



COMMONWEALTH OF VIRGINIA

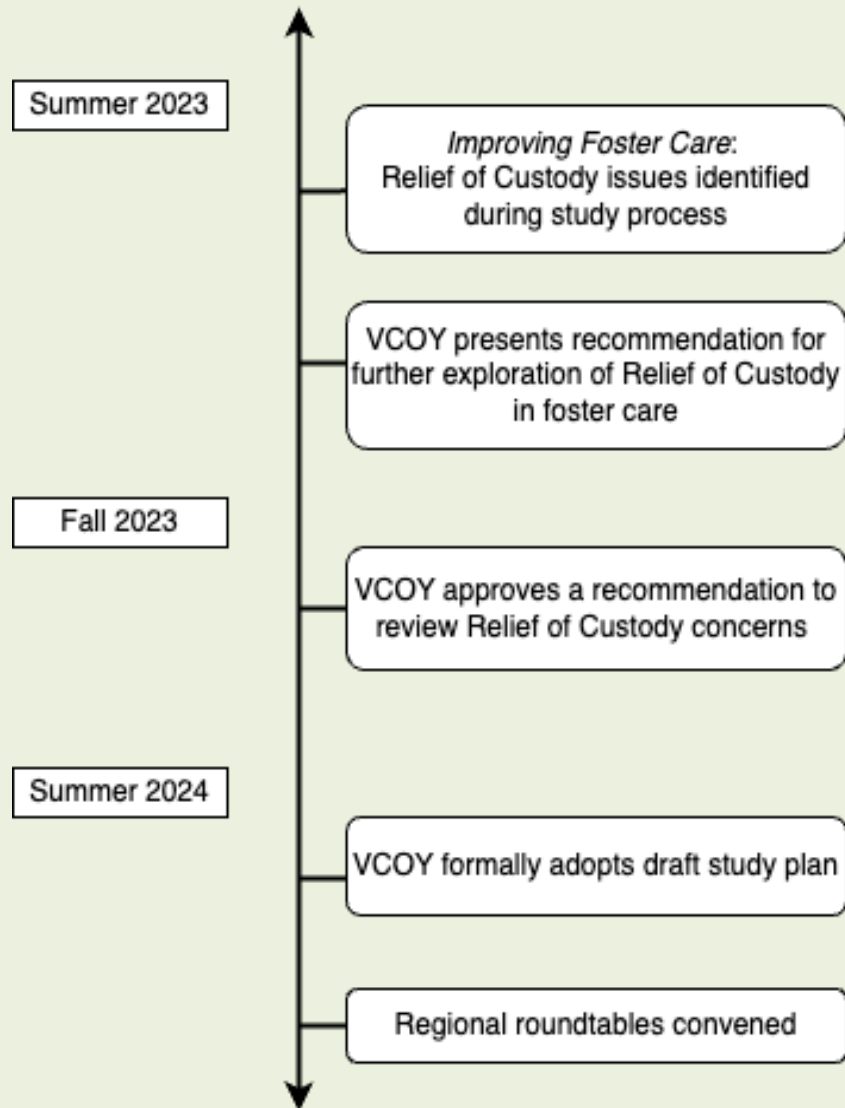
Commission on Youth

Relief of Custody

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STUDY PLAN: MANDATE



- 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



- 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.



- 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)



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”



- 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.”



- § 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.”



- § 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.”



- § 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.”

RELIEF OF CUSTODY PROCESS



UNDERLYING PETITION

Court Case No. _____

FOSTER CARE PLAN

Court Case No. _____

Relief of custody:

Based upon evidence presented upon adjudication of the petition filed pursuant to Virginia Code § 16.1-241 seeking relief of custody, **THE COURT FINDS:**

by a preponderance of the evidence, there is good cause for the petitioner's desire to be relieved temporarily of custody.

by clear and convincing evidence, granting the petition for permanent relief of custody is in the best interest of the child.

A separate ORDER FOR VOLUNTARY TERMINATION OF PARENTAL RIGHTS is attached and incorporated in this order.

OR

The court adjudicated the petition filed pursuant to Virginia Code § 16.1-241 seeking relief of custody on _____ DATE

Upon disposition of the petition, **THE COURT ORDERS:**

1. Relief of custody is granted.

2. For partial disposition, temporary custody of the child is transferred to _____

3. For final disposition, custody of the child is transferred to _____

PUBLIC OR PRIVATE CHILD-PLACING AGENCY OR INDIVIDUAL ADDRESS

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. A hearing shall be held on _____ DATE _____ TIME

for final disposition of the petition.

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. As this order, whether temporary or final, transfers legal custody of the child to a person with a legitimate interest, district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY, is attached and incorporated in this order.

6. The court has reviewed the preliminary protective order entered in this case on _____ DATE

and the order is dissolved or a final CHILD PROTECTIVE ORDER – ABUSE AND NEGLECT, district court form DC-532, is attached and incorporated in this order.

7. The parent _____ parent _____ parents guardian _____ shall provide the names and contact information for all persons with a legitimate interest to the local department of social services.

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. As custody of the child is transferred to a local board of social services, that:

a. Continued placement in the home would be contrary to the welfare of the child, based upon:

the facts contained in the following document(s), which is (are) incorporated by reference:

sustained petition. entrustment agreement.

affidavit. department of social services report.

the following facts:

AND

b. Reasonable efforts have been made have not been made to prevent removal of the child from the home, based upon:

the facts contained in the following document(s), which is (are) incorporated by reference:

sustained petition. entrustment agreement.

affidavit. department of social services report.

the following facts:

OR

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.

Other: _____

Note: Dispositional Order form. Includes Relief of Custody.



- § 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.



- **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.



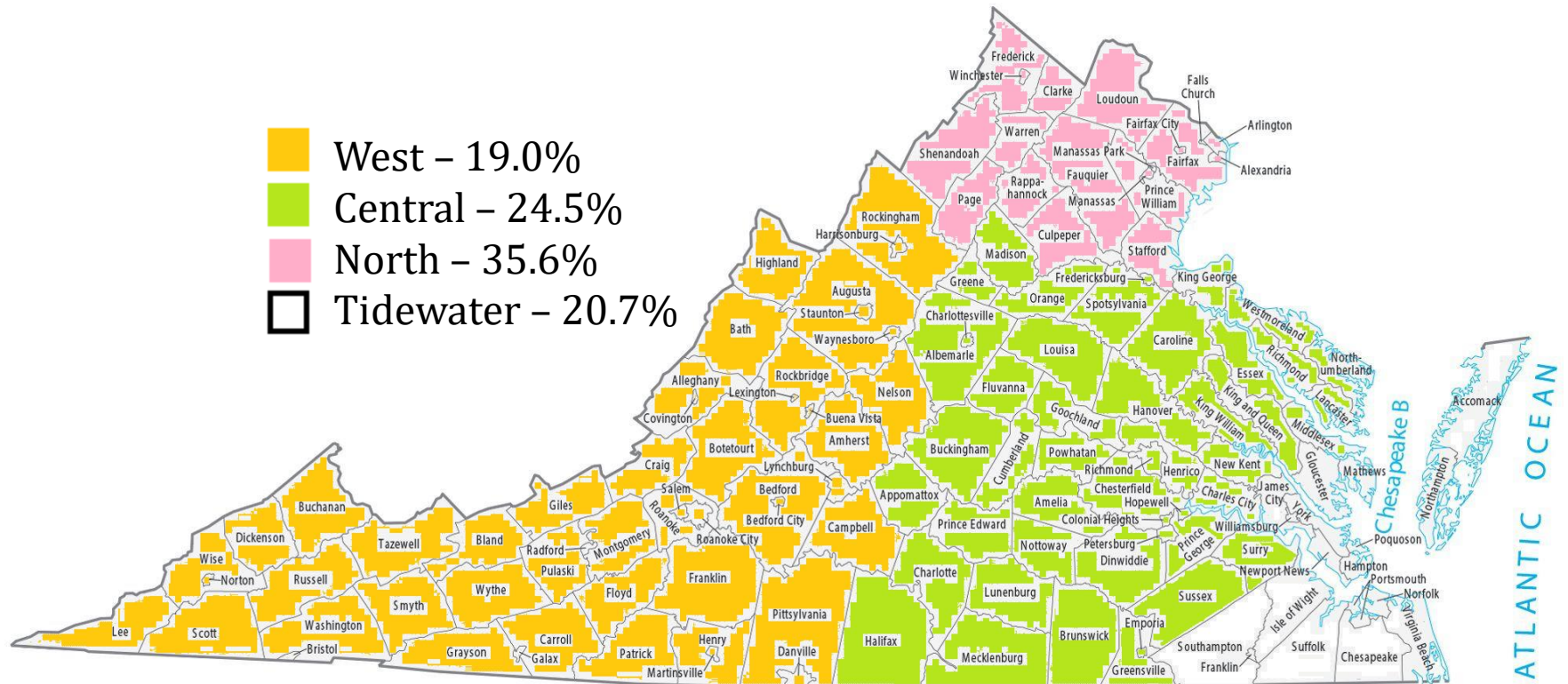
What is the petitioner seeking relief of custody trying to accomplish?

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

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



Relief of Custody Regions by Population

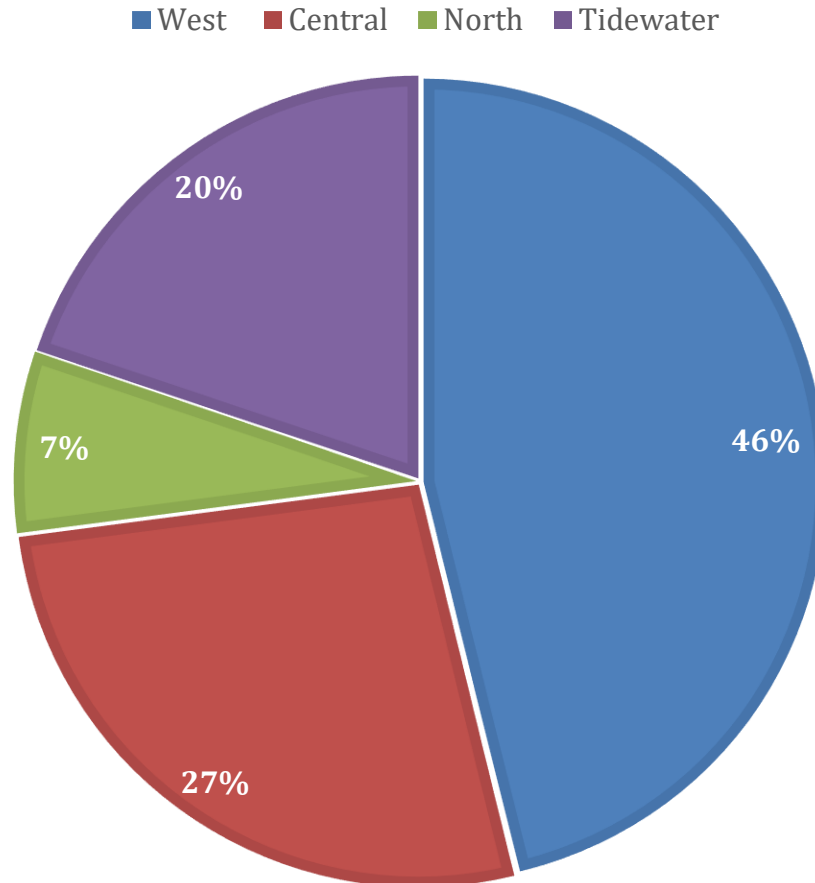


Note: Population data based on 2020 census. University of Virginia Weldon Cooper Center for Public Service. (2023). Virginia Population Estimates. Retrieved from <https://coopercenter.org/virginia-population-estimates>.

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT DATA



RELIEF OF CUSTODY PETITIONS FILED (REGION)

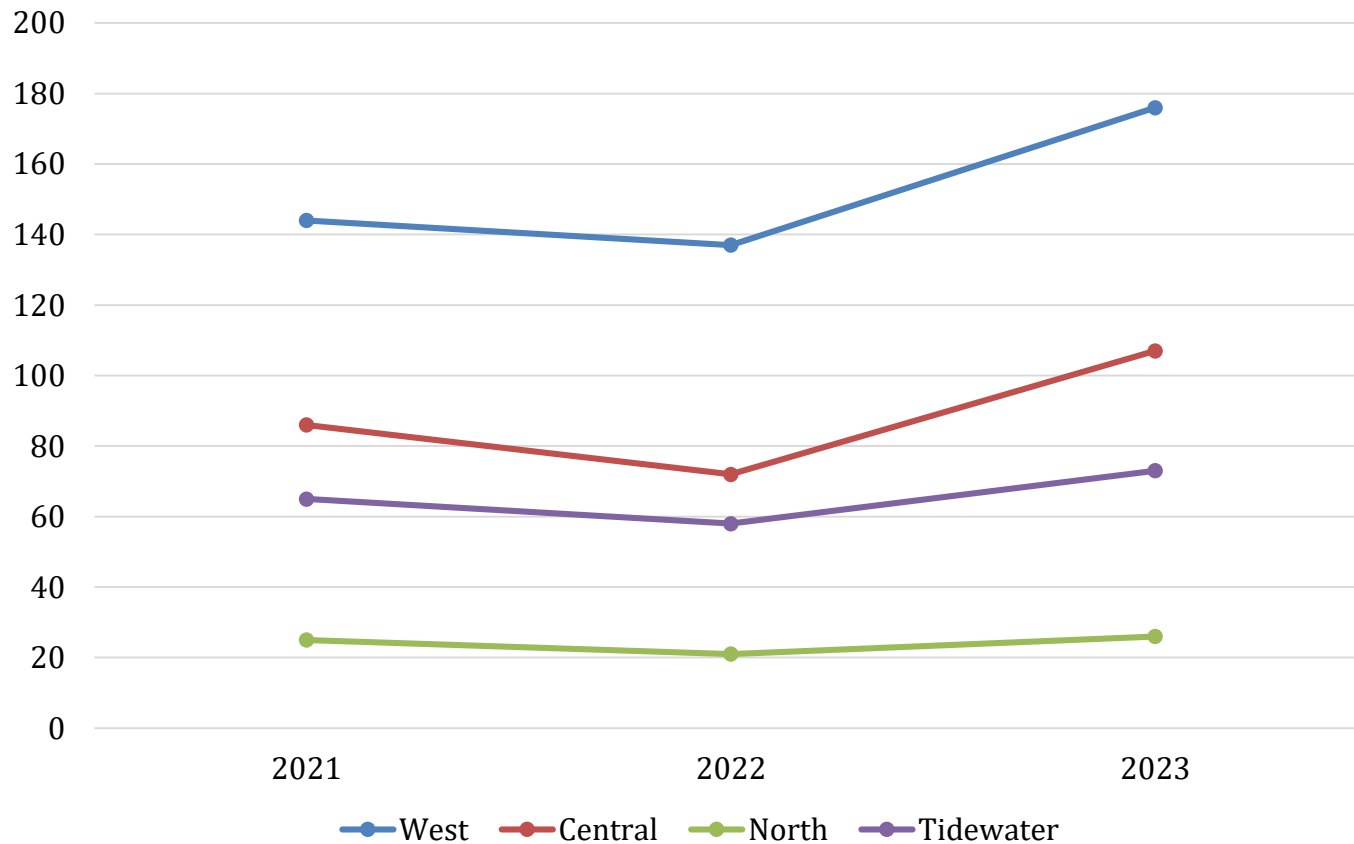


Note: Data from Office of the Executive Secretary, Supreme Court of Virginia, CY 2021-2023.

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.



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





- 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



- 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.



- 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



- 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



Questions/Comments?

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