

**REPORT OF THE  
STATE EXECUTIVE COUNCIL WORKGROUP**

**Final Report:  
The Relinquishment of Custody  
for the Purpose of Assessing  
Behavioral Health Treatment**

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



**HOUSE DOCUMENT NO. 87**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2005**

## Introduction

Last year, based on widespread concerns within the Commonwealth regarding the issue of parents being faced with the choice of giving up custody of their child with severe emotional disturbances solely to obtain behavioral health treatment this issue, the 2004 Session of the Virginia General Assembly directed that:

“The State Executive Council for the Comprehensive Services Act shall investigate the reasons leading to the practice of parents relinquishing custody of their children solely to obtain necessary and appropriate mental health services. The State Executive Council shall recommend policy options, including legislative action if appropriate, for abolishing this practice while continuing to make the services available and accessible to children, and report to the Chairmen of the House Appropriations and Senate Finance Committees, and to the Chairman of the Joint Commission on Health Care, by November 1, 2004.” (Item 299 F)

As chair of the State Executive Council, The Honorable Jane H. Woods, Secretary of Health and Human Resources, established a widely representative task force to complete this study. This task force consisted of 32 members and was chaired by Raymond R. Ratke, Chief Deputy Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. During 2004, the task force held a total of seven meetings including an extended session to hear from six families who faced this impossible decision and experienced the heart wrenching and destructive consequences. A preliminary report was issued on November 1, 2004 that contained a comprehensive review of the many complicated issues involved in this practice, ten study findings, and 18 recommendations. As a result of the complex issues involved, it was also recommended that the workgroup continue to study this practice for an additional year. This initial report is attached as an appendix.

The primary conclusion contained in this 2004 report was that **“this problem is a direct result of inadequate access to and availability of prevention, early intervention, and intensive mental health and substance abuse treatment services for children and adolescents”**.

## Progress Implementing Recommendations as Contained in the Preliminary Report:

Significant progress has been made over the past year in addressing the recommendations outlined by the taskforce in 2004, including the following:

- The Virginia Department of Social Services has developed and implemented a method for tracking the incidence of custody

relinquishment for the sole purpose of obtaining behavioral health treatment services.

- Family organizations established a statewide network for child and family advocacy, information, and referral to families to assist them in accessing available services. The Department of Mental Health, Mental Retardation and Substance Abuse Services entering into a contract with an organization called Parents and Children Coping Together in conjunction with Medical Home Plus initiated the development of this network.
- The Office of Comprehensive Services and the CSA State and Local Advisory Team are becoming proactive in:
  - Engaging families;
  - Providing consistent guidance on policy and program implementation; and
  - Providing training, technical assistance and best practices to communities in implementing effective local systems of care.
- Additional funding was appropriated during the FY 2005 session of the Virginia General Assembly for expanding services to the non-mandated youth population and for developing two projects to demonstrate the effectiveness of a “systems of care” model of service delivery for youth and families.

### **Work of the Taskforce During FY 2005**

The full workgroup met six times throughout 2005 and focused on the following areas:

1. Practices that reduce, eliminate, and/or minimize the negative impact of custody relinquishment while providing access to behavioral health treatment:
  - Within Virginia; and
  - In other states.
2. Recommendations for immediate and long term policy and funding changes that will help to abolish this practice in Virginia.

In meetings specifically intended to focus on the above areas, the taskforce met with a panel of representatives from localities that use non-custodial agreements to reduce custody relinquishment. The taskforce also met with a national expert regarding the services and programs provided in other states that have successfully reduced the incidence of custody relinquishment.

As a result of these meetings and the general work of the taskforce, the following recommendations were developed and approved by the State Executive Council for the Comprehensive Services Act.

### **FY 2005 Taskforce Recommendations**

1. Recommend consideration of a “Section 1” bill or Joint Resolution establishing the intent of the Commonwealth to make behavioral health services available to children who need them without requiring parents to relinquish custody. Consider requiring reports to the Commission on Youth and/or the JCHC Behavioral Health Care Subcommittee on progress made in achieving this goal.
2. Establish a taskforce to review and recommend revisions to all sections of the *Code of Virginia* related to the implementation of non-custodial agreements with the intent of making these agreements less adversarial and onerous for families, to include but not limited to the following issues:
  - Criminal background checks
  - Co-payments
  - Child support payments
3. Amend the *Code of Virginia* to eliminate required criminal background checks of parents with children under non-custodial foster care agreements and temporary entrustments when children are returning home from placements (including residential placements, group homes, respite or treatment foster homes).
4. Through *Code* revisions or policy interpretation, ensure that children who receive CSA services through mandated special education eligibility and who have a diagnosis of a serious emotional disturbance receive the necessary behavioral health treatment services, supports, and case management specified in the individualized family services plans as approved by the Community Policy and Management Teams through CSA mandated funds.
5. Explore federal funding options allowable under Medicaid (including the Home and Community–Based Waiver, Katie Beckett Option, and EPSDT), FAMIS, and through Title IV-E waivers to expand access and availability of services for children. Ensure that the same eligibility and benefits, to the extent allowed by federal law, are available for children under both Medicaid and FAMIS.
6. Increase access to community services through expanding the number of demonstration projects implementing system of care models focusing on evidence-based practices and incorporating the use of diversion protocols.
7. Funding Recommendations:
  - Increase funding and fiscal incentives to encourage the development of community services statewide for mandated and non-mandated children.
  - Increase funding for serving non-mandated children through the various state child-serving agencies.

- Provide access to start up funds for localities to develop community services to prevent or return children from out of community placements.
- Incorporate the use of diversion protocols as community-based services are expanded in communities.

## **Conclusion**

The primary conclusion initially reached by this workgroup in 2004 has not changed. The problem of parents being faced with the decision to give up custody of their child in order to obtain behavioral healthcare services is a direct result of inadequate access to and availability of prevention, early intervention, and intensive mental health and substance abuse treatment services for children and adolescents.

While the work of this taskforce concludes with this report, the State Executive Council and participating child serving agencies will continue to address the underlying causes of this practice and to implement improvements in Virginia's child serving system to improve access to care. Likewise, the Commonwealth should continue to support all efforts to make a full array of affordable behavioral health services available to children and adolescents based on their level of service need rather than their "mandated" or "non-mandated" status under the Comprehensive Services Act.

**Please refer to House Document 34 from 2004 for the Preliminary Findings.**

## **2005 Custody Relinquishment Study Work Group Members**

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