

**REPORT OF THE
VIRGINIA COMMISSION ON YOUTH**

STUDY OF ADOPTION LAWS

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



SENATE DOCUMENT NO. 15

**COMMONWEALTH OF VIRGINIA
RICHMOND
2000**



COMMONWEALTH of VIRGINIA
Commission on Youth

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January 12, 1998

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TO: The Honorable James S. Gilmore, III, Governor of Virginia

and

Members of the Virginia General Assembly

The 1999 General Assembly, through Senate Joint Resolution 366, requested that the Virginia Commission on Youth "be directed to study the desirability of reorganizing adoption laws in Virginia."

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input into this report.

Respectfully submitted,

A handwritten signature in cursive script that reads "Phillip A. Hamilton".

Phillip A. Hamilton
Chairman

Delegate Eric I. Cantor
Delegate L. Karen Darner
Senator J. Randy Forbes

Senator R. Edward Houck
Delegate Thomas M. Jackson, Jr.
Delegate Jerrauld C. Jones
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Mr. Gary L. Close
Ms. Michelle J. Harris
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From the Virginia House of Delegates

Phillip A. Hamilton, Chairman
Eric I. Cantor
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Gary L. Close
Michelle J. Harris
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§ 9-292 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." § 9-294 provides the Commission the power to "...undertake studies and gather information and data in order to accomplish its purposes...and to formulate and present its recommendations to the Governor and members of the General Assembly."

The 1999 General Assembly enacted Senate Joint Resolution 366 requesting the Commission on Youth to conduct a study examining the adoption laws in the *Code of Virginia*. The study resolution further directed the Commission to determine whether the laws could be rewritten and/or reorganized in such a way as to give clearer and more consistent guidance to persons using the laws.

In fulfilling its legislative mandate, the Commission undertook the study.

II. Members Appointed to Serve

The authorizing legislation required the Commission on Youth to study Virginia's adoption laws. The Commission divided into three subcommittees for the purposes of conducting the studies assigned to them by the 1999 General Assembly Session. One of the three, designated as the Adoptions Laws Subcommittee, met in June and September, 1999.

The recommendations of the Subcommittee were forwarded to the full Commission at its November 12th legislative meeting and approved at that time. The members of the Adoption Laws Subcommittee are:

Mr. Gary Close (Commonwealth's Attorney, Culpeper), Subcommittee Chair
Del. Phillip Hamilton (Newport News)
Sen. Yvonne B. Miller (Norfolk)
Del. L. Karen Darner (Arlington)
Sen. J. Randy Forbes (Chesapeake)
Del. Thomas M. Jackson, Jr. (Carroll)
Del. Jerrauld C. Jones (Norfolk)
Del. Robert F. McDonnell (Virginia Beach)

III. Executive Summary

Pursuant to SJR 366, the Commission on Youth undertook the study of the Commonwealth's adoption laws to determine whether the laws could be rewritten and/or reorganized in such a way as to give clearer and more consistent guidance in adoption procedures. Many parties become involved in the adoption process, which entails both the severing of parental rights and then the establishment of parental rights through a new legal relationship. The courts in Virginia have held that there is no common law basis for adoption and therefore a strict adherence to the statutory procedures is

essential.¹ Given the importance of statutory construction in the adoption process, the study was designed to improve the usability of these statutes.

The findings of the study are based on several different methodologies. Information gathered through telephone surveys of adoption specialists, (social workers, attorneys, adoptive parents, birth parents, adoptees) provided the basis for the identification of key study issues. Each of these constituent groups was represented on a study Workgroup convened to provide input and expertise to the commission. Staff attorneys from the Division of Legislative Services also participated in the Workgroup and drafted proposed legislation. Commission staff designed and disseminated surveys to all 32 of Virginia's licensed child placing agencies in order to gather feedback. Finally, as part of its review of the Adoption Assistance Program, Commission staff analyzed data provided by the Department of Social Services and received feedback on proposed policy changes from several directors of local departments of social services.

There is consensus among members of the adoption community that the statutory framework of Virginia's adoption laws is lengthy, complex and confusing. Adoption reform efforts in Virginia over the last decade have led to multiple changes to the Code. Selected sections and subsections should be reorganized to read more clearly. Language in some sections is ambiguous and needs clarification. The Adoption Assistance Program, which provides money and/or services to adoptive parents of children with special needs, is not implemented consistently throughout Virginia. Additional statutory and policy guidance is needed in order to ensure that the program meets its stated goals.

The following recommendations are made pursuant to SJR 366, the Study of Virginia's Adoption Laws:

Finding

The Code of Virginia's chapter and subsections on adoption are complex and confusing. The Code has been amended numerous times over the years and some sections have become unduly long and complicated. Many practitioners have difficulty using the Code for guidance.

Recommendation 1

Repeal Chapter 11, Adoption, and reorganize as new chapter. Create General Provisions and set out separate article for each type of adoption (i.e., parental placement, agency placement, stepparent, adult adoption).

Finding

Language in certain sections of the Code is ambiguous. Clarification is needed in four identified areas.

¹ Virginia CLE, Adoption Procedures and Forms: A Guide for Virginia Lawyers, 1998.

Recommendation 2

Amend the Code to require that birth parent receive a copy of the entrustment agreement which he/she signed. Entrustment agreement shall include instructions for revocation as described in § 63.1-220.2.

Recommendation 3

Amend the Code to define proceedings as "the petition for consent to the adoption, the date and location of the consent hearing."

Recommendation 4

Amend the Code to describe the birth father's responsibilities if he objects to the proposed adoption. Require that objection be in writing and that the birth father appear in Court.

Recommendation 5

Maintain current statutory construction regarding non-written statements and consent outside Virginia. Any information which is material to the adoption should be in writing and any additional burden is balanced by upholding Virginia's policy regarding adoption procedures.

Finding

Section 63.1-233 describes the legal effects of adoption. However, adoptive parents' rights to testify as parents in criminal proceedings have been called into question.

Recommendation 6

Amend the Code to clarify that an adopted person is the child of an adoptive parent and, as such, the adoptive parent is entitled to testify in all civil and criminal cases.

Finding

Adult adoptees desire access to original birth certificates and adoption records without consent of birth parents. Birth parents and some adoption workers oppose such access as a violation of confidentiality. Changing the law regarding access to records is a major policy change which has been reviewed and addressed in earlier adoption reform efforts.

Recommendation 7

Maintain current provisions related to access to records.

Finding

The Adoption Assistance Program, designed to provide financial assistance and services to parents who adopt children with special needs, is administered through departments of social services. Variability exists from one locality to another in the amount and type of information provided to adoptive parents about the program.

Recommendation 8

Amend the Code to include the purpose of the Adoption Assistance Program as, "to facilitate adoptive placements and ensure permanency for children with special needs."

Recommendation 9

Amend the Code to require the local board of social services or licensed child placing agency to provide adoptive parents with appropriate information to include: their child's eligibility for subsidy; their child's special needs; and, to the extent possible, the current and potential impact of those special needs.

Findings

Adoption assistance agreements developed at the time of the adoption may no longer be appropriate as the child gets older. There is currently no requirement for a regular review of the agreement.

Recommendation 10

Amend the Code to require annual review of the adoption assistance agreements.

Findings

An appeal process is in place in the event that there is disagreement between the adoptive parents and the local board of social services about the terms of adoption assistance which cannot be resolved by the locality. Local departments do not consistently inform parents about the process for appealing the adoption assistance decisions.

Recommendation 11

Amend the Code to require that the local board or licensed child-placing agency inform adoptive parents of their right to appeal agreements and the process for that appeal, prior to entering into an adoption assistance agreement.

Findings

Responsibility for subsidy payments by the local department of social services is continued if the adoptive parents move to another jurisdiction within or outside of the Commonwealth. This policy has been unclear to some localities.

Recommendation 12

Amend the Code to specify that the local department of social services with which the adoption assistance agreement was initiated is responsible for continuing the subsidy payments if the family moves to another locality.

Findings

Training in the negotiation and subsequent development of an adoption assistance agreement has not been provided to all local workers.

Recommendation 13

Direct the Department of Social Services (DSS) to provide regular ongoing training in order to empower local staff to represent the policies of the Department. Training should include adoption assistance policies and procedures, assessment of needs for services, and negotiation of agreements. DSS regional offices should have staff with designated responsibility for supporting local departments in all areas of Adoption Assistance. Such support should include assessment of subsidy needs, negotiation of agreements and conflict resolution. DSS should develop a mechanism for engaging regional office staff as early in the process as necessary to ensure that the best interests of the child and the Department are met.

Findings

Adoption assistance agreements are negotiated between adoptive parents and local departments of social services. Great variability exists from one locality to another in the usage of Adoption Assistance, in the amount of payments, in the types of services provided, and in the post-adoption monitoring of agreements.

Recommendation 14

Direct the Department of Social Services to clearly articulate its philosophy and policy regarding adoption assistance and to revise its policy manual within the next year. The following areas should be addressed in Department policy:

- **Goal:** The purpose of Adoption Assistance is to facilitate adoptive placements and ensure permanency for children who are hard to place.
- **Fiscal policy:** Adoption assistance is funded with state and federal dollars, passed through local departments on behalf of children with special needs. Local departments are expected to demonstrate good stewardship of funds while ensuring that all eligible children receive needed services.
- **Eligibility:** Eligibility is based on special needs of the child. Potential adoptive parents of all eligible children should be informed of their child's eligibility for adoption assistance.
- **Adoptive parents as fully informed decision makers:** Adoptive parents should receive clear, accurate information about their child's potential need for special services. Counseling related to the child's special needs and implications of those needs as the child grows older should be available to all adoptive parents.
- **Appeal:** Parents and local department social workers should work together to identify needs and resources and to develop adoption assistance agreements. The appeal process should be explained to parents before these negotiations begin.
- **Annual review:** Adoption assistance agreements should be monitored and reviewed with adoptive parents at least annually to determine whether changes need to be made.

IV. Study Goals and Objectives

On the basis of the requirements of SJR 366, the following study objectives were developed by the staff and approved by the Commission:

- A. Examine the adoption laws in the *Code of Virginia*;
- B. Determine code sections in need of reorganization and clarification;
- C. Revise and reorganize relevant statutes; and
- D. Examine the Adoption Assistance Program and determine need for changes.

In response to study objectives, the following activities were undertaken:

1. Identification of statutory inconsistencies;
2. Review of relevant federal legislation;
3. Review of previous legislative and executive branch studies;
4. Coordination with Supreme Court of Virginia's Court Improvement Program - Adoption and Foster Care;
5. Identification of concerns of affected interest groups:
 - Adoptive parents
 - Birth parents
 - Adoptees
 - Social Workers
 - Attorneys
 - Judges
6. Development and facilitation of study workgroup to discuss issues and develop recommendations;
7. Survey of licensed child placing agencies and analysis of survey data;
8. Analysis of Adoption Assistance and child placement data;
9. Assessment of implementation of Adoption Assistance Program at local level;
10. Gathering and analysis of feedback from local program directors; and
11. Revision of *Code* based on review of information.

V. Methodology

The findings of the 1999 Commission on Youth study of Virginia's adoption laws are based on several different methodologies. The primary purpose of the study was to determine whether the adoption laws could be rewritten and/or reorganized in order to give clear and consistent guidance to persons using the laws. This purpose guided the methodological approaches which are discussed briefly in the following pages.

A. STATUTORY ANALYSIS

Contact with the National Adoption Information Clearinghouse and the National Council of State Legislatures provided a starting point for analysis of State Adoption Codes. Like Virginia, a number of states have recently amended their adoption statutes in response to calls for adoption reform and new federal legislation. However, comparisons among states' statutory frameworks have been kept to a minimum since there are significant differences in court system structures from one state to another. Except for a few selected areas of language clarification, cross-state comparisons were of limited value.

B. TELEPHONE SURVEY

In beginning the study, Commission staff conducted a telephone survey with adoption specialists from both the public and private sectors, adoption attorneys, adoptive parents, adult adoptees and birth parents who had placed children for adoption. Approximately 25 individuals were contacted. The goal of the telephone survey was to identify key issues for further study. Contacted individuals were asked to identify those areas of Virginia's adoption laws which were unclear, inconsistent, and in need of revision. Commission staff analyzed these responses and identified ten common areas of concern. Commission members used this information to determine the scope of the study.

C. COORDINATION WITH COURT IMPROVEMENT PROGRAM

The goal of the Court Improvement Program, an initiative of the Supreme Court of Virginia, is to improve the court's processing of child abuse, neglect, and foster care cases. The specific objective of this improvement is to reduce the amount of time children spend in foster care and to achieve permanency for every child who enters the foster care system as early as possible. This objective is consistent with the focus of the federal Adoption and Safe Families Act of 1997, to expedite permanency planning for children, emphasize child safety and promote adoption where appropriate. The Court Improvement Program, in conjunction with the Department of Social Services, is reviewing the option of placement for adoption of children in the foster care system, and the related court services and procedures which make this permanent goal achievable. Commission staff coordinated efforts with Court Improvement Program staff in order to avoid duplication of efforts.

D. ANALYSIS OF PREVIOUS STUDIES

Over the last several years, adoption has been the subject of a number of legislative and executive branch studies. Four previous legislative and executive branch studies on adoption from 1975 to 1998 were reviewed. These studies have addressed statutory, policy, and administrative issues. Commission staff reviewed each of the previous studies and analyzed the changes made and/or recommended as a result of each.

E. WORKGROUP MEETINGS

As directed in SJR 366, the Commission sought input from judges, the American Academy of Adoption Attorneys, adoption advocacy groups, birth parents, adoptive parents, adopted persons, child placing agencies and other interested persons. Each of these constituent groups was represented on the Workgroup convened to provide input to the study. A listing of Workgroup members is provided in Appendix B. The Workgroup met twice in the summer of 1999 and made recommendations for change in the organization of the *Code* and for clarification of language in specified areas. Members also provided feedback on draft legislation. While the Workgroup recognized that their charge was limited to a technical revision and reorganization of the *Code*, policy issues occasionally arose. Selected issues were discussed in the context of information-sharing and are presented later in this report.

F. WRITTEN SURVEY OF LICENSED CHILD-PLACING AGENCIES

Thirty-two private agencies are licensed by the Virginia Department of Social Services to place children for adoption. A number of these agencies were represented on the workgroup and/or were contacted in the initial telephone survey. Commission staff developed and disseminated surveys to all 32 agencies in order to gather feedback on the adoption laws, on the proposed amendments to the *Code*, and on the costs associated with adoption. A copy of the survey is found in Appendix C.

G. ADOPTION ASSISTANCE DATA ANALYSIS

The Adoption Assistance Program provides financial assistance and services to adoptive parents on behalf of children with special needs. Adoption assistance agreements are negotiated between adoptive parents and local departments of social services. Great variability exists from one locality to another in the amount of assistance and the nature of services provided through Adoption Assistance. Commission staff analyzed data provided by the Department of Social Services related to determination of eligibility, expenditures for adoption assistance, and the number of children receiving assistance in each locality. Analysis of trends of types of adoption in Virginia over the last decade was also conducted. Additional feedback about the adoption assistance program was gathered from directors of local departments of social services.

VI. Background

Adoption is a legal process which creates the relationship of parent and child between individuals who are not each other's biological parent and child. Over the years, adoption has come to be accepted as a desirable solution for children whose biological parents are unable to raise them or who cannot be reunited with parents and thus need permanent homes. Outcome studies have shown that adoption creates for children a degree of stability, security, and psychological belonging unmatched by any other form of substitute care.²

Many parties become involved in the adoption process which includes both severing of parental rights and the establishment of parental rights through a new legal relationship. Virginia's adoption laws are a critical part of that process.

SJR 366 directed the Commission to study the Commonwealth's Adoption Laws and to determine whether they could be rewritten and/or reorganized in such a way as to give clear and consistent guidance to persons using the laws. The resolution described Virginia's adoption laws as "lengthy, complex, and confusing." Such confusion is not unique to Virginia. A report on adoption published by the Center for the Future of Children reported that efforts to improve adoption laws have persistently been undermined by the difficulty of achieving a consensus about how the legal system can balance the psychological and social needs of birth parents, adoptive parents and adoptees.³

² Behrman, R.E., Ed. (1993) The Future of Children: Adoption . Center for the Future of Children, The David and Lucille Packard Foundation. Los Angeles, CA.

³ Hollinger, J.H. (1993) Adoption Law in The Future of Children : Adoption. Center for the Future of Children, The David and Lucille Packard Foundation. Los Angeles, CA.

Adoption law is complicated not only by virtue of the types of people and family relationships involved but also by the number of governmental entities which have authority for regulation of adoption. For the most part, adoption is subject to state, rather than federal laws. Within states, these laws have not been consistently applied by the courts, lawyers, or child welfare agencies. In Virginia, the bifurcated court system which requires that birth parents' rights be terminated in the Juvenile and Domestic Relations District Court before the adoption proceeds in the Circuit Court, has added to the confusion of practitioners and parents.

A number of federal statutes and constitutional principles also pertain to adoption. The Indian Child Welfare Act governs the adoption of Native American children. Federal immigration and naturalization laws regulate the entry into this country of adoptees who are born in other countries. The Federal Adoption Assistance and Child Welfare Act provides guidelines and reimbursements to states for assisting families who adopt children with special needs.⁴ The Adoption and Safe Families Act of 1997, widely regarded as the most significant piece of federal child welfare legislation in almost 20 years, required numerous changes to state laws and policies.⁵ Other provisions in federal welfare, social security, and tax laws also affect adoptive relationships. Finally, many U.S. and Virginia Supreme Court rulings have significant implications for adoption law and practice.

A. ADOPTION REFORM EFFORTS - NATIONAL LEVEL

From landmark federal legislation passed twenty years ago, through current legislation before Congress, the federal government has had a key role in reforming laws to protect children whose parents are unable to care for them. The Adoption Assistance and Child Welfare Act of 1980 sought to prevent unnecessary separation of children and families, improve prevention and reunification efforts, and ensure that children did not drift in foster care. More recently, in response to growing dissatisfaction with the child welfare system and in recognition of reform efforts and innovations underway in many states,⁶ Congress enacted the Adoption and Safe Families Act (ASFA) of 1997. The goals of ASFA are to clarify the requirement for "reasonable efforts" to preserve and reunify families, expedite the process of placing children with permanent families when they cannot return home, emphasize child safety and promote adoption when appropriate. More specifically, ASFA:

- defines when states must initiate proceedings to terminate parental rights and immediately seek permanent placements;
- requires states to make reasonable efforts to find permanent homes for children who cannot safely be returned to their parents;
- accelerates the time frame for permanency hearings; and
- provides incentive payments to states to increase the number of adoptions of foster children.

⁴ 42 U.S.C., sections 620-28 and 670-76.

⁵ Christian, S. (1999) 1998 State Legislative Responses to the Adoption and Safe Families Act of 1997. National Conference of State Legislatures. Denver, CO.

⁶ Ibid.

Many of the changes in ASFA were modeled on existing state statutes. Several states had already passed legislation expediting the permanency process and expanding the cases which do not require reasonable efforts at reunification.

For the most part, ASFA left it to states to determine which federal requirements must be incorporated in state statutes. In 1998, 38 states enacted ASFA-related legislation⁷, but no state has enacted legislation to cover every ASFA mandate. States have determined that at least some of the law's requirements are best implemented by changes to administrative regulations, court rules, or internal agency policy, rather than state law.

In addition to ASFA regulations, the other impetus for reform of adoption laws around the nation has been the issue of access to adoption records. This concerns the desire of adoptees to gain access to information about their background and to break through legal barriers that have traditionally mandated anonymity, confidentiality, and the sealing of adoption records. Non-identifying information in sealed adoption records is generally available to adoptive parents and to adoptees at age 18 or 21, but identifying information has not been available, except upon a judicial finding of "good cause" or upon the mutual consent of the parties involved (adoptees and birth parents). Only the states of Alaska and Kansas have allowed access to original birth certificates and adoption records. Tennessee and Oregon recently passed similar legislation. All other states require mutual consent.

For more than 50 years, confidentiality has been an important element of adoptions in this country.⁸ Confidentiality is said to serve the privacy interests of birth and adoptive parents. Adoptees argue that they are constitutionally entitled to information about their birth history, and have become much more active in efforts to gain access to their records. Conflicts exist over the degree to which confidentiality and anonymity may be waived between members of birth and adoptive families, either consensually, by court order, or legislative mandate. Because of the intensity of these conflicts, many state legislatures continue to debate this issue.

B. ADOPTION REFORM EFFORTS - VIRGINIA

The General Assembly, the Department of Social Services, the Virginia Supreme Court and members of Virginia's adoption community have been very active in efforts to improve adoption law and practice. As early as 1977, the Joint Subcommittee on the Placement of Children for Adoption concluded that the best interests of children, birth parents, and adoptive parents were served by regulating who could place children for adoption. Placement of children for adoption was limited to birth parents or legal guardians, local departments of social services, and licensed child-placing agencies. Additional procedural safeguards approved by the 1978 General Assembly required consent to parental placement adoptions be executed before the Juvenile and Domestic Relations District Court and that birth parents have opportunities for counseling.⁹

⁷ Ibid.

⁸ Hollinger.

⁹ Joint Subcommittee on the Placement of Children for Adoption. (1978). Report to the Senate Committee on Rehabilitation and Social Services and the House Committee on Health, Welfare, and Institutions. Senate Document 18. Richmond, VA.

In 1989, the Joint Subcommittee Studying Direct Adoption Placement and Unauthorized Placement Activity added further protections for parental placement adoptions. The General Assembly approved subcommittee recommendations that an adoptive home study be performed early in the adoption process. In addition, requirements for the provision of counseling for both birth and adoptive parents were expanded to ensure that decisions were informed and uncoerced. Birth and adoptive parents were required to exchange identifying information and to disclose financial arrangements.¹⁰

The Joint Subcommittee Studying the Commonwealth's Adoption Laws, convened in response to a 1994 General Assembly resolution, also focused its efforts on parental placement adoptions. The subcommittee concluded that Virginia's adoption laws were fundamentally sound but that certain revisions could be made which would better accommodate the parties' intentions, better protect the interests of all parties, and minimize technical challenges to adoption proceedings. Resulting legislation passed in 1995 required a timely appearance by the birth parent in court and specified enforcement mechanisms. Additional provisions required docket preference for the consent hearing, provided a Class 6 felony penalty for provision of false information in writing and under oath, and strengthened an existing Code section related to final order of adoption. The amended section states that a final order of adoption is not subject to attack after six months "for any reason, including but not limited to fraud, duress, failure to give required notice, failure of any procedural requirement, or lack of jurisdiction over any person."¹¹

In 1999, pursuant to HJR 264, the Department of Social Services conducted a study of the barriers to adoption. This study addressed three issues related to the adoption of children in Virginia:

- The need to help children in foster care achieve the goal of adoption more quickly so that they are not further traumatized by not having a permanent attachment to a family;
- The need to ensure that children with special needs receive the financial assistance they need in order to obtain a stable, permanent home through adoption; and
- The need to educate unwed, pregnant women and their families to get them to view adoption as a viable option in their choices of dealing with pregnancy resolution.¹²

¹⁰ Report of the Joint Subcommittee Studying Direct Adoption Placement and Unauthorized Placement Activity. (1989). House Document 67. Richmond, VA.

¹¹ Report of the Joint Subcommittee Studying the Commonwealth's Adoption Laws (1995). House Document 65. Richmond, VA.

¹² Report of the Virginia Department of Social Services Study of Barriers to Adoption (1999). House Document 35. Richmond, VA.

As a result of this study, the Department made the following recommendations:

- Implement the recommendations of the legislative study on Foster Care and Adoption Staffing Needs to increase staffing in local agencies by adding 172 additional workers and 20 supervisors in foster care and adoption;
- Educate local departments of social services and Community Policy and Management Teams about using CSA funds to purchase adoption services for children in foster care;
- Allocate additional funds for contracting with private child placing agencies to provide adoption services;
- Continue to support families adopting children with special needs through adequate funding of the adoption assistance program;
- Develop a module on adoption to be included in Family Life Education in public schools;
- Conduct a public awareness campaign to educate the general public and other professionals about adoption; and
- Work with other organizations to develop educational courses on adoption to be included in counseling sessions with unwed pregnant women.

An additional recommendation was made pursuant to the review of study findings. The Department recommended establishment of a joint subcommittee to study the feasibility of restructuring adoption services in Virginia.

The 1999 General Assembly approved \$432,231 in General Funds and \$6.5 million in federal (TANF) funds for local departments to hire 172 social workers and 29 supervisors for foster care and adoption casework. The General Assembly also funded the Adoption Assistance Program to the full amount requested by the Department of Social Services (\$19.9 million). Other study recommendations have not yet been implemented.

Like other states, Virginia has worked to bring adoption laws into compliance with the Adoption and Safe Families Act. This effort has been the focus of the Court Improvement Program, an initiative of the Supreme Court of Virginia. It is the goal of the Court Improvement Program to improve the court's processing of child abuse and neglect and foster care cases. The objective of this improvement is to reduce the amount of time children spend in foster care and to achieve permanency for every child who enters the foster care system as early as possible, but no later than two years from the child's initial placement in foster care.¹³ In 1998, as a result of the work of the Court Improvement Program, Virginia enacted changes to the *Code* for expedited permanency planning hearings and termination of parental rights to facilitate the placement of certain children for adoption. These changes bring Virginia into compliance with the principles of ASFA. The Court Improvement Program continues to review the option of placement for adoption of children in the foster care system, in relation to the court services and procedures which make this permanent goal achievable.

¹³ Hopper, L. (1999). Work of the Court Improvement Program - Foster Care and Adoption - Which Relates to Study of Adoption Laws. Presentation to Virginia Commission on Youth. Richmond, VA.

A summary of the various legislative and executive branch studies on adoption and their resulting recommendations are provided in Exhibit 1.

**Exhibit 1
Adoption Reform in Virginia - General Assembly Actions
1978-1999**

YEAR	STUDY/ACTIVITY	CHANGES TO ADOPTION STATUTES
1978	Joint Subcommittee on the Placement of Children for Adoption	<ul style="list-style-type: none"> • Placement for adoption limited to parents/guardians, local departments of social services, or licensed child-placing agencies. • Required parental consent to adoption in J&DR Court • Required counseling be provided to birth parents
1989	Joint Subcommittee Studying Direct Adoption Placement	<ul style="list-style-type: none"> • Required adoptive home study early in adoption process • Required counseling for both birth and adoptive parents • Required disclosure of financial arrangements
1995	Joint Subcommittee Studying the Commonwealth's Adoption Laws	<ul style="list-style-type: none"> • Required timely appearance by birth parent for consent hearing • Allowed the Court to grant the adoption petition without consent of birth parent if the Court finds consent is being withheld contrary to best interest of the child. • Required docket preference for consent hearing • Added specific requirements for revocation of consent. • Provided penalty for provision of false information • Broadened and clarified what expenses may be paid for adoption on behalf of birth parents. Reduced penalty for violation from Class 5 to Class 6 felony. • Clarified that in step parent adoptions, home study is required only if the Court determines one is necessary. • Strengthened final order of adoption
1999	Department of Social Services Study of Barriers to Adoption	<ul style="list-style-type: none"> • Added \$6.9 million for 172 social workers and 29 supervisors for local foster care and adoption casework • Approved \$19.9 million for Adoption Assistance
1999	Supreme Court of Virginia Court Improvement Program - Foster Care and Adoption	<ul style="list-style-type: none"> • Required permanency planning hearings be held 11 months after child's dispositional hearing • Expedited filing for termination of parental rights • Expanded list of situations in which reasonable efforts to reunify families are not required • Required filing of Adoption Progress Report every six months after termination of parental rights until final order of adoption.

Source: Virginia Commission on Youth Graphic/Analysis of the Code of Virginia, 1999

C. ADOPTION IN VIRGINIA - CURRENT LAW AND PRACTICE

There are several different types of adoption allowed under the Virginia Code. Each has different requirements, but all must strictly adhere to the applicable Code sections. A brief description of each type of adoption and of study issues and activities unique to each type is offered below.

Agency Placement Adoptions

An agency placement adoption occurs when a public or private child-placing agency accepts custody of a child and the parental rights of the birth parents are terminated. Grounds for termination are statutorily defined and generally arise when a child must be removed from his or her home for the child's own protection or when the parents enter into an entrustment agreement and voluntary termination.

The Juvenile and Domestic Relations District Court may terminate parental rights of those parents who are not able to care for their children according to considerations set out in §16.1-283 of the Virginia Code. These considerations are based upon the best interests of the child and include:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time;
2. The parent or parents are suffering from a severe mental or emotional illness and there is no reasonable expectation that such parent will be able to undertake responsibility for the child;
3. The parent or parents have habitually abused or are addicted to liquors, narcotics or other dangerous drugs and have not responded to or followed through with recommended and available treatment;
4. The parent or parents have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts designed to reduce, eliminate or prevent the neglect or abuse of the child;
5. The parent or parents have failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care;
6. The parent or parents have been unwilling or unable within a reasonable period of time, not to exceed twelve months from the date the child was placed in foster care, to remedy substantially the conditions which led to or required continuation of the child's foster care placement; and
7. The parents' whereabouts cannot be determined after diligent efforts to locate them, and no other family members have come forth to claim the child within six months of the child's placement in foster care.

Birth parents may voluntarily terminate parental rights after a child is at least ten days old by executing an entrustment agreement with a child-placing agency. Birth parents have 15 days after the execution of the agreement to revoke the entrustment, and must do so in writing to the agency (§63.1-220.2). Current Virginia law does not require that birth parents receive a copy of the entrustment agreement that they have executed, nor that they receive written instructions related to revocation of the agreement.

Once parental rights are terminated and the revocation period has expired, a child may be placed by the agency with a suitable adoptive parent or family. Virginia Code requires that the adoptive parents have their home study completed and approved before receiving a child into their home (§63.1-220.2) The child placing agency retains legal custody over the child until the final order of adoption is entered, at least six months after child has been placed in the adoptive home.

Parental Placement

In parental placement adoption, birth parents voluntarily terminate parental rights in order to place their child directly with adoptive parents of their choosing. Consent to adoption must be given by the birth parents before the Juvenile and Domestic Relations District Court, at least 10 days after the birth of the child. Both birth parents must consent unless the parents are not married and:

1. the identity of the birth father is not reasonably ascertainable or

2. the identity of such birth father is ascertainable and his whereabouts are known, such birth father is given notice of the adoption proceeding by registered or certified mail to his last known address and such birth father fails to object to the adoption proceeding within twenty-one days of the mailing of such notice. (§63.1-225)

The birth father's specific responsibilities if he objects to the proceeding are not defined in the *Code*.

Virginia law requires a number of preliminary requirements before the consent hearing. These include:

1. Counseling of birth parents about alternatives to adoption, the adoption process and opportunities for placement with other families. The judge must find that the decision to place the child for adoption was informed and uncoerced.
2. Counseling of adoptive parents about alternatives to adoption, the adoption process, termination of parental rights, and the opportunity to adopt other children. Their decision must also be informed and uncoerced, and they must intend to file an adoption petition and proceed toward final order of adoption.
3. Exchange of identifying information between birth and adoptive parents, including names addresses, physical, mental, social, and psychological information.
4. Disclosure of any financial arrangements including all fees paid in connection with the adoption and any expenses paid by adoptive parents on behalf of the birth mother. Virginia *Code* prohibits certain exchange of property and any person violating these provisions may be found guilty of a Class 6 felony. (§63.1-220.4)
5. Home study on the adoptive parents. Section 63.1-220.3 sets out the specific requirements of the home study.
6. Simultaneous meeting between the adoptive parents, the birth parents and a social worker.

Once the consent is signed, the birth parents have 15 days to revoke their consent. After the revocation period has ended, adoptive parents may file in Circuit Court for an interlocutory order. This order begins the adoptive parents' six-month probationary period, prior to final order of adoption. During this period, the child and family are visited in the adoptive home at least three times by a social worker and a report is prepared for the court. The court has the discretion to omit the interlocutory order under certain conditions (§63.1-229).

Step Parent Adoption

In step parent adoption, the petitioner has married someone who already has children and wishes to adopt the child(ren) of his or her spouse. If the noncustodial parent is deceased, consents to the adoption, or is not known, the court may order the adoption without referring the matter to the Department of Social Services for investigation. If the noncustodial birth parent refuses to consent to the adoption, the court has the authority to grant the adoption if it finds that the consent is being withheld contrary to the best interests of the child.

As long as the birth parent also signs the petition, indicating consent to the adoption of his/her child by the petitioner, and the birth parent is legally married to the petitioner, no home study is required.

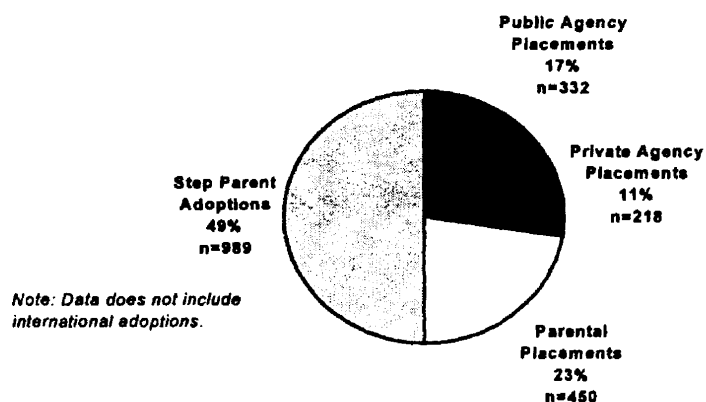
Interstate and International Adoptions

Interstate and international adoptions are subject to all relevant Virginia statutes governing either parental placement (§63.1-220.3) or agency placement (§63.1-220.2) adoptions. In addition, these placements require compliance with child-placement and adoption laws of the sending and receiving states and foreign countries.

As seen in Chart 1, step parent adoptions accounted for almost half (49%) of the total number of adoptions in Virginia in 1998. Agency placements, public and private, account for slightly more than parental placements.

Chart 1

1998 Virginia Adoptions by Type (N=1989)

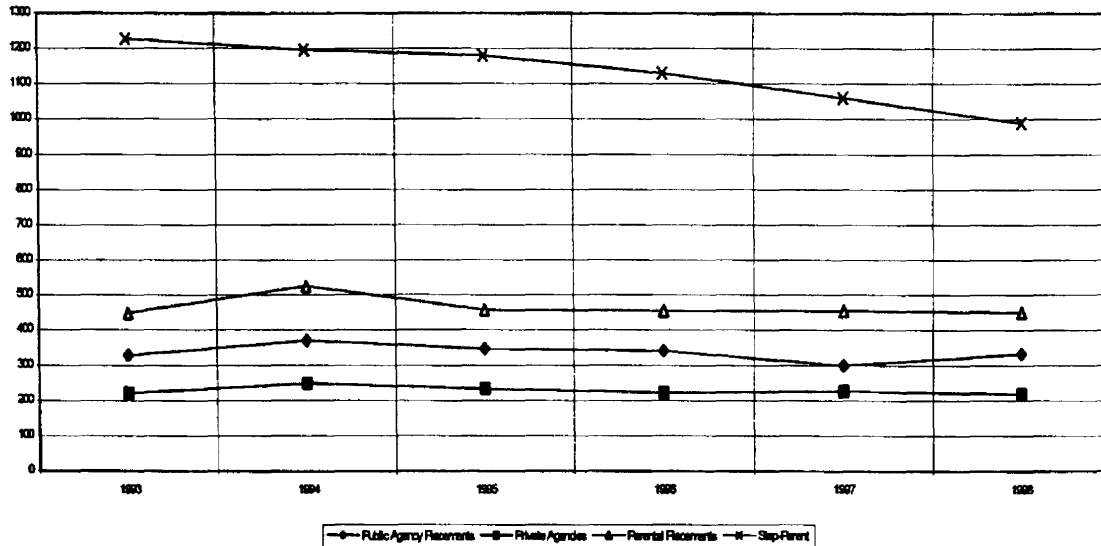


Source: Virginia Commission on Youth Analysis of Department of Social Services Data

While the number of step parent adoptions is decreasing, as shown in Chart 2, they continue to represent the largest category of adoptions. Agency placement adoptions, public and private agency combined, represent a slightly higher percentage than parental placements, and these ratios have been consistent over the last five years. With the recent changes in court practice and commitment to expediting permanent placement for children in foster care, it is expected that the number of public agency placements will increase over the next several years. Over the seven years in which data was collected on the number of adoptions, three patterns emerge. The number of children adopted remained relatively stable. There has been a dip in public agency adoptions between 1996 and 1997 but 1998 data indicates a leveling off of public agency placements. Also of note is the declining trend of step-parent adoptions in Virginia.

Chart 2

Virginia Adoptions by Type 1993-1998



Source: Commission on Youth Analysis of Department of Social Services Data

D. ADOPTION ASSISTANCE FOR CHILDREN WITH SPECIAL NEEDS

Child welfare professionals recognize that adoption is a life-long experience and it is critical to provide services before, during, and after finalization of the adoption. The Virginia Department of Social Services (DSS) administers the Adoption Assistance Program as a means of providing money and/or services to adoptive parents on behalf of a child with special needs. This assistance facilitates the adoption of children considered hard to place because of their physical and/or psychological needs since few families are available to meet those needs. Without adoption assistance, these children are likely to remain in long-term foster care.

Children with special needs, adopted from the foster care system, are eligible for adoption assistance. The Department of Social Services Policy Manual describes children with special needs as those who meet one or more of the following conditions:

- a) Have a physical, mental, or emotional disability existing before legal adoption;
- b) Have a hereditary tendency, congenital problem or birth injury that could lead to a future disability;
- c) Be six years or older;
- d) Be a member of a minority or mixed race heritage;
- e) Be a member of a sibling group which should not be separated; or
- f) Have significant emotional ties with the foster parents with whom the child has resided for at least 12 months.

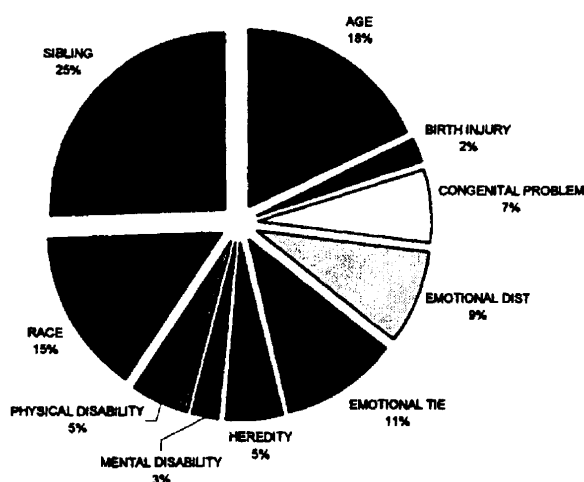
(DSS Policy Manual, Volume VII, Section III, page 76.)

While many children who receive adoption assistance have multiple special needs, social workers from local departments of social services record the primary special need for which children are determined eligible for subsidy. According to FY99

data, children who are members of sibling groups, older children, and children of minority or mixed race heritage make up the largest classification groups (See chart 3). Medical issues (listed as physical disabilities, birth injury, and congenital problems) comprise 14% of classifications. Many of the children evidence more than one characteristic which will classify them as special needs. The data presented represents the local DSS worker's estimation of the most salient characteristic.

Chart 3

**Adoption Assistance Program:
Categories of Primary Special Need
FY 1999**



Source: Virginia Commission on Youth Graphic/Analysis of Department of Social Services Data, 1999

Adoption assistance is paid through both state and federal funds. Payments for children who meet eligibility requirements under Title IV-E are reimbursed with a combination of state and federal funds (51% Federal, 49% state). Payments for children who are eligible for adoption assistance, but do not meet the requirements for IV-E are reimbursed from state general funds. In June 1999, approximately two-thirds of the children receiving adoption assistance payments were eligible for federal reimbursement. The number of children provided adoption assistance and funding source for FY99 is provided in Table 1.

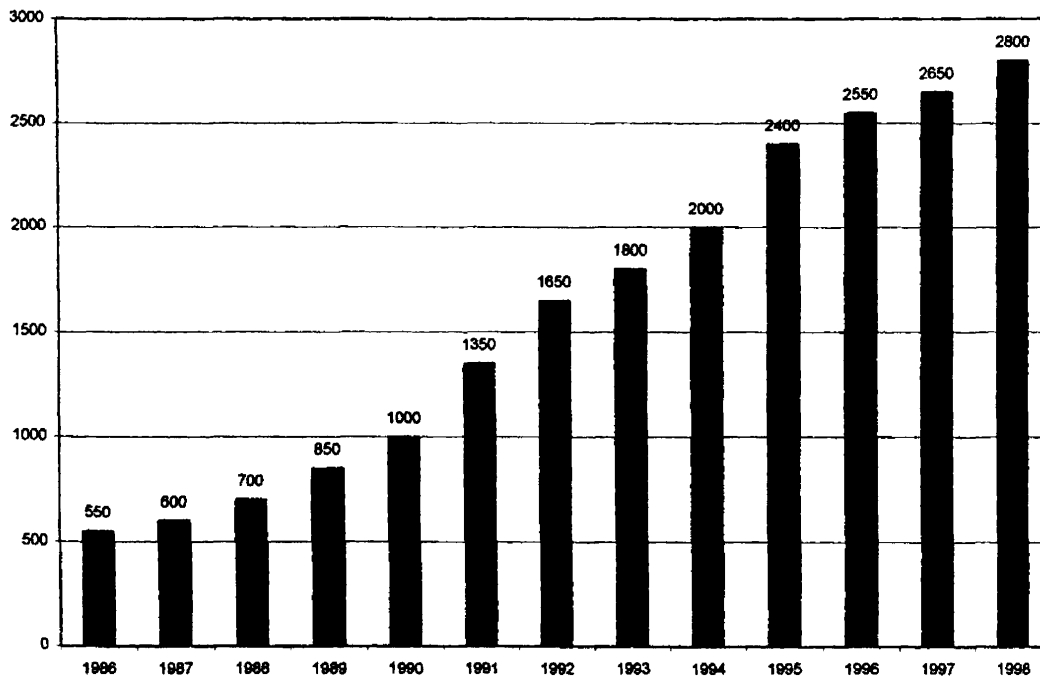
Table 1

	Number of Children	Percent of Total
Title IV-E Adoption Assistance	2,112	63%
State Adoption Assistance	1,231	37%
Total	3,343	100%

According to DSS, 3,343 children received adoption assistance payments in June 1999. As chart 4 displays, the number of children receiving assistance has increased significantly in the past ten years. This reflects the growing number of children considered hard-to-place because of their special needs who are in need of permanent placements. With the new state and federal commitment to moving children out of foster care and into permanent adoptive homes more rapidly, this increase is expected to continue. There are incremental increases of 150 children per year from 1986 through the 1990's. The pace of increase in the number of monthly payments nearly doubled in the beginning of the decade to 350 children from 1991 through 1993, while continuing to climb in the last four years of the decade the pace has slightly lessened.

Chart 4

Average Monthly Adoption Subsidy Cases



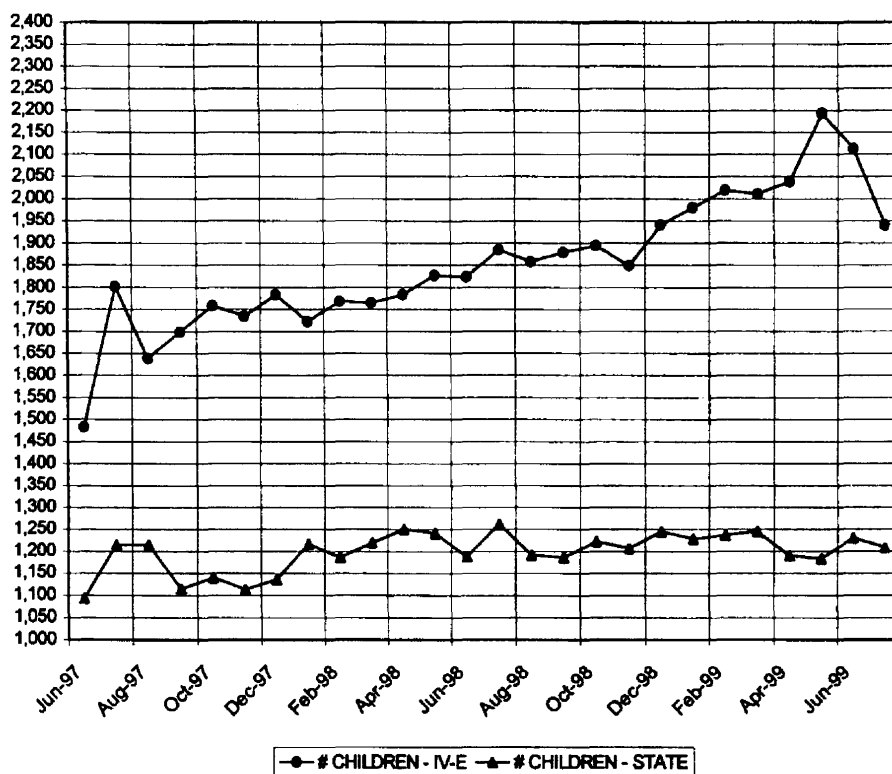
Source: Commission on Youth Analysis of Department of Social Services Data, 1999

As shown in Chart 5, The number of children receiving state subsidy has remained relatively constant over the last two years, while there has been an increase in the number of children determined eligible for IV-E assistance.

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Chart 5

Number of Children Receiving Adoption Subsidy Payments 1997-99



Source: Virginia Commission on Youth Graphic/Analysis of Department of Social Services Data, 1999

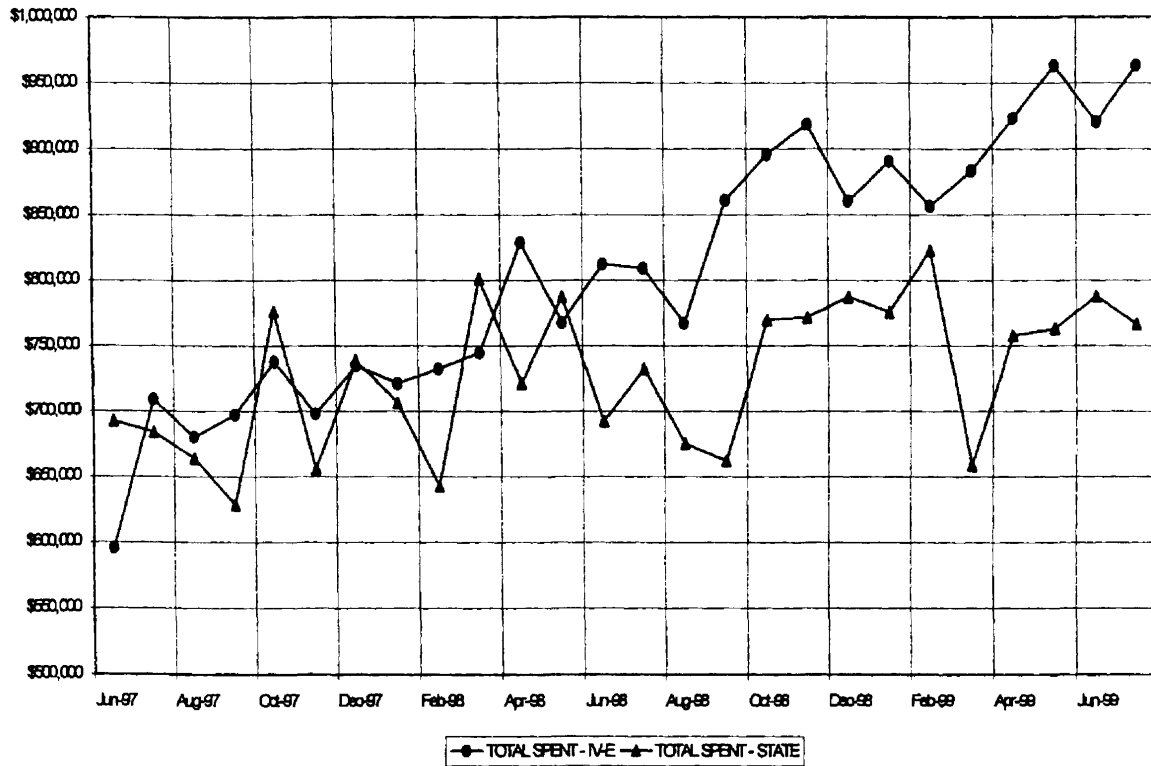
There are three types of adoption assistance payments:

- Maintenance Payments - for child's daily living expenses
- Special Service Payments - for meeting child's physical, mental, emotional, or dental needs
- One-time Only Payments - for non-recurring expenses of adopting a special needs child

Amounts of assistance are negotiated between adoptive parents and local departments of social services. In fiscal year 1999, Virginia distributed \$8.9 million in state adoption assistance and \$10.6 in federal IV-E adoption assistance. Monthly expenditures are depicted in Chart 6.

Chart 6

Adoption Assistance Expenditures by Month 1997-1999



Source: Virginia Commission on Youth Graphic/Analysis of Department of Social Services Data, 1999

In its report to the 1999 General Assembly, DSS identified a number of barriers to ensuring that children receive the financial assistance they need:

- *Adoption assistance agreements are administered by local agencies. Children across the state are not receiving consistent financial support for services.*
- *Many workers negotiating adoption agreements are not skilled in negotiation, nor knowledgeable of the policies and procedures governing adoption assistance.*
- *Funding for Adoption Assistance is not stable. Funds are allocated on a two-year budget cycle and, until this year, has been historically underfunded. Families may not be willing to assume financial burden associated with a special needs child without greater assurances from the state.*
- *Additional staff resources are needed.*

(Virginia Department of Social Services Report on Barriers to Adoption, 1999)

DSS has recommended allocation of additional funds for contracting with private agencies to provide post-adoption services and continuation of adequate funding for the adoption assistance program.

E. ACCESS TO ADOPTION RECORDS

The issues of access to adoption records and disclosure of identifying information from the records were discussed briefly by the Commission on Youth Workgroup. Members of the adoption community in Virginia are deeply divided over the issues and have been working to reach consensus for many years. Recent changes in the *Code* allow for all records in parental placement adoptions executed after July 1, 1994 to be open. Access to other records is determined by the Commissioner of Social Services and/or the Circuit Court.

Separate Records

All adoption records are kept by the Clerk of the Court in a separate and exclusive order book, file and index. Such records are required to be kept out of public view, and are made available only to attorneys of record, social service officials, court officials, and others as the court orders. Records must be retained permanently in the original form or on microfilm (§63.1-235). Reports, recommendations, and other information obtained in connection with a finalized adoption are maintained by the Commissioner of Social Services in a separate file (§63.1-236).

Access by the Adopted Person

The adopted person may obtain non-identifying information from the adoption file upon reaching the age of 18. Such information may not include the home study of the adoptive parents, if either of them is still living, without their written permission. The adopted person, upon reaching age 18, may also apply to the Commissioner of Social Services for disclosure of identifying information. The Commissioner will request the agency that made the investigative report (§63.1-220.3) to attempt to locate the birth family and advise them of the application. The reporting agency must submit a report to the Commissioner, including an analysis of the relative effects of the disclosure on the adopted person, the adoptive family and the birth family. In addition, the adopted person and the birth family may submit written comments on the anticipated effects of such disclosure. The Commissioner then determines whether there is good cause shown to disclose the information.

If the Commissioner fails to designate an agency to attempt to locate the birth family, or if the disclosure request is denied, the adult adoptee may petition the Circuit Court for disclosure. The court will grant the order for "good cause shown," defined in the *Code* as "compelling and necessitous need for the identifying information" (§63.1-236).

In 1994, the General Assembly granted additional legal rights to adopted persons in parental placement adoptions in which the consent to adoption was executed on or after July 1, 1994. Under §63.1-236.01 (E), once the adopted person has reached the age of 18, the entire adoption record must be made open to the adoptee. In addition, this section allows disclosure of medical, psychological, or genetic information to the adopted person over the age of 18 if a physician or licensed mental health provider submits a written statement indicating why this information is critical.

Access by Adoptive Parents

The adoptive parents of a child under the age of 18, whose adoption was finalized on or after July 1, 1994, may apply to the Commissioner for disclosure of identifying information about the birth family (§63.1-236.01B). The Commissioner has the same responsibility to designate an agency to locate the birth family, advise them of the application, and submit a report. The Commissioner then rules on whether good cause has been shown for such disclosure. The adoptive parents may also petition the Circuit Court if the commissioner fails to grant the request. The conditions of §63.1-236.01 (E) also apply to adoptive parents in parental placement adoptions.

Access by Birth Parents

Members of the birth family have no general right to access to non-identifying information. However, if at least one of the adoptive parents and one of the birth parents agree in writing, non-identifying information and pictures may be exchanged through the public or private agency facilitating the adoption (§63.1-236.01D).

If the adoption is a parental placement in which the consent was executed on or after July 1, 1994, the entire adoption record is open to the birth parent who executed written consent (§63.1-236.01E). Additionally, if the adoption is finalized on or after July 1, 1994, and the adopted person is over the age of 21, the adopted person's birth parents and biological siblings may apply to the Commissioner of Social Services for disclosure of identifying information (§63.1-236.01A).

VII. Findings and Recommendations

Adoption is a legal process which creates the relationship of parent and child between individuals who are not each other's biological parent and child. Many parties become involved in the adoption process which involves both the severing of parental rights and then the establishment of parental rights through a new legal relationship. Since the courts in Virginia have held that there is no common law basis for adoption, a strict adherence to the statutory procedures is essential.

There is consensus among members of the adoption community that the statutory framework of Virginia's adoption laws is lengthy, complex and confusing. Adoption reform efforts over the last decade have led to multiple changes to the *Code*. Selected sections and subsections should be reorganized to read more clearly. Language in some sections is ambiguous and needs clarification. The Adoption Assistance Program, which provides money and/or services to adoptive parents of children with special needs, is not implemented consistently throughout Virginia. Additional statutory and policy guidance is needed in order to ensure that the program meets its stated goals.

Findings

The Code of Virginia's chapter and subsections on Adoption are complex and confusing. The Code has been amended numerous times over the years and some sections have become unduly long and complicated. Many practitioners have difficulty using the Code for guidance. Some of the difficulty arises because

practitioners are unable to locate the specific information they need. Others have difficulty determining which sections apply to particular types of adoption.

Recommendation 1

Repeal Chapter 11, Adoption, and reorganize as new chapter. Create General Provisions and set out separate article for each type of adoption (i.e., parental placement, agency placement, stepparent, adult adoption).

Findings

Language in certain sections of the Code is ambiguous. Courts in different jurisdictions in Virginia have interpreted statutes in different ways. Clarification is needed in four identified areas:

- 1. The Code does not require that birth parents receive copies of the entrustment agreement, nor that birth parents receive written instructions related to revocation of the agreement. Birth parents who place their children for adoption through an agency enter into an entrustment agreement with the agency. This agreement serves to terminate parental rights for purposes of placement for adoption. Specific instructions related to revocation of the agreement by the birth parent are set out in the Code. Many agencies review these instructions with birth parents at the time of the entrustment. Some do not. Workgroup members and survey respondents expressed concern that birth parents may not be fully informed about the entrustment agreement and their rights and responsibilities related to revocation.*
- 2. Language related to the execution of consent of the unmarried birth father is unclear. The Code requires that a birth father, not married to the mother, be given notice of the proceedings and 21 days to object. Neither clear definition of proceedings nor description of the procedures for objections is given. Some courts notify the father of the date and time of the hearing and require that he appear in court if he objects to the adoption. Others require the objection to be in writing. There is a lack of consistency in the interpretation of this statute and concern that adoptions may be delayed and/or disrupted if clearer guidance is not provided.*
- 3. Provision of false information in writing and under oath is punishable as a Class 6 felony. Non-written false statements are not addressed in the Code. Some members of the adoption community desire to see a penalty for any false statements, written and non-written. Others maintain that any statement, material to the adoption, should be in writing, and that it is the practice across Virginia to commit any material information to the written record.*
- 4. A birth mother from outside Virginia may execute consent to the adoption in a court of competent jurisdiction in her home state, provided all requirements of Virginia law have been met. Virginia law may be more restrictive and this requirement may place additional burdens on both birth parents and adoptive parents. This additional burden must be weighed against the commitment to uphold Virginia's adoption policy.*

Recommendation 2

Amend the Code to require that birth parent receive a copy of the entrustment agreement which he/she signed. Entrustment agreement shall include instructions for revocation as described in § 63.1-220.2.

Recommendation 3

Amend Code to define proceedings as "the petition for consent to the adoption, the date and location of the consent hearing."

Recommendation 4

Amend Code to describe the birth father's responsibilities if he objects to the proposed adoption. Require that objection be in writing and that the birth father appear in Court.

Recommendation 5

Maintain current statutory construction regarding non-written statements and consent outside Virginia. Any information which is material to the adoption should be in writing and any additional burden is balanced by upholding Virginia's policy regarding adoption procedures.

Findings

Section 63.1-233 describes the legal effects of adoption. However, adoptive parents' rights to testify as parents in criminal proceedings have been called into question.

Recommendation 6

Amend Code to clarify that an adopted person is the child of an adoptive parent and, as such, the adoptive parent is entitled to testify in all civil and criminal cases.

Findings

Current Virginia law allows adopted persons access to non-identifying information from the adoption file upon reaching the age of 18. The adult adoptee may also apply to the Commissioner of Social Services for disclosure of identifying information. Both the adopted person and the birth family may submit written comments related to the potential impact of such disclosure. The Commissioner then determines whether there is good cause to disclose the identifying information. Good cause is generally determined where there is mutual consent of the birth parents and the adoptee. Adult adoptees desire access to original birth certificates and adoption records without consent of birth parents. Some birth parents and adoption workers oppose such access as a violation of confidentiality. Members of Virginia's adoption community are deeply divided over this issue and have been working for many years to reach consensus.

Recommendation 7

Maintain current provisions related to access to records. This is a major policy change which has been reviewed and addressed in earlier adoption reform efforts.

Findings

The Adoption Assistance Program provides money and/or services to adoptive parents of children with special needs who are in the custody of a local department of social services or licensed child placing agency. The purpose of adoption assistance is to facilitate the adoptive placement and ensure permanency for children with special needs. Without assistance, many of these children would remain in foster care.

Over the last 10 years, the number of children receiving adoption assistance has increased at a rate of approximately 10% per year. With recent legislative changes designed to expedite the permanent adoptive placement of children currently in foster care, these numbers are expected to rise at an even faster rate in coming years. Through the Adoption and Safe Families Act of 1997, the federal government has made a commitment to permanency for children who cannot remain with their birth parents. The Adoption Assistance Program is seen by many in Virginia's adoption community as a valuable resource in maintaining this commitment.

The Adoption Assistance Program is administered locally. Funding is provided by state and federal sources, with localities receiving reimbursements. Variability exists from one locality to another in the amount and type of information provided to adoptive parents about the program. Across Virginia, not all potential adoptive parents receive the same information regarding their child's eligibility for assistance, his/her potential need for special services, and the impact of the child's special needs through various stages of development.

Recommendation 8

Amend the Code to include the purpose of the Adoption Assistance Program as, "to facilitate adoptive placements and ensure permanency for children with special needs."

Recommendation 9

Amend the Code to require the local board of social services or licensed child placing agency to provide adoptive parents with appropriate information to include: their child's eligibility for subsidy; their child's special needs; and, to the extent possible, the current and potential impact of those special needs.

Findings

The needs of children and parents change over time. Adoption assistance agreements developed at the time of the adoption may no longer be appropriate as the child gets older. The special needs of a child who has been abused or neglected often do not manifest themselves until adolescence. Current law requires parents to submit an annual affidavit certifying that the child is still in their care and the child's condition requiring subsidy continues to exist. There is no requirement for a review

of the continued appropriateness of the agreement. Some localities update the adoption assistance agreement annually, while others have no contact with adoptive parents except for the required affidavit.

Recommendation 10

Amend the Code to require annual review of the adoption assistance agreements.

Findings

Adoptive parents and local boards do not always agree on the amount and/or type of adoption assistance necessary for a child. In some instances, adoptive parents are reluctant to express their disagreement, out of fear that the adoption may not be approved. An appeal process is in place in the event that a disagreement between the adoptive parents and the local board cannot be resolved by the locality. Local departments do not consistently inform parents about the process for appealing the adoption assistance decisions.

Recommendation 11

Amend the Code to require that the local board or licensed child-placing agency inform adoptive parents of their right to appeal agreements and about the process for that appeal prior to entering into an adoption assistance agreement.

Findings

Responsibility for subsidy payments by the local department is continued if the adoptive parents move to another jurisdiction within or outside of the Commonwealth. Virginia Department of Social Services (DSS) policy requires that this responsibility be maintained by the local department which initiated the agreement. This policy has been unclear to some localities. Adoptive parents have reported difficulty in maintaining their adoption assistance after moving to another locality.

Recommendation 12

Amend the Code to specify that the local department with which the adoption assistance agreement was initiated is responsible for continuing the subsidy payments if the family moves to another locality.

Findings

According to a 1998 DSS study,¹⁴ many workers negotiating adoption assistance agreements are not skilled in negotiation and are not knowledgeable about the policies and procedures governing adoption assistance. Some local workers have requested additional guidance in determining allowable and reasonable costs for special services to be covered by Adoption Assistance and in resolving conflicts with adoptive parents. In some localities, DSS regional office staff provide support to local workers in negotiating agreements and solving problems related to Adoption Assistance. In many localities, social workers are managing foster care in addition to adoption cases. Workers report that priority is placed on meeting immediate needs (i.e., foster care), with less attention to issues of permanency (i.e., adoption). Training in adoption assistance has not been provided to all local workers.

¹⁴ Department of Social Services Study of Barriers to Adoption, 1999.

Recommendation 13

Direct the Department of Social Services (DSS) to provide regular ongoing training in order to empower local staff to represent the policies of the Department. Training should include adoption assistance policies and procedures, assessment of needs for services, and negotiation of agreements. DSS regional offices should have staff with designated responsibility for supporting local departments in all areas of Adoption Assistance. Such support should include assessment of subsidy needs, negotiation of agreements and conflict resolution. DSS should develop a mechanism for engaging regional office staff as early in the process as necessary to ensure that the best interests of the child and the Department are met.

Findings

Adoption assistance agreements are negotiated between adoptive parents and local departments of social services. With 122 local departments of social services, the Adoption Assistance Program is not applied consistently across the Commonwealth. Great variability exists from one locality to another in the usage of Adoption Assistance, in the amount of payments, in the types of services provided, and in the post-adoption monitoring of agreements. Some local agencies embrace the concept that adoption assistance helps achieve permanency for children who would otherwise grow up in foster care. Others continue to question why adoptive families need to be "subsidized."¹⁵

Recommendation 14

Direct the Department of Social Services to clearly articulate its philosophy and policy regarding adoption assistance and to revise its policy manual within the next year. The following areas should be addressed in Department policy:

- **Goal**: The purpose of Adoption Assistance is to facilitate adoptive placements and ensure permanency for children who are hard to place.
- **Fiscal policy**: Adoption assistance funds are state and federal dollars, passed through local departments on behalf of children with special needs. Local departments are expected to demonstrate good stewardship of funds while ensuring that all eligible children receive needed services.
- **Eligibility**: Eligibility is based on special needs of the child. Potential adoptive parents of all eligible children should be informed of their child's eligibility for adoption assistance.
- **Adoptive parents as fully informed decision makers**: Adoptive parents should receive clear, accurate information about their child's potential need for special services. Counseling related to the child's special needs and implications of those needs as the child grows older should be available to all adoptive parents.

¹⁵ Ibid.

Recommendation 14 (cont.)

- **Appeal**: Parents and local department social workers should work together to identify needs and resources and to develop adoption assistance agreements. The appeal process should be explained to parents before these negotiations begin.
- **Annual review**: Adoption assistance agreements should be monitored and reviewed with adoptive parents at least annually to determine whether changes need to be made.

In addition to the workgroup members, the Virginia Commission on Youth extends its appreciation to the following individuals and agencies for their assistance and cooperation on this study:

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SENATE JOINT RESOLUTION NO. 366

Directing the Commission on Youth to study the desirability of reorganizing the Commonwealth's adoption laws.

Agreed to by the Senate, February 25, 1999

Agreed to by the House of Delegates, February 23, 1999

WHEREAS, the decision to place a child for adoption is a painful and agonizing decision that birth parents make because they believe that it is in the best interests of the child; and

WHEREAS, some children are adopted after languishing in the uncertainties of foster care; and

WHEREAS, it is in the best interests of all citizens of the Commonwealth for children to be living securely in a permanent family situation; and

WHEREAS, adoption, either through adoption agencies or independently, is a very important process necessary for the establishment of permanency for children by establishing new families for children whose biological families are unable to care for them; and

WHEREAS, the adoption law, which is used both to sever and then to establish parental rights through a new legal relationship, is a critical part of that process; and

WHEREAS, the various philosophies surrounding all aspects of the adoption process have been vigorously debated by persons interested in the protection of children, their birth families, and their adoptive families, and by those interested in later reunification of adopted children with their birth families; and

WHEREAS, Virginia's adoption laws have been amended numerous times over the years and are lengthy, complex, and confusing; and

WHEREAS, Virginia's adoption laws should be written in such a way as to give clear and consistent guidance to those using such laws in agency or parental placement adoptions and those affected by the law in order to ensure, to the extent possible, the well-being of adopted children and to further ensure the protection of those children, and their birth and adoptive families, from any legal uncertainties related to this important process; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on Youth be directed to study the desirability of reorganizing the Commonwealth's adoption laws. The Commission shall conduct a comprehensive review of Virginia's adoption laws and determine whether such laws can be rewritten and/or reorganized to give clear and consistent guidance to the persons using the laws.

Technical assistance shall be provided to the Commission by the Department of Social Services. All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request. The Commission shall seek input from judges, the American Academy of Adoption Attorneys, adoption advocacy groups, birth parents, adopted persons and adoptive parents, child-placing agencies, and any other interested persons.

The Commission on Youth shall complete its work in time to submit its findings and recommendations to the Governor and the 2000 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

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VIRGINIA COMMISSION ON YOUTH

LICENSED CHILD-PLACING AGENCIES' SURVEY ON ADOPTION LAW ISSUES

The 1999 Session of the Virginia General Assembly enacted Senate Joint Resolution 366 directing the Virginia Commission on Youth to conduct a study of "the desirability of reorganizing Virginia's adoption laws... to determine whether such laws can be rewritten and/or reorganized to give clear and consistent guidance to the persons using the laws." As part of this study, the Commission is surveying license child-placing agencies to collect opinions and information on this issue. Definitions and a list of *Code of Virginia* citations have been enclosed to assist with your responses.

Please complete the survey and return **by August 6, 1999**. If you have questions, please call Judith Cash at (804) 371-2481. The General Assembly of Virginia and the Virginia Commission on Youth thank you for your participation in this important study effort.

1. What type(s) of adoption placement services does your agency provide? (Check all that apply.)

- Agency Placements (Please complete Section 1, plus Sections 3-5.)
- Parental Placements (Please complete Section 2, plus Sections 3-5.)
- Step Parent Adoptions (Please complete only Sections 3-5.)

SECTION 1: AGENCY PLACEMENT

(Complete only if you do agency placements.)

2. For each of the following sections from the *Code of Virginia*, please indicate (✓) whether you routinely use the cite as your source of guidance for specific agency activity, you find it to be clearly written, and if it is consistent with other *Code* sections. Check only for YES; please leave blank if NO.

CODE OF VIRGINIA CITATION		Use for Guidance	Clearly Written	Consistent With Other Code Sections
§63.1-220.2	Agency placement			
§63.1-220.6	Provision of false information			
§63.1-221	Jurisdiction and proceedings			
§63.1-225.1	Best interest of the child			
§63.1-229	Omission of interlocutory order			
§63.1-236	Disposition of reports; disclosure of information			
§63.1-236.01	Disclosure to biological family, adoptive parents, etc.			
§63.1-238.2	Subsidy payments; eligibility			
§63.1-238.3	Subsidy payments; maintenance, special needs, payment agreements			
Other	Please specify.			

3. For each of the following sections from Chapter C of the Department of Social Services Policy Manual (Standards), please indicate (✓) whether you routinely use the Standard as your source of guidance for specific agency activity, you find it to be clearly written, and if it is consistent with other Standards. Check only for YES; please leave blank if NO.

DSS STANDARDS CITE CHAPTER C - AGENCY PLACEMENT	Use for Guidance	Clearly Written	Consistent With Other Code Sections
Section 1. Guiding Principles			
Section 2. Preplacement Services			
Section 3. Placement Services			
Section 4. Post-Placement Services			
Section 5. Post-Adoption Services			
Section 9. Adoptive Home Studies			
Section 10. Subsidy			
Other (Please specify.)			

4. Do you find the Virginia Code and the DSS Standards to be consistent with each other in requirements for agency placement adoption?

Yes (If YES, please go to question 6.) No

5. If NO, in what areas do you find inconsistencies? Please list the areas and describe the inconsistencies.

6. Do you favor amending the Code (§63.1-220.2) to require that birth parents receive copies of signed entrustment agreements?

Yes (Please proceed to question 6a.) No (Please proceed to question 6b.)

6a. If YES, why would you favor amending the Code?

6b. If NO, why would you favor not amending the Code?

7. Do you favor amending the Code (§63.1-220.2) to require that birth parents receive written instructions related to revocation?

Yes (Please proceed to question 7a.) No (Please proceed to question 7b.)

7a. If YES, why would you favor amending the Code?

7b. If NO, why would you favor not amending the Code?

8. Do you favor amending the Code (§63.1-220.6) to make providing false information (which is material to an adoptive placement) in non-written statements which are offered under oath to be a Class 6 felony?

Yes (Please proceed to question 8a.) No (Please proceed to question 8b.)

8a. If YES, why would you favor amending the Code?

8b. If NO, why would you favor not amending the Code?

9. Does your agency provide adoption assistance services for children with special needs?

Yes No (If NO, please proceed to question 15.)

10. What services do you provide? (Check all that apply.)

Post adoption counseling Referral for adoption subsidy
 Case management/Service coordination Other (Please specify.)

11. Are you satisfied with the process by which the local Department of Social Services determines adoption assistance (subsidy) amounts? (Please check one.)

Yes No Varies by locality

12. Are you satisfied with the policy reflected in the Virginia Code related to adoption assistance for children with special needs?

Yes No

13. What revisions to the Virginia Code, if any, would you recommend related to adoption assistance for children with special needs? *(Attach additional pages as needed.)*

14. What changes would you recommend to the process by which Adoption Assistance agreements are developed? *(Attach additional pages as needed.)*

15. What, if any, revisions to the Virginia Code you would recommend related to placement of children for adoption by agency or local board? *(Attach additional pages as needed.)*

SECTION 2. PARENTAL PLACEMENT
(Complete only if you do parental placements.)

16. For each of the following sections from the Code of Virginia, please indicate (✓) whether you routinely use the cite as your guidance for specific agency activity, it is clearly written, and if it is consistent with other Standards. Check only for YES; please leave blank if NO.

CODE OF VIRGINIA CITE	Use for Guidance	Clearly Written	Consistent With Other Code Sections
§63.1-220.1 Who may place child for adoption			
§63.1-220.3 Parental placement			
§63.1-220.4 Certain exchange of property prohibited			
§63.1-220.6 Provision of false information			
§63.1-221 Jurisdiction and proceedings			
§63.1-225 Parental, etc. consent			
§63.1-225.1 Best interest of the child			
§63.1-229 Omission of interlocutory order			
§63.1-236 Disposition of reports; disclosure of information			
§63.1-236.01 Disclosure to biological family, adoptive parents, etc.			
Other <i>(Please specify.)</i>			

17. For each of the following sections from Chapter D (Adoption-Non-Agency Placement and Other Court Services) of the Department of Social Services Policy Manual (Standards), please indicate (✓) whether you routinely use the Standard as your source of guidance for specific agency activity, you find it to be clearly written, and if it is consistent with other Standards.

DSS STANDARDS CITE CHAPTER D - PARENTAL PLACEMENT	Use for Guidance	Clearly Written	Consistent With Other Standards
Section 3. Responsibilities of the Agency			
Section 4. Adoptive Home Study			
Section 5. Responsibilities of the Commissioner			
Section 6. Responsibilities of the Juvenile Court			
Section 7. Responsibilities of the Circuit Court			
Section 8. Responsibilities of the Agency After Adoption Petition is Filed			
Other (Please specify.)			

18. Do you find the Virginia Code and the DSS Standards to be consistent with each other in requirements for parental placement adoption?

Yes (If YES, please go to question 20.) No

19. If NO, in what areas do you find inconsistencies? Please list the areas and describe the inconsistencies.

20. Do you favor amending the Code (§63.1-220.6) to make providing false information (which is material to an adoptive placement) in non-written statements which are offered under oath to be a Class 6 felony?

Yes (Proceed to question 20a.) No (Proceed to question 20b.)

20a. If YES, why would you favor amending the Code?

20b. If NO, why would you not favor amending the Code?

21. Do you favor amending the Code (§63.1-220.3) to allow, prior to 10 days after birth, the written consent of a birth father not married to the mother?

- Yes (Proceed to question 21a.) No (Proceed to question 21b.)

21a. If YES, why would you favor amending the Code?

21b. If NO, why would you not favor amending the Code?

22. What, if any, revisions to the Virginia Code would you recommend related to placement of children for adoption by parents? (Attach additional pages as needed.)

SECTION 3 INTERLOCUTORY ORDERS

23. Section 63.1-229 grants the Court discretion to omit the Interlocutory Order under certain conditions. In your experience, how often does the Court omit the Interlocutory Order in each of these conditions? Please circle the number which best describes court practice.

	<u>Never</u>	<u>Rarely</u>	<u>Sometimes</u>	<u>Often</u>	<u>Always</u>
a. Step Parent Adoptions	1	2	3	4	5
b. Child placed by birth parent with relative	1	2	3	4	5
c. Child is legally adopted in a foreign country	1	2	3	4	5
d. Child is placed through Interstate Compact for the Placement of Children	1	2	3	4	5
e. Child-placing agency certifies that child has lived with petitioners for at least 6 months and has been visited by agency at least 3 times	1	2	3	4	5
f. Child has resided in the home of the petitioner continuously for at least 3 years	1	2	3	4	5

24. Should the discretion available to the Court for omission of Interlocutory Orders in each of these cases be removed? Please check (✓) as applicable.

- | | YES | NO |
|------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| a. Step Parent Adoptions | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Child placed by birth parent with relative | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Child is legally adopted in a foreign country | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Child is placed through Interstate Compact | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Child-placing agency certifies that child has lived with petitioners for at least 6 months. | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Child has resided in the home of the petitioner continuously for at least 3 years | <input type="checkbox"/> | <input type="checkbox"/> |

SECTION 4: DISCLOSURE OF REPORTS AND INFORMATION

25. Does your agency assist adult adoptees with searches for birth parents/records?

- Yes No (If NO, please proceed to question 26.)

25a. How many requests for such assistance did you receive in fiscal year 1998? _____

26. Does your agency assist birth parents with searches for adopted children?

- Yes No (If NO, please proceed to question 27.)

26a. How many requests for such assistance did you receive in fiscal year 1998? _____

27. Does your agency assist adoptive parents in searches for information about birth family of an adopted child?

- Yes No (If NO, please proceed to question 28.)

27a. How many requests for such assistance did you receive in fiscal year 1998? _____

28. Are you satisfied with the policy reflected in the Virginia Code related to disposition of reports and disclosure of adoption records?

- Yes (If YES, please proceed to question 29.) No

28a. What revisions to the Virginia Code would you recommend related to disclosure of records? (Attach additional pages as needed.)

29. Would you favor amending the Virginia Code (§63.1-236.01) to give adult adoptees access to original birth certificates and all adoption records with or without the consent of the birth parents?

Yes (Proceed to question 29a.) No (Proceed to question 29b.)

29a. If YES, why would you favor amending the Code?

29b. If NO, why would you favor not amending the Code?

SECTION 5: COST OF ADOPTION

30. Please indicate for fiscal year 1998 the actual cost to your agency of each of the adoption-related services listed below. Round costs to nearest dollar. Mark with an asterisk (*) those costs offset by state and/or federal funds.

ADOPTION SERVICE	Step Parent Adoption	Parental Placement	International Adoption	Agency Placement (Infant)	Agency Placement (Special Needs)
Counseling for Birth Parents	\$	\$	\$	\$	\$
Medical expenses for Birth Mother		\$	\$	\$	\$
Foster Care				\$	\$
Recruitment of adoptive parents				\$	\$
Counseling for adoptive parents	\$	\$	\$	\$	\$
Home Study	\$	\$	\$	\$	\$
Adoption Search	\$	\$	\$	\$	\$
Other (Please describe.)	\$	\$	\$	\$	\$

31. Do you have any other comments or concerns regarding Virginia's adoption laws you would like to share? *(Please attach additional pages as needed.)*

Name of person completing survey _____

Title _____ Phone _____

**Please return by August 6 to
Judith Cash, Legislative Policy Analyst
Virginia Commission on Youth
General Assembly Building - Suite 517-B
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FAX (804) 371-0574**

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