caregivers don't know how to engage services earlier in the process/ they do not want services coming in the home / or are not available in a locality
- Schools are typically the first point of contact in the relief of custody timeline but are underequipped to provide support

18

THEMES FROM PREVIOUS ROUNDTABLES



- The appropriate role of the courts service units (CSU) is unclear to other local agencies.
- Uptick in cases involving out-of-state kids living with informal kinship placements in VA or dissolved adoptions.
- Judges expend a lot of energy trying to convince parents to problem-solve.
- Problems tend to crop up when a child is entering the teenage years, especially for international adoptions.

19

THEMES FROM PREVIOUS ROUNDTABLES



- Multidisciplinary teams could help address communications breakdown
- Judges in different areas of the state see more or less of the problem
- The timeline for hearing a petition from when it was filed varies widely from court to court

20

STUDY ACTIVITIES: GOING FORWARD



- Previous and upcoming regional roundtables
 - Southwest Virginia – June 24
 - Central Virginia – July 31
 - Northern Virginia – Aug. 26
 - Tidewater Virginia – Sept. 4
- Convene an Advisory Group – October 8
- Research other jurisdictions' relief of custody/ relief of custody-related processes
- Receive public comment
- Present findings and recommendations to the Commission in a final report

21

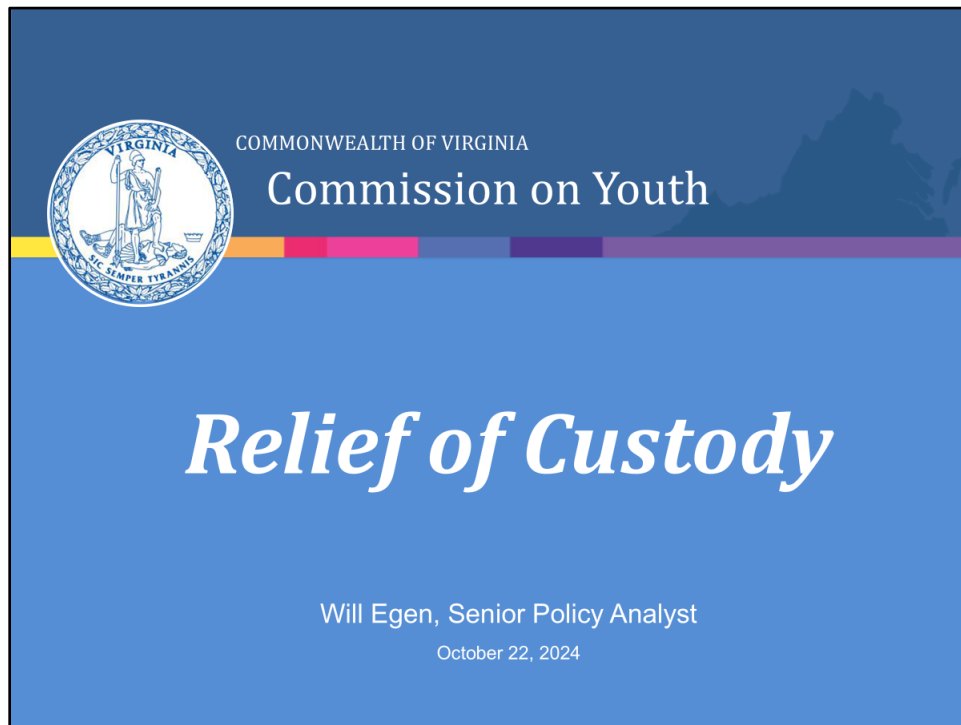



Questions/Comments?

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22



STUDY PLAN: MANDATE

- The Virginia Commission on Youth approved a recommendation at its November 20, 2023 meeting regarding the reported increased use of relief of custody to discuss, review, and make recommendations regarding the practice:
 - Direct the Commission on Youth to review concerns surrounding the increased use of temporary and permanent relief of custody to place a child in foster care. The Commission shall convene an advisory group to assess this concern. This advisory group shall include the Department of Social Services, Department of Behavioral Health and Developmental Services, Department of Juvenile Justice, the Court Improvement Program, Local Departments of Social Services, Community Services Boards, and other relevant stakeholders.

2

RELIEF OF CUSTODY IN THE *CODE OF VIRGINIA*



- Parents and caregivers have the legal right to petition for relief of custody of a child in their care under *Code of Virginia* § 16.1-277.02.
- There are two main *Code* sections for relief of custody.
 - Article 8. Adjudication: § 16.1-277.02. Petition for relief of care and custody.
 - Article 9. Disposition: § 16.1-278.3. Relief of care and custody.

3

ROUNDTABLE DISCUSSION



Previous regional roundtables:

- Southwest Virginia – June 24
- Central Virginia – July 31
- Northern Virginia – Aug. 26
- Tidewater – Sept. 4

Perspectives from the roundtable:

- | | |
|-------------------|---------------------|
| ▪ Social Services | ▪ Schools |
| ▪ Judges | ▪ Private Providers |
| ▪ CSA | ▪ CSU |
| ▪ Mental Health | ▪ Families |

4

THEMES FROM THE ROUNDTABLES



- By the time the petition is filed, it is usually too late to improve the family and home life situation
- Parents can only focus on getting quick fixes; not able to fully consider long-term consequences
- Parents do not know how to engage services earlier in the process/ they do not want services coming in the home / or are not available in a locality
- Schools are typically the first point of contact in the relief of custody timeline but are underequipped to provide support

5

THEMES FROM THE ROUNDTABLES



- Determining the proper role of the courts service units in directing parents at intake for services available in the community
- Concerns with law enforcement recommending relief of custody to parents in some localities
- Reported uptick in cases involving out-of-state children living with informal kinship placements in VA or dissolved adoptions
- Problems tend to crop up when a child is entering the teenage years, especially for international adoptions – related to underlying trauma

6

THEMES FROM THE ROUNDTABLES



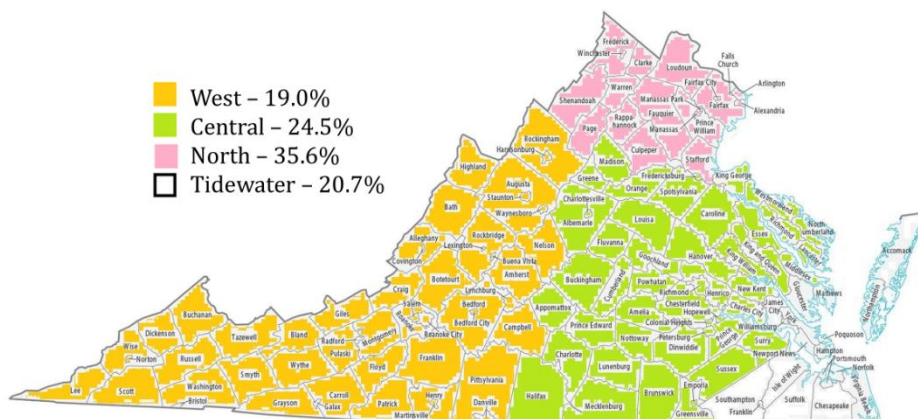
- Multidisciplinary teams could help improve communications between local agencies
- Judges in different areas of the state either see several cases a year or hardly any
- Desire, especially among judges, for requiring parent engagement in the Code of Virginia
- Misconception among parents that certain services can be accessed only if their child is in foster care
- CSA parental agreements and services may be underutilized

7

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



Relief of Custody Regions by Population



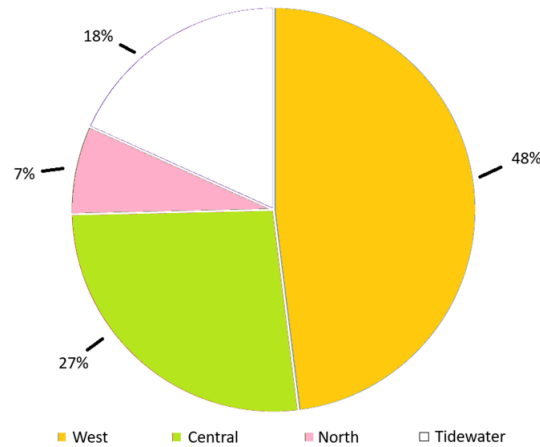
Note: Population data based on 2020 census. University of Virginia Weldon Cooper Center for Public Service. (2023). Virginia Population Estimates. Retrieved from <https://coopercenter.org/virginia-population-estimates>.

8

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



Relief of Custody Petitions Filed by Region
(2019 - Aug. 2024)



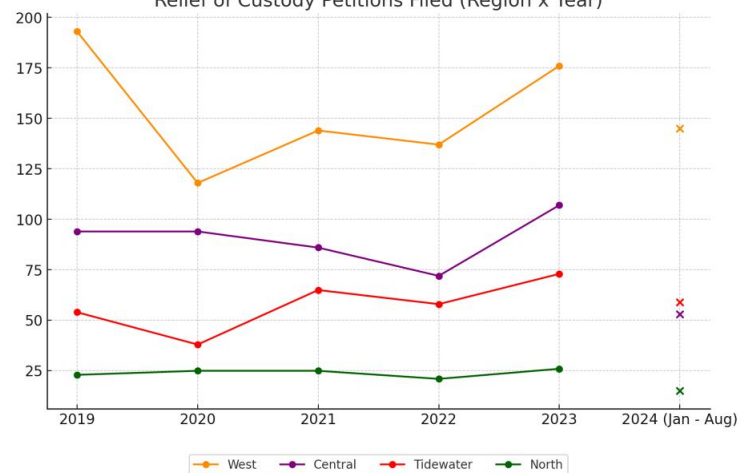
Note: Data from Office of the Executive Secretary, Supreme Court of Virginia, CY 2019-2024.

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JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



Relief of Custody Petitions Filed (Region x Year)



Note: Data from Office of the Executive Secretary, Supreme Court of Virginia, CY 2019-2024.

10

ADVISORY GROUP



- Advisory Group met in Richmond on October 8
- Group heard a presentation on roundtables themes and data
- Discussed draft recommendations



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ADVISORY GROUP MEMBERSHIP



- | | |
|--|---|
| ▪ Family Focused Treatment Association - VA Chapter | ▪ Virginia Association of Licensed Child Placing Agencies |
| ▪ Guardian Ad Litem | ▪ Virginia Commission on Youth |
| ▪ Juvenile & Domestic Relations District Court | ▪ Virginia Department of Behavioral Health and Developmental Services |
| ▪ Office of Children's Services | ▪ Virginia Department of Education |
| ▪ Office of the Children's Ombudsman | ▪ Virginia Department of Juvenile Justice |
| ▪ Office of the Executive Secretary, Supreme Court of Virginia | ▪ Virginia Department of Social Services |
| ▪ Senate of Virginia | ▪ Virginia House of Delegates |
| ▪ Virginia Association of Community Services Boards | ▪ Virginia League of Social Services Executives |
| ▪ Virginia Association of Licensed Child Placing Agencies | ▪ Voices for Virginia's Children |

12



Draft Recommendations

13



Draft Recommendations

Recommendation 1: Amend the *Code of Virginia* to standardize the pre-hearing “investigation” in § 16.1-277.02 (A) by requiring the local department of social services, at a minimum, put together a written home study report on the child and family.

The Department of Social Services shall create guidance for a template on what should be included in this home study. This template should include best practices, not limited to background on the full history of child and family (medical and mental health, legal, educational, information from providers), and the exploration of all relatives and fictive kin. Information on what services are being and have been offered to the child and family and potential use of a family partnership meeting should also be in the home study.

14

Draft Recommendations



Recommendation 2: Amend the *Code of Virginia* § 16.1-277.02 to require that when investigating a petition for Relief of Custody, the local department of social services shall refer the parent to the local Family Assessment and Planning Team (FAPT).

Recommendation 3: Amend the *Code of Virginia* § 16.1-277.02 (C) to include "a petitioner's diligent efforts to utilize services offered by the local department of social services or other agency (CSA, CSB)" as a factor in the judge's consideration of "good cause shown" for the petitioner's desire to be relieved of the child's care and custody.

15

Draft Recommendations



Recommendation 4: Amend the *Code of Virginia* to increase the standard of evidence for granting temporary Relief of Custody. Currently, temporary Relief of Custody requires "a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody." Permanent relief of custody requires "a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child."

This amendment to the *Code* would change the language in § 16.1-277.02 (C) to: "a finding, based upon a ~~preponderance of the evidence~~ *clear and convincing evidence*, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody."

16

Draft Recommendations



Recommendation 5: Amend the *Code of Virginia* § 2.2-5211 and 2.2-5212 to clarify that children in need of services are eligible for Children's Services Act (CSA) parental agreements and community based services.

Recommendation 6: Request that the Office of Children's Services work with local Children's Services Act coordinators to create a strategy to publicize community based services or parental agreements to relevant local partners and agencies as a viable option for families before they reach the point of petitioning for Relief of Custody.

17

Draft Recommendations



Recommendation 7: Request the Department of Social Services create guidance or initiate regulatory changes to strengthen the ability of adoptive families to find and obtain services in their current locality if the family has moved localities after an adoption is finalized. The Department of Social Services shall report back on these changes to the Commission on Youth by November 1, 2025, including if any changes to the Code are necessary to fully support this recommendation.

Currently, under § 63.2-1220, "the Department shall furnish a document listing all post-adoption services available to adoptive families to the State Registrar of Vital Records for distribution to adoptive parents pursuant to § 32.1-261." However, over time parents may lose track of this information or service availability may change.

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Draft Recommendations



Recommendation 8: Request that the Virginia Association of Licensed Child Placing Agencies, Family Focused Treatment Association, and other organizations representing licensed child placing agencies work with their members to ensure that pre-adoption training emphasize trauma-informed parenting, and cover topics including:

- commonly-occurring mental health and neurodevelopmental conditions
- child and adolescent development
- building and utilizing support systems
- supports available to adoptive families

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Draft Recommendations



Recommendation 9: Require that the Virginia Department of Education (VDOE) survey local education agencies (LEAs) to review i) how schools currently grant access to Local Departments of Social Services and Community Services Boards and ii) what school-based mental health options are available at each LEA.

Additionally, the results and feedback from this survey shall inform the continued development and improvement of guidelines for school professionals that support students and families that connect them with community resources that provide mental and behavioral health services. VDOE shall report back any findings and recommendations based on their survey to the Commission on Youth by November 1, 2025.

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Draft Recommendations



Recommendation 10: Request that the Virginia League of Social Services Executives compile and make available information gathered from local departments on best practices regarding collaboration between local agencies and judges regarding relief of custody. This should include details on the frequency of meetings, types of shared information, methods of communication, and recommendations for improving engagement. This recommendation will help provide local departments with model examples of where things are going well.

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Draft Recommendations



Recommendation 11: Request that the Department of Juvenile Justice develop best practices to distribute to its court service units for when a parent comes in to intake desiring to petition for relief of custody to inform them of services available in their community.

Recommendation 12: Request that the Virginia Sheriffs' Association and Virginia Association of Chiefs of Police with assistance from the Department of Social Services come up with best practices to distribute to its members on alternatives to relief of custody when they encounter families in crisis to inform them of services available in their community.

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PUBLIC COMMENT



- The Commission will be accepting written public comment through November 21
- Directions for submitting public comment will be posted on the Commission's website (<https://vcoy.virginia.gov>) following today's meeting
- The Commission will receive in person public comment and vote on draft recommendations at the November 25 Commission meeting, at 10:30 a.m. at the General Assembly Building

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Questions/Comments?

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