Report on Senate Bill 1332

Estimate Fiscal Impact and Recommendations

By

The Office of Comprehensive Services
for At-Risk Youth & Families

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Report of Senate Bill 1332
Fiscal Impact and Recommendations

Study Mandate

The 2007 General Assembly mandated through the Appropriations Act *(Item 279N)* that the Office of Comprehensive Services for At Risk Youth and Families *(OCS):*

> *"report on the potential fiscal impact of Senate Bill 1332, passed by the 2007 Session of the General Assembly, including:*
> *(i) an estimate of the number of additional children and adolescents that would become eligible for services pursuant to § 2.2-5211(a)(6);*
> *(ii) the type and estimated cost of the services anticipated to be needed to serve newly eligible children and adolescents through the Comprehensive Services Act, and*
> *(iii) mechanisms to offset the cost of these services, including the need for additional statutory, policy, or procedural changes to ensure services are delivered in the least restrictive environment and most cost effective manner.*
> *The report shall be made to the Governor, and the chairmen of the House Appropriations and Senate Finance Committees by November 1, 2007." The request for an extension of the reporting date to December 1, 2007 was granted.*

Background

The Virginia Attorney General issued an advisory opinion on December 6, 2006 concluding that parents do not have to relinquish custody of their children to local departments of social services in order to access mental health services. Statutory and constitutional provisions allow eligible "children in need of services" to access mandated services through the Comprehensive Services Act *(CSA)*. The Attorney General also determined that a child may be eligible for CSA mandated services without a court making a specific legal finding that the child meets the statutory conditions for a "child in need of services."

Senate Bill 1332 was introduced by Senator Devolites Davis at the request of the Attorney General's Office during the 2007 General Assembly session. An identical bill, House Bill 2620, was introduced by Delegate William Fralin. These bills clarified current state law and codified the Attorney General's opinion. Major purposes of the bills were to eliminate custody relinquishment and increase consistency across communities in providing services to children regardless of where they live in the state. Historically, some communities allowed these children to access CSA mandated funding for services through foster care prevention, court orders, custody relinquishment or non-custodial agreements. Other communities maintained that these children were not eligible for CSA mandated services.

During the session, amendments to the bills were incorporated that clarified and narrowed the eligibility criteria for children. The Senate bill was approved by the 2007 General Assembly

Session with a reenactment clause. Thus, the provisions of the Act *(Chapter 840)* are not effective unless they are passed again by the 2008 General Assembly.

Summary of Senate Bill 1332

Senate Bill 1332 *(see Attachment A)* allowed families with eligible children to access necessary mental health services through mandated CSA funds to prevent placement of their children in foster care. The bill established a separate category for these children in the target population *(§2.2-5211)* and eligibility for mandated funds *(§2.2-5212)* through the CSA state pool of funds. These children were already mandated under foster care services through CSA.

The approved bill specified that children requiring mental health services must meet all six of the following criteria in order to access the CSA state pool of funds:

1) Child is eligible for CSA state pool of funds *(Section 2.2-5212.A.1).* Specifically, the child or youth must have emotional or behavior problems that:
   a) Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted; and
   b) Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and
   c) Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

   Eligibility must be determined through the use of a uniform assessment instrument and process, and by policies of the community policy and management team to access CSA funds.
2) There are sufficient facts that the child's behavior, conduct or condition presents or results in a serious threat to his well-being and physical safety, or, if he is under the age of 14, his behavior, conduct or condition presents or results in a serious threat to the wellbeing and physical safety of another person. This determination is made by a licensed mental health professional designated by the Family Assessment and Planning Team or by a juvenile court services intake officer.
3) Mental health services are required to prevent placement in foster care as determined and recommended by a licensed mental health professional designated by the Family Assessment and Planning Team.
4) The Family Assessment Planning Team, in collaboration with the child's parents or guardians, indicates as a goal in the individualized family services plan that, absent the referenced mental health services, foster care is the planned arrangement for the child.
5) The mental health services are not covered by private insurance
6) The child is not eligible for Medicaid upon initial evaluation of these criteria.

In addition, the bill mandated that local governments require parental or legal financial contributions, not specifically prohibited by federal or state law or regulation, using a standard sliding fee scale based upon ability to pay established by the Office of

Comprehensive Services. Currently, local governments are required to assess and provide for appropriate financial contributions based on standard fee scales based upon ability to pay that are locally determined.

The bill contained a reenactment clause and does not become effective unless reenacted by the 2008 General Assembly. No appropriation was attached to the bill.

Requirements of state and federal law

State and federal law do not require parents or guardians to relinquish custody of their children to local departments of social services in order to obtain necessary services. Rather, state law mandates the provision of foster care services through CSA for "children in need of services." These children are defined in Virginia Code *(§16.1-228)* as a child who is a serious threat to the well-being and physical safety of the child, or to another person if the child is under the age of 14.

Specifically, state law mandates the provision of foster care services through the CSA state pool of funds *(§2.2-5211C subdivision B3)*. Two types of children and their families are eligible to receive foster care services *(§63.2-905)*:

- Children who are "abused or neglected" as defined in §63.2-100; and
- "Children in need of services" as defined in §16.1-228.

There are three separate and distinct situations when these children and their families are provided mandated foster care services *(§63.2-905)*. The children:

- Have been identified as needing services to prevent or eliminate the need for foster care placements; or
- Have been placed through an agreement between the parents or guardians and the local department of social services *(LDSS)* or the public agency designated by the Community Policy and Management Team *(CPMT)* where legal custody remains with the parents or guardians; or
- Have been committed or entrusted to a LDSS or licensed child placing agency by the court.

Foster care services are defined as "a full range of casework, treatment and community services for a planned period of time" *(§63.2-905)*. Services for children and their families should be provided through a collaborative system of services and funding that is child-centered, family-focused and community-based *(§2.2-5200)*. A primary purpose of CSA is to preserve and strengthen families and provide appropriate services in the least restrictive environment that protect the welfare of children and maintain public safety *(§2.2-5200)*.

The benefits of an effective CSA system of care include: improved decision-making; simplified access to services for families; coordinated services and funding across public and private systems; improved outcomes for children and families; and maximized use of limited resources.

CSA is comprised of two collaborative teams at the local level that work to improve outcomes for children and families and to control the rate of growth in CSA expenditures. Family Assessment and Planning Teams *(FAPTs)* assess the strengths and needs of children and their families, develop individual family services plans *(IFSPs),* refer children and families to services, and designate case managers to monitor children's progress. The teams are responsible for engaging families in participating in all aspects of assessment, planning and implementation of services *(§2.2-5208).* The teams are comprised of a parent and representatives from the local child serving agencies *(community services boards, courts service units, social services, and public schools).* They may include a local health department and private provider *(§2.2-5207).* Communities include other representatives they deem appropriate for their community or for individual children and families served.

The FAPTs work in accordance with policies established by the CSA Community Policy and Management Teams *(CPMTs).* CPMTs have the statutory authority and accountability for managing collaborative efforts and implementing interagency policies that govern CSA in the community. They coordinate community wide planning, develop needed services, maximize and pool resources across sectors, and manage local CSA funds *(§2.2-5206).* The CPMTs are comprised of a parent, local government official, agency heads from the local child serving agencies *(community services boards, courts service units, health, social services, and public schools)* and a private provider representative *(§2.2-5205).* Communities include other representatives they deem appropriate.

The teams are responsible for serving children and their family in their homes, schools and communities whenever possible and appropriate. If community services have been explored and determined not to be in the best interest nor meet the needs of children, the teams work collaboratively with the families to explore placements with extended families and individuals who can effectively care for the children whenever possible. If there are no viable options, the teams then explore placements in family-like homes. Finally, the teams and families explore group or residential settings to serve the child if these are the most appropriate, least restrictive and cost effective services. Before placing the child across jurisdictional lines, the team must:

- explore all appropriate community services for the child;
- document that no appropriate placement is available in the locality; and
- report the rationale for the placement decision to the CPMT *(§2.2-5211.1.2*).

When the FAPT and the legal guardian agree on an out-of-home placement that is the most appropriate and least restrictive service, the local public agency designated by the CPMT and the legal guardian must enter into an agreement. This agreement requires the legal guardian who retains custody to agree to place the child and the CPMT to agree to provide funding. A discharge plan for returning the child home as quickly as appropriate must be included as part of the IFSP.

The FAPT, in adherence to CPMT policies, is responsible for designating a person to monitor and report progress in implementing the IFSP to the team and responsible local agencies as appropriate *(§2.2-5208).* Case management services may be provided by local departments of social services *(LDSS)* or another public agency for foster care services as designated by the CPMT.

- If a LDSS enters into an agreement with the legal guardian to place the child outside of the home in "24 hour substitute care" and the LDSS is the case manager with "placement and care" responsibility for the child, the child is considered "in foster care" by the federal government and all federal and state requirements must be met *(45 C.F.R. §1355.20).* VDSS' Noncustodial Foster Care Agreement is used to place the child. Federal IV-E funds can only be claimed if LDSS has placement and care responsibility and the child is determined to be Title IV-E eligible by the LDSS.
- If another public agency designated by the CPMT enters into an agreement where the legal guardian agrees to place the child outside of the home and this public agency has case management responsibility for the child, the child is not considered "in foster care." As a result, no federal foster care requirements apply but certain state requirements must be met *(e.g., court reviews).* The CSA Parental Agreement is used. Federal Title IV-E funds may not be used to pay for any costs.

The FAPT, or entity designated by the CPMT, explores all available family, private insurance, community and public resources that may assist in funding the services and supports in the IFSP. CSA statute requires that the community services board, LDSS, local school division, court service unit and the Virginia Department of Juvenile Justice continue to be responsible for providing services identified in the IFSP that are within the agency's scope of responsibility and that are funded separately from the state pool *(§2.2-5211D).*

All efforts should be made to maximize and pool resources across agencies and sectors. The CPMT should use Medicaid funds whenever available for appropriate CSA services for the child and family *(Appropriation Act #279E).* The team should also use the process established by the CPMT to assess the ability, and provide for, appropriate financial contributions to the cost of services by the parents or guardian, using a standard sliding fee scale based upon ability to pay when appropriate *(§2.2-5208.5).*

After assessing all appropriate federal, state, private and community resources, the team recommends to the CPMT a plan for funding the services, including expenditures from the local allocation of the CSA state pool of funds *(§2.2-5208).* The CPMT uses established policies and processes for authorizing and monitoring the team's requests for funding *(§2.2-5206).*

Ongoing utilization management *(§ 2.2-2648.D15)* shall be conducted to assess the effectiveness and appropriateness of services based on the plan established by the CPMT following guidelines of the State Executive Council.

Events Since SB1332 Was Enacted

A series of events occurred after SB1332 was enacted which have culminated in interagency guidelines on specific foster care services for children in need of services through CSA. These events are described below.

JLARC Report. The Joint Legislative Subcommittee Studying the Comprehensive Services Act, chaired by Senator Emmett Hanger, requested the Joint Legislative Audit and Review Commission *(JLARC)* to examine the impact of the Attorney General's opinion issued in

December 2006. JLARC issued its "Follow-Up Report: Custody Relinquishment and the Comprehensive Services Act" in March 2007. Specifically, JLARC:

- Confirmed the findings of the Attorney General that "the Code of Virginia requires the State and localities to serve children who are at risk of foster care placement without requiring their parents to relinquish custody. The opinion indicates that some localities have chosen to interpret the Code of Virginia too narrowly, and are improperly requiring parents to relinquish custody in order to obtain services."
- Determined that Virginia Code requires the duration of foster care services to be for a planned period of time based on the needs of youth and their families. Recommended revising State policy that required foster care prevention services to be limited to six months unless extensions were approved by regional DSS staff.
- Concluded that "…a State policy that restricts access to residential services for children at risk of foster care placement has a more significant impact than local interpretation of State law. The State does not appear to have a legal basis for this policy. Furthermore, Virginia law appears to provide access to all needed services for children who are at risk of foster care placement and meet other eligibility criteria for CSA funding without parents having to relinquish custody or enter into non-custodial agreements."
- Recommended that "the Office of Comprehensive Services should take the lead in ensuring that current policies are consistent with State law and issue any needed clarifications to localities. Guidelines should be developed to ensure that localities fairly and consistently determine eligibility for services funded through CSA Foster Care Prevention and provide services to those children who are eligible for them under Virginia law."

Secretary's Directive for Immediate Action. The Governor's Cabinet Secretary of Health and Human Resources Marilyn Tavenner directed OCS, the Virginia Department of Social Services *(DSS)*, and the Virginia Department of Mental Health, Mental Retardation, and Substance Abuse Services *(DMHMRSAS)* to take immediate corrective actions necessary to comply with current law. The three agencies distributed a memo entitled "Foster Care Prevention Policy for Children Funded through CSA" on March 27, 2007 that was consistent with the findings in the JLARC report and the Attorney General's Opinion.

OCS convened a Stakeholder Group with representatives from 14 stakeholder groups to provide input during the development of proposed interagency guidelines for consideration by the CSA State Executive Council *(SEC)*. Throughout this process, over 70 stakeholders invested significant time and expertise which strengthened the guidelines.

Actions of the State Executive Council. The SEC is the State supervisory council for CSA established in statute *(§2.2-2648)*. It has authority to establish interagency program and fiscal policies which support the purposes of CSA by administrative action through a public participation process *(prescribed in CSA law and based on SEC policy)* or through the promulgation of regulations by the state boards, as appropriate *(§2.2-2648.D.3)*.

The SEC is chaired by the Secretary of Health and Human Resources. It is comprised of two General Assembly members, seven state government agency heads *(from the five child*

serving agencies, the Virginia Department of Medical Assistance Services, and the Office of the Executive Secretary of the Supreme Court), two local government officials, the chair of the CSA State and Local Advisory Team, and representatives from parents and private provider associations *(§2.2-2648).* A list of members is attached *(Attachment B).*

The SEC met on May 15, 2007 and considered two documents: a memo clarifying legal requirements; and proposed interagency guidelines implementing these requirements that were developed with input by the Stakeholder Group. The three agencies designated by Secretary Tavenner had prepared a memo entitled "Specific Foster Care Services Funded through CSA" to supersede the March 27, 2007 memo. It clarified federal and state law and incorporated legal clarifications from the Virginia Office of the Attorney General.

The SEC authorized broadly distributing the memo clarifying federal and state law. It also authorized broadly distributing the draft proposed guidelines to all stakeholders for 60 days of public comment consistent with SEC policy.

The primary purpose of the memo and guidelines that were distributed on May 18, 2007 was to comply with state and federal law. The documents stressed that families do not have to relinquish custody of their children in order to access necessary services. The proposed guidelines focused solely on a small group of "children in need of services" who are a serious threat to themselves or another person who are eligible for mandated foster care services through CSA when they require services in their home to prevent foster care placement or out of home placements though parental agreements.

First round of public comments. 126 respondents submitted official public comments by the July 20th deadline, including:

- 68 Virginia localities and 1 Washington DC respondent
    - 34 Department of Social Services
    - 27 CSA Systems
    - 25 parents and concerned citizens
    - 25 local governments
    - 2 Court Services Units
- 4 statewide advocacy organizations
    - Legal Aid Justice Center – Just Children Program
    - National Alliance on Mental Illness – National and Virginia Chapter
    - Virginia Poverty Law Center, Inc.
    - Voices for Virginia's Children
- 3 statewide associations
    - Virginia Association of Counties
    - Virginia League of Social Services Executives
    - Virginia Municipal League
- 1 manager of children's services in a state agency
- 1 legislator
- 5 judges – compiled by the Office of the Executive Secretary of the Supreme Court

Major themes from the public comments included concerns about the fiscal impact, the inappropriateness of the foster care system in serving these children, the determination of a "child in need of services," the appropriateness of court oversight for these cases, and case management for these children. Specifically, some of the major themes were:

Fiscal impact

- 75 respondents *(60% of 126 total respondents)* were concerned about the fiscal impact.
- 54 respondents *(43%)* said the state needs to fund administrative costs which are already underfunded.
- 13 respondents *(10%)* stated these children and families have already been receiving services in some communities without custody relinquishment through noncustodial agreements or CSA nonmandated funds.

Appropriateness of the foster care system

- 46 respondents *(37%)* felt that the mental health systems should be funded through DMHMRSAS and the community services boards to serve these children.
- 29 respondents *(23%)* maintained that the foster care system is inappropriate for serving these children.
- 22 parents and concerned citizens *(17%)* stated that the custody relinquishment issue is not solved because families are still involved with the court and foster care systems.

Court involvement

- 29 respondents *(23%)* maintained that court oversight is inappropriate for these children.
- 27 respondents *(21%)* supported only the court making the determination of a "child in need of services" and not the CSA family assessment and planning team.
- 24 respondents *(19%)* stated the court process is burdensome, inappropriate and not family friendly.
- 11 respondents *(9%)* noted practical difficulties with court procedures that needed to be clarified.
- 8 respondents *(6%)* stated court oversight is necessary.

Case management

- 34 respondents *(27%)* stated that the guidelines created a dual foster care system and DSS would end up having to manage the cases.
- 33 respondents *(26%)* questioned who is responsible for case management.
- 32 respondents *(25%)* asked how case management costs would be funded.

Implementation issues

- 47 respondents *(37%)* recommended delaying implementation until appropriate funding, additional analysis, improved policy guidance, implementation tools and/or training were provided.
- 27 respondents *(21%)* recommended using the Division of Child Support Enforcement for uniformity and enforcement of parental co-pays.
- 16 respondents *(13%)* stated the need for a due process and appeals process.
- 15 respondents *(12%)* stressed the need for training

Actions by the Secretary and State Executive Council. In response to public comment, Secretary Tavenner delayed the SEC meeting from August until October to provide additional time to strengthen the guidelines, reduce the fiscal impact to the extent possible, and provide localities tools to assist with implementation.

On October 2, 2007, the SEC considered the public comments and the revised interagency guidelines developed with input by the Stakeholders Group. The SEC voted to approve the guidelines. However, they provided an additional thirty days of public comment on the guidelines and authorized Secretary Tavenner as Chair to make needed changes before finalizing and distributing the guidelines for implementation. The public comment period ended November 7, 2007.

Second round of public comments.
74 respondents from 32 localities submitted official public comments. Almost half of these respondents *(33)* were from Norfolk, including 29 respondents from 12 private organizations. Overall, the respondents included:

- The Virginia League of Social Services Executives
- 29 private organizations *(all serving Norfolk)*
- 14 local departments of social services
- 11 local CSA systems
- 12 local governments
- 4 parents and concerned citizens
- 2 Court Services Units
- 1 community services boards

There were similar themes to those raised during the first round of public comments. Specifically, concerns focused on the fiscal impact, the role of the mental health system in serving these children, case management for these children, and the appropriateness of court oversight for these cases. Specifically, the major themes were:

Mental health system should serve these children
- 30 respondents *(41% of 70 respondents)* expressed that the mental health system through DMHMRSAS and the CSBs should serve these children
- 10 respondents *(14%)* expressed concern about creating a dual foster care system
- 8 respondents *(11%)* commented on the inappropriateness of the foster care system to serve families with children who have mental health needs

Concern about fiscal impact
- 26 respondents *(35%)* were concerned about fiscal impact on local government
- 12 respondents *(16%)* expressed concern about increased case management costs
- 10 respondents *(14%)* expressed concern about increased administrative costs

Concern about case management
- 11 respondents *(15%)* believe training/guidance is needed for agency case managers
- 11 respondents *(15%)* were concerned that LDSS becomes case manager by default

- 5 respondents *(7%)* stated intensive care coordination should be a funded service, unless an agency is already funded to provide that function.

Use Division of Child Support Enforcement for parental co-pays

- 14 respondents *(19%)* stated that the Division of Child Support Enforcement should be the mechanism for parental co-pays

Divergent comments on appropriateness of court oversight

- 10 respondents *(14%)* commented court oversight is unnecessary *(intrusive, hampers relationship with family)*
- 9 respondents *(13%)* commented court oversight provides protection for children and is necessary

Norfolk concerns resulted primarily from the community misunderstanding for which children the guidelines apply. These respondents were concerned that the guidelines applied to children who are abused or neglected. The guidelines state that they do not apply to children who meet the statutory definition of abuse and neglect and who are eligible to receive foster care services, including foster care prevention services. This point was further clarified in the final guidelines.

Issues the guidelines could not address. Some respondents expressed concerns during the public comment periods that could not be addressed in the guidelines either because they dealt with provisions in Virginia Code or were beyond the scope of the work. For example:

- Concern: The foster care system is inappropriate for these children.
  Fact: State law mandates that "children in need of services" receive foster care services through CSA *(§2.2-5211C subdivision B3 and §63.2-905).*
- Concern: The guidelines are expanding the CSA mandate.
  Fact: State law currently places the mandate for these children under CSA *(see above).* JLARC confirmed the Attorney General's conclusion that some localities were interpreting the Code of Virginia too narrowly. They found that 20% of communities were not serving "children in need of services" with foster care prevention services. They also found that just over half of the communities *(56%)* were not fully serving these children through parental agreements in residential placements.
- Concern: The mental health system should be funded to serve these children.
  Fact: State law places the mandate for these children under CSA *(see above).* The CSBs are part of CSA by statute and have an important role with many of these children. CSA statute creates a "collaborative system of services and funding" across the child serving systems *(§2.2-5200)* to serve children with serious emotional and/or behavior problems *(§2.2-5212).* The children specified in the guidelines are often involved in multiple systems. One purpose of CSA funding is to "consolidate categorical agency funding" *(§2.2-5211A).*
- Concern: The guidelines create dual foster care systems, one for abused and neglected children and one for children in need of services.
  Fact: The Code defines these two populations of children separately. They often have different circumstances and needs.

- Concern: Only a court can make the determination of a "child in need of services."
  Fact: The Virginia Office of the Attorney General advised OCS that a finding by a court is not the exclusive means by which a child may meet this definition. The fact that the definition appears in §16.1-228 does not limit FAPT in accordance with guidelines established by the SEC and the CPMT, from determining that a child meets the definition of a "child in need of services" in order to receive CSA services and funds. Just as an abused and neglected child does not require a legal determination by the court of abuse and neglect in order for the child to access necessary services and funding through CSA, the statutory definition of a child in need of services can be used by the FAPT to determine eligibility for accessing necessary services and funding through CSA without a legal determination of CHINS by the court. Only the court can make a legal determination. The FAPT is making an eligibility determination for CSA services and funding.
- Concern: Divergent views on the appropriateness and necessity of court reviews for parental agreements.
  Fact: State law requires court reviews of placements outside of the home when there is a parental agreement between a public agency designated by the CPMT and the parents or legal guardians who retain legal custody.

Final interagency guidelines distributed. The final interagency guidelines were distributed November 27, 2007 and effective December 3, 2007. They were developed based on federal and state law, legal clarifications from the Virginia Office of the Attorney General, and input received during the two public comment periods. An Eligibility Determination Checklist and CSA Parental Agreement were also distributed to assist with implementation. Because stakeholders had to work within existing law and tried to balance the significantly divergent perspectives and needs among stakeholders and localities, it was not possible for the stakeholders to agree on all aspects of the interagency guidelines.

The guidelines specify that the FAPT, or approved alternative multi-disciplinary team, in accordance with the policies of the CPMT, shall determine whether there are sufficient facts that a child meets <u>all four</u> of the following eligibility criteria:

1) ***The child meets the statutory definition of a "child in need of services" (§16.1-228).*** Specifically, "the child's behavior, conduct, or condition presents or results in a serious threat to the well being and physical safety of the child, or the well-being and physical safety of another person if the child is under the age of 14."

   This determination of facts shall be made in one of two ways:
   a. The FAPT and/or approved alternative multi-disciplinary team designated by the CPMT shall determine that the child's behavior, conduct, or condition meets this specific statutory definition and is of sufficient duration, severity, disabling and/or self-destructive nature that the child requires services.
   b. A court finds that a child falls within these provisions, based on "(i) the conduct complained of must present a clear and substantial danger to the child's life or health or to the life or health of another person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the

intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family." *(§16.1-228)*

2) ***The child has emotional and/or behavior problems*** where either:
   a. the child's problems:
      - have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted; and
      - are significantly disabling and are present in several community settings, such as at home, in school or with peers; and
      - require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies."

   or
   b. the child:
      - is currently in, or at imminent risk of entering, purchased residential care; and
      - requires services or resources that are beyond normal agency services or routine collaborative processes across agencies; and
      - requires coordinated services by at least two agencies."

3) ***The child requires services:***
   a. to address and resolve the immediate crises that seriously threaten the well being and physical safety of the child or another person; and
   b. to preserve and/or strengthen the family while ensuring the safety of the child and other persons; and
   c. the child has been identified by the Team as needing:
      - services to prevent or eliminate the need for foster care placement[1]. Absent these prevention services, foster care is the planned arrangement for the child.
        or
      - placement outside of the home through an agreement between the public agency designated by the CPMT and the parents or legal guardians who retain legal custody. A discharge plan for the child to return home shall be included.

4) ***The goal of the family is to maintain the child at home*** *(for foster care prevention services)* ***or return the child home as soon as appropriate*** *(for parental agreements).*

Estimated Number of Children Impacted

It is difficult to estimate the number of children to be served who have not yet entered the system. The largest impact in complying with state law will be the number of additional children placed outside of the home through parental agreements. JLARC concluded that there

[1] Foster care placement is defined as "placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board of licensed child-placing agency." *(§ 63.2-100)*

would be limited impact with increased use of community services since 80% of communities already serve these children with community services. These costs are not as significant as out of home placements.

To gather data on eligible children who are placed through parental agreements, OCS modified a data field in the CSA Data Set. This change will allow the state and localities to capture the number, demographics, services, expenditures and outcomes of these children.

It is difficult at this time, however, to measure the impact since the final guidelines did not go into effect until December 3, 2007. A few localities began serving these children in December 2006 with the Attorney General's opinion. Many localities began in March 2007 with the directive to comply with state and federal law. Some localities served children on a case by case basis, but waited to change policies until they received the final guidelines in December 2007.

A further complicating factor has been the differences in how localities have interpreted which children are eligible. Some localities have broadly interpreted eligibility; others have narrowly interpreted it. The new guidelines require consistent application of eligibility across the State.

Thus, the FY 2007 data set numbers reflect only a small portion of the new children, inconsistent definitions of eligibility, and sometimes only one or two months of costs for these children. The impact of the guidelines can be better assessed with CSA data from the second half of fiscal year 2008. Localities will complete reporting of this data October 15, 2008, after year end bills are paid.

Since the interagency guidelines were based on provisions in current law and state policy, JLARC proposes a reasonable approach to estimating the number of children and the fiscal impact. It is anticipated, however, with the specificity of the new eligibility criteria, that these estimates may be on the high end.

JLARC estimated the number of children and the fiscal impact at the request of Senator Hanger *(June 12, 2007 JLARC memo).* They focused on the new State policy requiring localities to:

- provide eligible children access to necessary services to meet their needs without their families having to relinquish custody;
- provide foster care prevention services based on children's needs and no longer limit services to six months; and
- enter into voluntary agreements between parents and the community policy and management teams to place children in residential facilities when appropriate where the parents retain legal custody.

JLARC estimated in its March report that up to 225 additional children could receive community services through CSA foster care prevention for the 20% of communities that were not already serving "children in need of services." They arrived at this estimate based on

determining the proportion of foster care prevention cases being served in those localities that served children in need of services and were for reasons other than abuse or neglect.

JLARC used two methodologies to extrapolate the experience of localities that had a history of providing residential services to all eligible children through noncustodial agreements to estimate the number of children now eligible for services in other localities under a new State policy. Using a multivariate regression model, they estimated approximately 753 additional children could be served through parental agreements in those localities that previously did not accept or limited the number of noncustodial agreements. Using an alternative analysis they developed a comparable estimate of 615 additional children who could be served.

In the multivariate regression model, JLARC identified the characteristics that appeared to most closely predict the number of children served in those localities that did not limit noncustodial agreements. In each locality, they determined that the number of children who received services through noncustodial agreements seemed to be closely related to the number of: residents under the age of 18; juvenile intakes at court services unit; children found to be in need of services *(CHINS)* by a judge; teenage pregnancies; and foster care, child protective services and Food Stamp cases. These characteristics explained almost 97 percent of the variation across localities in the number of children with noncustodial agreements when included in a multivariate regression model. JLARC then applied the regression equation to other localities and developed an estimate of 1,234 children who could be served through parental agreements based on the new State policy. They determined that 753 of these children would be new cases since 385 children were already served through noncustodial agreements and 96 through custody relinquishment.

JLARC conducted an alternative analysis to validate the results from the regression model. They determined that the prevalence of children among residents under the age of 18 who were served in localities that did not limit noncustodial agreements was 0.06 percent, compared to 0.01 percent in other localities. They then estimated that an additional 615 children could be served through parental agreements, assuming a prevalence rate of 0.06 percent across all localities when these agreements were available throughout the State.

Fiscal Impact

JLARC estimated the fiscal impact of a new State policy based on information gathered through surveys of localities, quantitative analyses described above to estimate the number of children impacted, and analyses of CSA financial data reported by localities. They identified two types of services that would impact some communities and the State financially:

- 20% of communities were not serving children in need of services with foster care prevention services. Estimate 225 children.
- 56% of communities not fully serving families through parental agreements, estimated between 615-753 children.

JLARC concluded there would be little or no fiscal impact in localities that already serve all eligible children. They determined that some children may have been unserved in localities that did not offer parents the option of entering into noncustodial agreements, that placed limits on

the number of agreements entered into as a community, or where parents declined to relinquish custody.

JLARC estimated in its March report that serving the estimated 225 children not receiving foster care prevention services could cost the State and localities approximately $1.5 million per year. The cost for the State would be around $0.9 million and for localities around $0.6 million, based on the average state and local share of CSA costs. JLARC based this estimate on the average annual cost per child served with foster care prevention funds for reasons other than abuse or neglect *($6,690 in FY 2005).* They stressed that this estimate may be overstated because some children may already be receiving services through CSA nonmandated funds or because parents may have relinquished custody.

JLARC estimated in its June memo that serving the potentially 753 unserved children through parental agreements could cost the State $13.4 million and those local governments not already serving these children $7.8 million. This was based on the average State share of funding *(63 percent)* and required local match *(37 percent)* in FY 2006.

JLARC based their estimate on the actual experience of 39 localities serving children similar to those of children impacted by a new State policy. They used the average actual cost of services provided to children through noncustodial agreements in FY 2005, which was $27,270 per child. They inflated this figure to $28,150 to account for the actual and estimated increase in daily residential rates from 2005 to 2007.

JLARC stressed that it is impossible to predict the cost of services for each new CSA child. Their individual needs may differ slightly from children already served through noncustodial agreements and rate increases by residential providers are not known. They also stated that the number of children will probably increase in the future as the overall youth population increases. They cautioned that differences between these assumptions and actual experience could impact the fiscal impact.

Solutions to help offset some costs

Reducing use of residential care. Most of the fiscal concern for serving these children relates to the concern that these children will require residential placements. Residential care includes group homes, residential treatment facilities and psychiatric hospitals.

JLARC found in its 2006 review of residential services provided through CSA *(House Joint Resolution 60)* that some children are placed in more restrictive, intensive settings than necessary. They found that mismatched services can result in increased: lengths of stay, number of placements, and mental or behavior problems. It also results in unnecessary higher costs since residential services are four times more costly than community services *(average annual cost of $48,129 vs $11,360 in 2005 which includes state, local and Medicaid funds).*

JLARC concluded that managing residential expenditures will likely yield the largest fiscal impact in controlling CSA costs. State and local governments spent almost $145.3 million in CSA pool funds on 4,301 children in residential care during 2007, representing 42.4% of all net CSA state pool expenditures *($342.2 million).* When Medicaid expenditures on

residential services for CSA children are added, this amount increases to over $231 million. These costs do not include federal IV-E expenditures and other Medicaid services paid for CSA children during these placements.

While residential care is an important part of a continuum of care, approximately one out of every four CSA children *(24%)* was placed in residential care at some point during each of the past three years. The Annie E. Casey Foundation's Strategic Consulting Group reports that the national average of 18% of foster care children placed in residential care is high, with best practices dictating less than 10% of children served in residential care. Because of the large number of residential foster care placements through CSA, these percentages suffice as a reasonable proxy measure. *(Approximately 82% of CSA residential services are provided through the foster care system, with 18% percent provided through special education placements.)*

Virginia is beginning to reduce the number of children in residential care. However, there is a long way to go to reach 10%. The percentage of CSA children in residential care has declined slightly the last 2 years to 23.3% of children in FY07. The growth in the number of children placed in residential care over the prior year has declined from a 5.7% increase to less than 1% (0.7%) increase in FY2007. Length of stay on average declined by 23 days in FY06 over FY05; however, it increased by 6 days in FY07 over FY06.

The State and many localities have launched major initiatives to reduce the use of residential care and serve children in their homes, schools and communities whenever appropriate. These initiatives include:

- The Virginia Department of Medical Assistance Services was awarded one of 10 federal demonstration grants to bring children home from psychiatric residential treatment facilities through funding intensive family and community services through Medicaid for eligible children. The goals are to shorten length of stay, develop community services, and improve outcomes for children and families. The program is effective December 1, 2007.
- The First Lady has undertaken her "For Keeps" Initiative to find permanent families for foster care teens and improve family and community supports for all children.
- The Annie E. Casey Foundation's Strategic Consulting Group is working with Secretary Marilyn Tavenner on major CSA, child welfare and child mental health reforms, including reducing reliance on residential care and investing funds in community services.
- JLARC completed its report, Evaluation of Children's Residential Services Delivered Through the Comprehensive Services Act, in December 2006. They recommended expanding community services, reinvesting any cost reductions in reduced residential care to fund additional community services, strengthening local CSA systems, and improving access to information for decision-making.
- Senator Hanger's Joint Subcommittee *(SJR 96)* is studying the cost effectiveness and administration of CSA by state and local governments and will recommend program improvements and cost containment strategies in late Fall 2007.
- The 2007 General Assembly initiated the CSA Innovative Community Services Grants with $250,000 in FY07 and $500,000 in FY08 for competitive start-up funds.

Sixteen communities were funded through six grants to return, or prevent, residential placements for children who can be served effectively in the community. These grants began in January 2007.

- The Chief Justice's Commission on Mental Health Reform's Child & Adolescent Task Force recommended funding incentives through OCS to limit the use of residential care and invest any cost saving to develop community services.
- The Commission on Youth, DMHMRSAS and OCS convened a statewide conference in September 2007 on practical tools for implementing systems of care and evidenced based practices by serving children in their homes, schools and communities. Over 550 participants attended from across the state and various disciplines to learn from national, state, and local experts. CSA has also held regional roundtables, technical assistance and training to communities on assessments, creative service planning, developing community services, and best practices.
- The SEC is implementing results accountability in CSA. OCS is providing management reports for communities to track children, services and expenditures.
- DMHMRSAS is leading a cross systems effort to apply for a six-year federal grant on systems of care that provides funding to expand family support and community services. Several localities are applying as well.

Clarifying intensive care coordination policy. Stakeholders have raised concerns about case management services for these children. The ongoing management of service plans falls to local agency workers. Oftentimes local department of social services staff are responsible for providing these services for children and their families who have serious emotional and behavior problems. LDSS say they do not have the expertise or training to serve these children and families. These workers often carry large caseloads and have limited time to provide the intensive services necessary to serve children who are at risk of residential placements in their homes and communities effectively. It is difficult for these workers to conduct comprehensive assessments of the strengths and needs of children and families, much less provide the ongoing services and supports required to keep a family together. The end results can be mismatched services, children being placed or staying longer in residential care than appropriate or necessary, poorer outcomes for children and families, and higher expenditures than necessary.

Older children, averaging 14-17 years old, tend to be placed in restrictive, intensive placements through CSA. These children often have mental health diagnoses and/or prescribed psychotropic medications due to mental health problems. In FY06, the percentages of children in intensive settings with mental health diagnoses were: residential treatment facilities *(73%),* special education private day placements *(63%),* group homes *(59%),* and therapeutic foster homes *(54%).* In fact, forty two percent of all CSA children *(7,700)* had mental health diagnoses and/or received psychotropic medications in FY07. State and local governments spent over $221.8 million on these children, representing 63% of all CSA state pool expenditures.

Hampton has one of the lowest rates of residential care placements in the state. Only 7% of its CSA children are in residential care. While statewide CSA costs have increased on average 8.6% annually since 1998, Hampton has controlled CSA pool costs through serving children in their homes and communities. Between 1997 and 2005, Hampton spent around $4 million (*state and local)* in its CSA program until the past two years when its costs have increased,

partly due to purposeful investment decisions. Hampton largely attributes its success over the years in keeping children in their homes, schools and communities to its child-centered, family focused and community based approach and its use of intensive care coordination services for children in, or at risk of entering, residential placements.

The Stakeholders Group recommended that intensive care coordinators be funded to work closely with children who are at imminent risk of, or who are currently in, residential care. These coordinators would provide a higher level of intense services than typical case management services provided by the agencies. They would work closely with the family to identify strengths and needed services, develop creative wrap around services, establish plans for crisis stabilization and interventions, and build long term, natural community supports to ensure the child can safely remain at home, school and in the community.

The intensive care coordinator would be accountable for implementing the IFSP. S/he would provide direct supportive services, link the family to necessary community services, serve as liaison and coordinate services across providers and community resources, assess the effectiveness and quality of services, advocate for the family, and monitor to ensure services are effective and modified to meet changing needs. When a child is placed in residential care, s/he would be responsible for attending all treatment meetings at the facility and for reintegrating the child as quickly as appropriate back into his/her home, school and community. S/he would coordinate parallel work with the family when the child is in residential care. S/he would ensure needed services are in place when the child returns home, including in-home services, counseling, medication management, educational services and other community services. Typically, s/he would visit the family in their home and the child in school at least weekly for three months after discharge from residential care.

Children can be better served and expenditures reduced by intensive care coordinators working to prevent unnecessary residential placements and to reduce length of stay. JLARC reported that State and local governments could realize an annual savings of $1 million for each of the following actions:

- Preventing residential care for 34 children who can effectively and appropriately be served with community services; or
- Reducing every child's length of stay in residential care by less than a day (0.8).

Another way to assess the fiscal impact, it is estimated that it would cost approximately $1.5 million in state funds and $866,880 in local funds to purchase 40 intensive care coordinators across the state. To pay for this, length of stay in psychiatric residential treatment facilities across the state would need to be reduced on average by 3-4 days, or 175 youth across the state would need to be diverted from residential services and receive three community services.

The Stakeholder Group considered four alternatives for funding these services: 1) providing a direct allocation from DMHMRSAS to the CSBs to develop these services; 2) purchasing these services from the CSB and/or private providers through the CSA state pool of funds by local CSA systems; 3) exploring the use of Medicaid funds for these intensive services; and 4) exploring whether the federal government would allow VDSS to enter into a memorandum of

agreement with DMHMRSAS to provide intensive care coordination services for eligible foster care children and receive Title IV-E funds.

The Secretary of Health and Human Resources concluded that since many CSA children have mental health needs, a collaborative approach is required between OCS, DMHMRSAS, the CSBs and the local CSA systems. She recommends that the State Executive Council clarify state policy for local CSA systems to purchase intensive care coordination services through the CSA state pool of funds to prevent or return children from residential placements as quickly as appropriate.

DMHMRSAS would be responsible for establishing service and performance standards for conducting comprehensive child and family assessments, intensive clinical care coordination services, and utilization management functions when appropriate. Given the intensity of interventions, caseloads for each worker would not exceed 15 children and their families.

Implementing systems of care training. While localities work diligently to implement CSA, their ability to build community based alternatives, decrease the numbers of youth in restrictive settings, strengthen performance monitoring and improve outcomes is inconsistent across the state. JLARC concluded that additional State training for community teams would improve accountability, effectiveness and efficiency in local CSA service planning and delivery. They found that CPMTs that demonstrated strategic vision, were proactive in policy setting, and provided overall program oversight had lower per-child expenditures and a smaller proportion of children receiving residential care.

Implementing a consistent practice model and maintaining a consistent knowledge and skill base across the state that is child-centered, family-focused, community-based and cost effective requires a statewide strategy. A statewide System of Care Academy would provide a mechanism for implementing a major paradigm shift, improving the program, policy and fiscal governance and implementation of CSA, and training CSA teams on an ongoing basis to effectively serve children and their families in their homes, schools and communities whenever appropriate.

A Systems of Care Academy would provide knowledge and skill building to strengthen workforce competencies for CPMTs, FAPTs and CSA Coordinators. Examples of content areas include: mission, goals and values of a system of care; CSA structure and roles; engaging families as partners; conducting comprehensive child and family assessments; designing and implementing creative wrap around services; using data and outcomes to drive actions; managing change; assessing community needs and resources; creatively pooling resources across sectors; creating an array of community services; selecting and implementing evidenced based, best practice and promising service models; strengthening utilization management; and facilitating collaborative decision making. The design could include three streams: core courses in CSA and system of care fundamentals; intensive coaching and training on FAPT processes; and advanced sessions for CPMT leadership development.

Through training, local CSA teams would be able to implement the statutory purpose of CSA to provide high quality, child centered, family focused, cost effective, and community-based

services to troubled youth and their families. Communities would more effectively use promising and evidence-based practices; CPMTs would develop more effective long range planning; and FAPTs would increase their abilities to use community-based services. The result would be that as service delivery shifts to the home, school and community, child and family outcomes would improve, length of stay in residential settings would shorten, unit costs would decrease, and the significant rate of growth in CSA expenditures would decline.

Other important issues

Two other issues were highlighted during this process that impact not only these children who are at risk of custody relinquishment, but other children in CSA.

Tracking Child and family outcomes. It is important to ensure that children and families receive appropriate services and are making progress on improved outcomes. The CSA State and Local Advisory Team *(SLAT)* recommended tracking the following outcomes statewide and by community: the proportion of children served in home, school and community; and improved functioning of the child, the child's success in school, and family engagement. The most effective ways to gather and track these measures is through the CSA data set and a new assessment instrument to track progress on child and family outcomes over time.

Virginia Code *(§2.2-2648)* requires the SEC to oversee development and implementation of a mandatory uniform assessment instrument. It also requires the collection of uniform data on individual children served through CSA, including demographic, service, expenditure and outcomes from the 131 localities.

Given concerns among State and local CSA systems with the current assessment instrument, the SEC directed SLAT to evaluate and recommend a mandatory uniform assessment instrument and ways to use it to its fullest capacity. After evaluating several instruments, SLAT recommended adopting the Child Assessment of Needs and Strengths *(CANS).*

The CANS tool assists in the planning and management of services for youth and their families with the primary objectives of permanency, safety and improved quality of life. It is designed for use at two levels: service planning at the individual child and family; and management at the community systems level. This tool can effectively be used to capture outcomes with children and families, to help inform decisions on appropriate levels of care needed for individual children, to provide statewide web-based training, and to provide routine and customized reports for decision-making.

SLAT is now finalizing a plan to transition the State to the new CANS instrument. OCS is also examining how to link CSA data on children with key outcome data from its partner child-serving agencies to track permanency rates in foster care, educational outcomes from the schools, and juvenile justice recidivism rates for children served through CSA.

Strengthening due process protections for children and families. Some families expressed concerns through public comment that due process protections be strengthened for children and families served through local departments of social services and through CSA. State CSA

policy requires each CPMT to establish a local due process system with the following minimum parameters:

- Notice to families at point of entry to FAPTs;
- Opportunity for the family/child to be heard and communicate their position; and
- Timelines for the review of requests and CPMT responses.

This review process should not take the place of any other review processes pursuant to existing state or federal law *(e.g., special education, foster care, and the courts).*

It is recommended that the State Executive Council direct SLAT, OCS and DSS to strengthen the state policy and guidance for localities on due process protections through CSA and the foster care system.

Conclusion

Virginia and other states have struggled over many years with the issue of custody relinquishment. It is clear that state and federal law in Virginia do not require families to relinquish custody of their children in order to access needed services.

Working through these issues over the past nine months has revealed a complicated legal and programmatic framework that involves many systems. Major progress was made in clarifying and resolving longstanding issues through this process thanks to the significant contributions of time and expertise from families, state and local agencies, local government officials, CSA systems, private providers, advocates, the Office of the Secretary of Health and Human Resources, the Virginia Department of Planning and Budget, the Virginia Attorney General's Office and the Virginia Office of the Executive Secretary of the Supreme Court.

Attachment A

CHAPTER 840

An Act to amend and reenact §§ 2.2-5211 and 2.2-5212 of the Code of Virginia, relating to state pool of funds for community policy and management teams.

[S 1332]

Approved March 26, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-5211 and 2.2-5212 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-5211. State pool of funds for community policy and management teams.

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families. The purposes of this system of funding are to:

1. Place authority for making program and funding decisions at the community level;

2. Consolidate categorical agency funding and institute community responsibility for the provision of services;

3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and

4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds that serve the target populations identified in subdivisions 1 through ~~5~~ *6* of this subsection in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children for whom foster care services, as defined by § 63.2-905, are being provided to prevent foster care placements, and children placed through parental agreements, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.2-900;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential

program, or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of § 16.1-284.1; ~~and~~

5. Children committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14~~.~~*; and*

6. Children requiring mental health services, provided the child meets all of the following criteria:

a. The child is eligible for funding pursuant to subdivision A1 of § 2.2-5212.

b. Sufficient facts exist for a licensed mental health professional designated by the Family Assessment and Planning Team or by a juvenile court services intake officer to conclude that the child's behavior, conduct or condition presents or results in a serious threat to his well-being and physical safety, or, if he is under the age of 14, his behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person.

c. Mental health services are required to prevent placement in foster care as determined and recommended by a licensed mental health professional designated by the Family Assessment and Planning Team.

d. The Family Assessment Planning Team, in collaboration with the child's parents or guardians, indicates as a goal in the individualized family services plan that, absent the referenced mental health services, foster care is the planned arrangement for the child.

e. The mental health services are not covered by private insurance.

f. The child is not eligible for Medicaid upon initial evaluation of these criteria.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services *including mental health services* for children identified in subdivisions B 1, B 2, ~~and~~ B 3, *and B 6* and (ii) meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs. ~~Nothing in this section prohibits local~~ *Local* governments ~~from requiring~~ *shall require* parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as ~~provided in the appropriation act~~ *determined by the Office of Comprehensive Services*.

D. When a community services board established pursuant to § 37.2-501, local school division, local social service agency, court service unit, or the Department of Juvenile Justice has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit or Department of Juvenile Justice has met its fiscal responsibility for that child for the services funded through the pool. However, the community services board, the local school division, local social services agency, court service unit or Department of Juvenile Justice shall continue to be responsible for providing services identified in individual family service plans that are within the agency's scope of responsibility and that are funded separately from the state pool.

Further, in any instance that an individual 18 through 21 years of age, inclusive, who is eligible for funding from the state pool and is properly defined as a school-aged child with disabilities pursuant to § 22.1-213 is placed by a local social services agency that has custody

across jurisdictional lines in a group home in the Commonwealth and the individual's individualized education program (IEP), as prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate educational program for such individual, the financial and legal responsibility for the individual's special education services and IEP shall remain, in compliance with the provisions of federal law, Article 2 (§ 22.1-213) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the placing jurisdiction until the individual reaches the age of 21, inclusive, or is no longer eligible for special education services. The financial and legal responsibility for such special education services shall remain with the placing jurisdiction, unless the placing jurisdiction has transitioned all appropriate services with the individual.

E. In any matter properly before a court for which state pool funds are to be accessed, the court shall, prior to final disposition, and pursuant to §§ 2.2-5209 and 2.2-5212, refer the matter to the community policy and management team for assessment by a local family assessment and planning team authorized by policies of the community policy and management team for assessment to determine the recommended level of treatment and services needed by the child and family. The family assessment and planning team making the assessment shall make a report of the case or forward a copy of the individual family services plan to the court within 30 days of the court's written referral to the community policy and management team. The court shall then consider the recommendations. However, the court may make such other disposition as is authorized or required by law, and services ordered pursuant to such disposition shall qualify for funding as appropriated under this section.

§ 2.2-5212. Eligibility for state pool of funds.

A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 45 and shall be determined through the use of a uniform assessment instrument and process and by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems that:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at imminent risk of entering, purchased residential care. In addition, the child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs.

4. The child or youth has been placed in foster care through a parental agreement between a local social services agency or public agency designated by the community policy and management team and his parents or guardians, entrusted to a local social services agency by his parents or guardian or has been committed to the agency by a court of competent jurisdiction for the purposes of placement as authorized by § 63.2-900.

5. The child or youth requires mental health services to prevent placement in foster care pursuant to a parental agreement.

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person less than eighteen years of age and (ii) any individual through twenty-one years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.

2. That the provisions of this act shall not become effective unless reenacted by the 2008 Regular Session of the General Assembly.

Attachment B
State Executive Council Members
Comprehensive Services for At-Risk Youth and Families
November 2007

Office of Health and Human Resources
Marilyn B. Tavenner, Secretary of Health & Human Resources
(Heidi Dix, Deputy Secretary)

Virginia House of Delegates
Delegate Phillip A. Hamilton

Senate of Virginia
Senator John S. Edwards

Parent
Trudy Ellis

Local Government
B. David Canada, City Manager, City of Petersburg
Woodrow Harris, Councilman, City of Emporia

Private Provider
Greg Peters, Virginia Coalition of Private Provider Association

Office of the Executive Secretary of Virginia Supreme Court
Lelia Hopper, Director, Court Improvement

Department of Education
Billy K. Cannaday, Jr., Superintendent of Public Instruction
(Douglas Cox, Assistant Superintendent, Special Education and Student Services)

Department of Health
Robert Stroube, Commissioner
(Jeff Lake, Deputy Commissioner)

Department of Juvenile Justice
Barry Green, Director
(Tim Howard, Deputy Director for Community Programs)

Department of Medical Assistance Services
Patrick Finnerty, Director
(Cynthia Jones, Chief Deputy Director)

Department of Mental Health, Mental Retardation & Substance Abuse Services
James S. Reinhard, Commissioner
(Raymond Ratke, Deputy Commissioner/Chief of Staff)

Department of Social Services
Anthony Conyers, Jr., Commissioner
(Lynette Isbell, Director of Family Services)

State & Local Advisory Council *(SLAT)*
Charlotte McNulty, Chair