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November 1, 2014

The Honorable Charles J. Colgan, Co-Chairman
Senate Finance Committee
Senate of Virginia
10660 Aviation Lane
Manassas, VA 20110

The Honorable Walter A. Stosch, Co-Chairman
Senate Finance Committee
Senate of Virginia
Innsbrook Centre
4551 Cox Road, Suite 110
Glen Allen, VA 23060

The Honorable Chris S. Jones, Chairman
House Appropriations Committee
Virginia House of Delegates
P.O. Box 5059
Suffolk, VA 23435

The Honorable Thomas K. Norment, Jr., Chairman
Senate Courts of Justice Committee
Senate of Virginia
P.O. Box 6205
Williamsburg, VA 23188

The Honorable David B. Albo, Chairman
House Courts of Justice Committee
Virginia House of Delegates
6367 Rolling Mill Place, Suite 102
Springfield, VA 22152

RE: Report Pursuant to Item 37.K. 2014 Appropriations Act, Chapter 2

Dear Chairman Colgan, Chairman Stosch, Chairman Jones, Chairman Norment and Chairman Albo:

Item 37, Paragraph K, of the 2014 Appropriations Act requires the Executive Secretary of the Supreme Court to review the impact on the court system, fiscal and operational, of allowing a single petition in juvenile and domestic relations district court cases involving two or more children if such children have the same parents or legal guardians. The Executive Secretary is to report his findings to the Chairmen of the House Appropriations, Senate Finance, House Courts of Justice and Senate Courts of Justice Committees. Please find attached the specified report.

If you have any questions about the report, please do not hesitate to contact me. With kind regards, I am

Very truly yours,

A handwritten signature in black ink that reads "K R Hade".

Karl Hade

cc: Richard E. Hickman, Jr., Senate Finance Committee
Michael Jay, House Appropriations Committee
Division of Legislative Automated Systems

Report Pursuant to Item 37.K. 2014 Acts of Assembly, Chapter 2

Single Petition for Custody/Visitation in Juvenile & Domestic Relations District Court

Introduction

This report is submitted in accordance with Item 37.K., 2014 Acts of Assembly, Chapter 2, which requires the “Executive Secretary of the Supreme Court of Virginia to review the impact on the court system, fiscal and operational, of allowing a single petition in juvenile and domestic relations district court case[s] involving two or more children if such children have the same parents or legal guardians.”

To assist with the preparation of this report, the Office of the Executive Secretary has undertaken the following tasks, each of which is presented throughout this report:

- Reviewed the current statutory authority and obligations of the juvenile and domestic relations district court.
- Reviewed the proposed legislation (HB 438) from the 2014 Session of the General Assembly.
- Reviewed comments previously received from juvenile and domestic relations district court judges on the impact of similar legislation proposed during past General Assembly sessions.
- Surveyed juvenile and domestic relations district court clerks on the impact of the proposed legislation on their clerks’ offices.
- Completed a Fiscal Impact Analysis.

Authority and Obligations of the Juvenile and Domestic Relations District Court

Jurisdiction. Juvenile and domestic relations district courts have “exclusive original jurisdiction... over all cases, matters and proceedings involving the custody and visitation... of a child.” Va. Code § 16.1-241 A. This jurisdiction is concurrent with the circuit court under specified circumstances, and the juvenile court is divested of this jurisdiction under specified circumstances, e.g., when a suit for divorce has been filed in the circuit court. § 16.1-244.

Case Initiation. “All [custody and visitation] matters alleged to be within the jurisdiction of the [juvenile] court shall be commenced by the filing of a petition.” § 16.1-260 A. Such petitions shall be filed with the intake officer by the party parent or may be filed directly with the clerk’s office, if an attorney files the petition. “The intake officer shall accept and file a petition in which it is alleged that (i) the custody [or] visitation ... of a child is the subject of controversy or requires determination....” § 16.1-260 B.

The *Code of Virginia* specifically permits anyone, including but not limited to, grandparents, stepparents, former stepparents, and other blood relatives and family members, with a legitimate interest (which shall be broadly construed to include the child’s best interest) to petition for custody or for visitation. § 16.1-241 A. This same code section also identifies those who are excluded by statute from having a legitimate interest.

Filing fee. Upon the initial commencement of a custody case or a visitation case, a filing fee of \$25.00 must be paid unless the petitioner is granted *in forma pauperis* status. Only one \$25.00 fee is required for all custody petitions and visitation petitions simultaneously initiated by a single petitioner. § 16.1-69.48:5.

Contents of Petition. § 16.1-262. Separate petitions are filed for custody and for visitation, and only one child is included on each petition. This practice ensures compliance with state laws governing: judicial consideration of the best interests of each child before the court; confidentiality of court records; notice to parties as to the issues which will be subject to court review; what issues are before the circuit court for *de novo* review upon appeal; timely expungement of juvenile records; as well as establishing a coherent and uniform measure of workload that bears some relation to the demands placed on the court's resources.

The petition must be sworn to and include the:

- child's name, age, date of birth and address;
- mother's name and address;
- father's name and address;
- current custodian's name and address; and
- specific facts that bring the child into the court's jurisdiction.

Legal Representation. Parents are not entitled to court-appointed counsel compensated by the Commonwealth when filing a petition for custody or for visitation. A judge has the discretion to appoint a guardian *ad litem* for a child who is the subject of a custody petition or a visitation petition. § 16.1-266 F. The Appropriations Act, Acts of Assembly, requires parents, adoptive parents, or other parties with a legitimate interest to reimburse the Commonwealth for the costs of services rendered by guardians *ad litem* for the children. Such reimbursement (i) may not exceed the amount awarded the guardian *ad litem* by the court, and (ii) may be reduced or eliminated if the court determines that the parents are unable to pay.

Appeals. "From any final [custody or visitation] order ... of the juvenile court ..., an appeal may be taken to the circuit court within 10 days of the entry of a final ... order ... and shall be heard *de novo*." § 16.1-296 A.

Access to Court Records. "All juvenile case files [including custody and visitation] shall be filed separately from adult files and records of the court and shall be open only to ..." [specified individuals and entities] § 16.1-305 A.

Expungement of Court Records. "...the clerk of the juvenile and domestic relations district court shall on January 2 of each year or on a date designated by the court, destroy its files, papers and records, including electronic records connected with any [custody or visitation] proceeding concerning a juvenile in such court, if such juvenile has attained the age of 19 years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section." § 16.1-306 A. "All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet." § 16.1-306 F.

Legislative Proposal Under Review

This report addresses a legislative proposal (HB 438) from the 2014 Session of the General Assembly to revise the laws referenced above as follows (emphasis added):

- § 16.1-260. Intake; petition and investigation.
Authorize in subsection C:
 - (i) the filing of a single petition in juvenile and domestic relations district court on issues of custody and visitation for one child and
 - (ii) such petitions for custody and visitation to include two or more children, if such children have the same parents or legal guardians.
- § 16.1-305. Confidentiality of court records.
Authorize in subsection A2:
“In any case in which a single petition with regard to any or all custody or visitation issues for two or more juveniles was filed in accordance with subsection C of § 16.1-260, any person, agency, or institution that may inspect juvenile case files pursuant to subsection A for any juvenile subject to the petition is authorized to inspect the entire case file related to the petition.”
- § 16.1-306. Expungement of court records.
Authorize in subsection A:
“... in any case in which a single petition with regard to any or all custody or visitation issues for two or more juveniles was filed in accordance with subsection C of § 16.1-260, such files, papers, and records, including electronic records, shall be destroyed when the youngest of the juveniles subject to the petition has attained the age of 19 years and five years have elapsed since the date of the hearing.”

Survey of Juvenile and Domestic Relations District Court Clerks of Court

The clerk of the court ensures that the administrative functions of the juvenile and domestic relations district court run smoothly. This includes the processing of paperwork filed with and produced by the court, preparation of the court’s docket, and communication with court users, including attorneys, guardians *ad litem*, and the public.

In an effort to better understand current processing of custody cases and visitation cases and the potential impact of the proposed legislation on these administrative functions, the Office of the Executive Secretary developed and distributed a 15 question survey to clerks of the court. Of the approximately 117 juvenile and domestic relations district court clerks, 79 completed the survey. This response rate of 68% stresses the importance of this issue to the daily operations of clerk’s offices across the Commonwealth. All clerk respondents indicated some level of impact, ranging from minor (9%) to significant (68%), on their court management of custody case and visitation case files. Seventy-four percent (74%) indicated that managing and tracking combined files for children in one family will be “very” to “extremely” difficult. Additional results of this survey are presented as a part of the operational impact on the court system.

Direction for this Report

Language in the 2014 Appropriations Act that directed this report states: “The Executive Secretary of the Supreme Court shall review the impact on the court system, fiscal and operational, of allowing a single petition in juvenile and domestic relations district court case[s] involving two or more children if such children have the same parents or legal guardians.” This language should have included the words “for custody and visitation” after the word “petition.” This report is submitted assuming the inclusion of these qualifying words, based on the language in HB 438.

Impact on the Court System – Operational

There are a myriad of issues involved when considering the impact of the proposed legislation on the operation of the courts. Each of these issues is discussed below.

Custody/Visitation Caseload. Juvenile and domestic relations district courts are high volume, form-driven institutions that are readily accessible to unrepresented litigants. The single largest case type category for juvenile courts is “CV,” which represents the filing of a custody case or a visitation case. It is also the case type that historically has grown at the highest rate. New cases filed for custody/visitation in juvenile courts statewide are recorded annually as follows:

2005 – 111,767
2006 – 116,605
2007 – 117,657
2008 – 125,712
2009 – 128,073
2010 – 129,278
2011 – 134,633
2012 – 137,910
2013 – 136,759
2014 – 102,500 for the first 9 months of 2014, as of 10/21/14,
136,667 Estimated, annualized figure for 2014.

Case Initiation. The large majority of custody and visitation cases brought before the juvenile and domestic relations district courts involve one or both parties who are *self-represented*. Their petitions are prepared by the intake officer in the court services unit. The filing of petitions by intake officers is supported through an interface with the Department of Juvenile Justice. Attorneys are supported in this process by the Virginia State Bar website, which provides attorneys with access to the petition in an electronic, fillable format. Attorney filings in the juvenile court are the exception, not the rule.

When clerks were asked to estimate the frequency with which attorneys file custody or visitation petitions/pleadings directly with the clerk's office on behalf of their clients, as opposed to self-represented litigants filing such cases through an intake officer in the court services unit, 74% indicated that not more than 20% of cases were filed by attorneys. Further, 54% of clerks indicated that the frequency with which self-represented litigants later retain legal counsel after filing a custody case and/or a visitation case through the court services unit is less than 20% of cases filed.

Legal Standard for Decisions. By statute, the legal standard for deciding these cases is the “best interests of the child.” § 20-124.2 B. It is not the best interest of the family. Juvenile court cases are child-based, not family-based as they are in circuit court.

Clerk’s Office Responsibilities with Case Processing. Upon the filing of a case in the juvenile court, the clerk’s office completes a series of tasks designed to ensure organized management and preparation of case(s) being reviewed by the court. These tasks include case indexing, which involves assigning a number to the case. The case number establishes a common link between all the papers and records pertaining to any one court case. In the juvenile court, the case number consists of a 6-digit base number, which is ascribed to a particular child, followed by a “charge” or “petition” number. As additional charges or petitions involving the child are filed with the court, the “charge” or “petition” number increases incrementally by 1. This process is based upon a “one child per case” policy.

This numbering system establishes a quick way for the clerk’s office and the judge to determine how many times a child has been before the court. This can be an important trigger in identifying quickly whether a child has been heavily court-involved. This information might impact a number of inquiries and decisions from the bench, such as whether a child should be released or detained pretrial, whether the local child welfare agency might have a history with the family and should be brought into a custody case, whether prior case papers should be pulled to review the child’s history prior to transferring custody or whether the child has a history which would implicate the prudence of granting a deferred finding following adjudication. Combining all children with the same parents or guardians under the same case number would remove a valuable tool in the court’s assessment of cases.

Establishing a Case File. Like the case number, a case file is established for each individual child. This file contains all cases filed with the court involving that child. Thus, a child before the court on a custody or visitation matter may also have a delinquency case, or a child in need of supervision case addressing truancy matters, as well as a child abuse/neglect case with attendant foster care plans and evaluations. The custody and visitation status of the child in relation to these other types of cases can be directly relevant to the case disposition by the court. A mingled file with other children “in the family,” who may have similar litigation before the court, would be very difficult for clerk’s office staff to manage in identifying which papers relate to the case on the docket for a given day. Of clerks responding to the survey, 69% indicated that managing a case file under the proposed law for an individual child who is before the court, or later comes before the court, in a delinquency, truancy or foster care case, and is also involved in a custody or a visitation matter with other siblings, will be “very” to “extremely” complicated.

“Family-based” petitions or mingled pleadings are complicated and confusing when subsequent pleadings are filed for some but not all of the children in the original action. Often parties have multiple children but do not file for custody or visitation of all of the children. For example, the father may file for custody of one child, while the mother may already have filed for custody of all three children of the relationship. In addition, the grandmother may file for visitation with two of the children. Indexing these cases, considering the entry of orders, and filing the case papers when there are multiple children on one petition will be complex and difficult.

Scheduling and Tracking Cases within a “Family”. Judges are accustomed to deciding custody/visitation cases based on several petitions filed on behalf of the children in the “family” who are before them at one time on a particular docket. Decisions by the court are made based on the best interests of each child, but they may very well be considered in the context of a family structure. However, it is the clerk’s office staff that must account for *each* of the children with orders and document how each child’s circumstances are handled.

Clerks responding to the survey noted that it will take longer to prepare custody and visitation dockets and to determine which case papers to provide to a judge when a single child is on the docket for a custody and/or visitation matter for which the underlying custody and/or visitation order involved all children in the family. Specifically, 23% of respondents indicated that it will take “slightly” to “somewhat” more time, while 66% indicated it will take “much” to “significantly” more time.

The current Juvenile Case Management System upon which clerks rely is based on a “single child per case” foundation. Due to the design of the system, clerks surveyed noted that it will be difficult to schedule a case when a motion to amend a custody and/or visitation order addresses only one child, yet the underlying order addresses multiple children. Twenty-eight percent (28%) of respondents indicated that it will be “slightly” to “somewhat” difficult, while 66% indicated “very” to “extremely” difficult.

Clerks also indicated some level of complication in managing, tracking and scheduling motions to amend and subpoenas issued on behalf of one child in a custody case and/or visitation case that involves multiple children. Twenty-six percent (26%) of respondents indicated such efforts will be “slightly” to “somewhat” complicated, while 68% indicated “very” to “extremely” complicated.

Judicial Authority in Subsequent Hearings. Mingled pleadings also present difficulties for decision-making by the judge on future issues that arise in these cases. If a motion to amend visitation of one child is filed in a case where an order has been entered regarding multiple children with the same case number, the judge will need to review all prior orders to determine the last order pertaining to the child currently before the court on the motion to amend. If the terms of the custody/visitation are modified for one child, would a new order need to be issued for all of the children to avoid conflicting orders on the child in question? Most likely, this is so. In determining in the future which order is most current and entitled to enforcement, how would these multiple orders be regarded?

Similar issues can arise with a contempt motion for show cause for failing to comply with a court order, resulting in confusion and enforcement issues.

Determining Parentage. The legislative proposal under review would permit one petition and mingled pleadings when children have the same parents or guardians. If there are children in a single household with different mothers and/or fathers, a mingled pleading would not be permitted, according to the proposal. If the identification of parents is not made correctly at the time of filing, this deficiency will not be established until after the parents are correctly identified in the court proceeding. How would this inaccuracy be corrected in the court paperwork after the case begins, if all of the children are included on one petition? Parentage is not a judgment that can be made by the intake officer or by the clerk’s office. Only the parties filing the case know this information. The

parties may believe that they are the “same parents or legal guardians” at the time of filing, but it is later determined after the case has started that the situation is otherwise.

Clerks have indicated that custody cases and visitation cases are not always cut-and-dried. When asked how frequently parentage issues arise in these cases, 69% of respondents indicated, “Frequently. Parents are often not married and are seeking to dissolve relationships in J&DR Court that are not always clearly legally defined.” The remaining 31% indicated that parentage issues arise “Sometimes. Mom is Mom but when the case goes to trial, paternity issues can arise.”

Petitioners Who are Legal Guardians. The proposed bill authorizes filings by “legal guardians on a single petition for multiple children.” This inclusion of legal guardians is even more complex than issues with “parents.” For example: the grandmother may be the legal guardian and have custody of two grandchildren from her daughter and a grandchild from her son. In addition to the grandmother, the four parents of these grandchildren would need to be a part of the case. The variety of parties’ names and mingling of family issues among these multiple individuals before the court will be a challenge to track if included on the same pleading and embraced in one order.

Further, these cases are heard where the children reside, often prompting transfers of court files to other venues in the mobile populations seen by the courts. If all children are on one order, with one case number, and custody of only one child is transferred to a parent or guardian who lives in another city or county, the court will face a dilemma. Would another case file with a separate order have to be created at that time for that child? What about the existing order with all the children’s names on it, which would remain in the current city/county?

Confidentiality. Issues of confidentiality with custody/visitation orders must also be considered with this legislative proposal. The proposal assumes that authorizing everyone listed in the statute to inspect the entire case file eliminates any confidentiality concerns. The proposed amendments to the confidentiality statute may eliminate any “violation of the law;” however, they do not protect the confidentiality of the children and the parents or guardians involved. Custody files often contain psychological evaluations and other highly sensitive documentation that should only be accessible to the proper parties. As the constellation of families evolves and parents breakup and remarry, commingled files are enhanced by subsequent filings and exhibits. The family file will have information that is more widely, and possibly inappropriately, available about otherwise confidential matters.

The manner in which clerks’ offices manage access to custody cases and visitation cases and comply with confidentiality statutes will be affected. The majority (95%) of respondents indicated that their offices take “compliance with Section 16.1-305 very seriously. Changes to this law which would allow access to documents containing the names and information regarding multiple children would be difficult to manage in the clerk’s office. Questions may arise from parents or parties regarding the release of information beyond what is necessary.”

Court orders are frequently used by parents in the community, for example, to authorize entry into school, provide access to school or medical records, eligibility for services, or permission for medical treatment by the presenting parent to prove custody. When multiple children are included on one

custody order and only one child is the subject of the presentation of the order, the confidentiality of the siblings is compromised.

Expungement. By establishing rules for expungement that require clerk's office staff to maintain files for longer periods of time and make determinations about who is the youngest child in a case with the possibility of multiple actions over the course of a child and family's history with the court, court management of case files is made more complex and difficult to manage.

The proposed legislation provides that custody case records and visitation case records be kept until the youngest of the children subject to the petition has attained the age of 19 years and 5 years have elapsed since the date of the hearing. When asked whether this change in the expungement statute would impact their courts, 77% of clerk respondents indicated that such a change would "detrimentally impact my court. Keeping current with expungement duties is already a challenge with the limited number of staff in the clerk's office and the complexity of expungement laws. We have insufficient space now in my courthouse for hard copy case files."

Appeals

Appeals cannot be addressed for one issue in a mingled pleading, but must re-address all items included in the pleading and court order being appealed. If a parent or legal guardian wishes to appeal the court's ruling with regard to one child, the appellant must appeal all issues for all children addressed in the order because of the single petition. Neither the court nor the litigant can select which issues will be subject to review in an individual order. This will make trial of these cases on appeal in the circuit court longer and more involved. The circuit judge will be required to try on a *de novo* basis the resolution of issues for ALL of the children in the family, instead of the one child whose custody or visitation may be in controversy.

Court Forms

Current juvenile court forms and the supporting Juvenile Case Management System for these courts do not support naming more than one child as the subject of a case. Juvenile court form orders allow only one child per order.

At the beginning of this report it was noted that "[j]uvenile and domestic relations district courts are high volume, form-driven institutions...." There are over 25 court forms approved by the Committee on District Courts, which are frequently used in processing custody cases and visitation cases. These forms support the self-represented litigant, the clerk's office and the court services unit in navigating and processing this case type. Each of these forms will need to be reviewed and most likely modified to accommodate multiple children and parents/legal guardians being included on individual forms. These forms changes will necessitate reprogramming the Juvenile Case Management System, as well.

Just as the use of mingled pleadings will make case processing more difficult and complex, it will also dramatically increase the complexity and size of these form pleadings. This increase in complexity will fall most heavily on those self-represented litigants who lack familiarity with the courts and the legal system.

Statistical Considerations

A final consideration for operational impact on the court system relates to court administration. Human resources in the form of both judges and clerks have been allocated to district courts on the basis of workload, which in turn is measured by caseload. It is important that the tools used to measure the demands placed on the courts are both coherent and uniform, and that the unit of measurement bears some relation to the demands placed on the court's resources. The natural choice for such a unit is the individual case. This is the vehicle for how legal issues are presented to the court. The current practice of "one child/one issue/one petition" provides for a common, shared definition of a "case" that, when shared and uniformly applied, places juvenile and domestic relations courts across the Commonwealth in a similar position with regard to the review and allocation of human and fiscal resources.

Impact on the Court System - Fiscal

A Fiscal Impact Statement (FIS) was first completed by the Office of the Executive Secretary in the fall of 2011 on a proposal similar to HB 438, which is currently under consideration. (HB 1807/2011 - Del. Surovell) The FIS estimated that it would cost \$315,000 to redesign the Juvenile Case Management System, which serves the juvenile and domestic relations district courts, to accommodate the new architecture of "family" case filings and tracking in lieu of the current child-based case filing system. The Office of the Executive Secretary also identified the need for a delayed effective date of January 1, to allow time to undertake the reprogramming, clerk staff training and other administrative tasks associated with this significant change in case processing.

In the past four years there have been significant enhancements to the Juvenile Case Management System and its associated technologies as well as to the cost drivers that support this system. Thus, in preparation for this report, a new analysis of the potential fiscal impact of this proposal was conducted. The updated Fiscal Impact Statement is premised on the assumption that any legislative proposal on this subject introduced for the 2015 Regular Session will parallel the previous legislative proposals.

Currently, it is estimated that implementation of a single petition process in the juvenile and domestic relations district courts would have a fiscal impact of \$481,000. In addition, the breadth of the work which would now be necessary to accommodate this new method of filing petitions could only be completed if the legislation has a delayed effective date of 12 months.

Implementing mingled pleadings for custody and visitation cases poses a significant structural change to all current case management systems, resulting in a major impact on many of the automated systems, including the case management system for circuit courts. Undertaking the work to redesign the Juvenile Case Management System and its associated technologies to accommodate the change in law discussed in the report will require a major shift in priorities for the Department of Judicial Information Technology, Office of the Executive Secretary for this extended period. Other projects in this department will need to be delayed to a significant degree to complete this system redesign. Even if the General Assembly funds the fiscal impact identified by this report, the human resources needed to undertake this work will be unavailable for existing projects, because those individuals will be required to dedicate their time to this effort.

Conclusion

For more than two decades, the Office of the Executive Secretary has worked to establish court practices with associated supportive technologies to manage the increasing caseloads of juvenile and domestic relations district courts and to maintain these courts as accessible and responsive institutions to children and families who most often appear without legal representation. Development of the current Juvenile Case Management System was completed and made available to the field in the spring of 2011. This system maximizes the ability of juvenile court clerk's offices to receive, process and finalize case filings for more than 136,000 custody and visitation cases annually, as well as an additional 355,000 other matters within the jurisdiction of the juvenile court. This technology is essential support to the limited staff in these courts.

The legislative proposal that has been reviewed for this report, HB 438, could be a convenience to attorneys. Its enactment, however, will come at significant expense to the administration of the juvenile and domestic relations district court clerk's offices and the management by the courts of these important legal issues affecting Virginia's children and families. The proposal shifts the burden of managing the filing of cases and paperwork flow from the litigants and lawyers initiating custody cases and visitation cases to juvenile court clerk's offices. These offices are already understaffed and stretched thin to perform their statutory and administrative duties. The benefits of this proposal to the children and families before the court in custody and visitation controversies have not been established.

The Judicial Conference of Virginia composed of circuit and appellate judges opposed HB 438 during the 2014 Session of the General Assembly. As noted earlier in this report, petitions or pleadings filed in the juvenile court and appealed to the circuit court are heard *de novo*. Neither the court nor the litigant can select which issues will be on appeal. Under the proposed new law, the circuit court will be required to address even issues that the appellant does not wish to contest in circuit court and which would have been the subject of separate petitions under current law. The proposal could significantly expand the issues on appeal in custody and visitation cases and further burden the dockets of circuit courts.

The Judicial Conference of Virginia for District Courts composed of juvenile and domestic relations district court judges and general district court judges also opposed HB 438 during the 2014 Session of the General Assembly. In addition to the substantial administrative burden placed on juvenile court clerk's offices, juvenile court judges have expressed concerns about the difficulties presented with decision-making on behalf of children represented in mingled pleadings for future issues involving a single child, clarifying who the "parents" are when issues of parentage arise, and appropriately enforcing orders which are modified for only one of multiple children in an order, among other legal matters detailed in this report.

For these and all of the other issues discussed in this report, the Office of the Executive Secretary also opposes the proposed change in the law due to its significant impacts on the administration of justice.

If this legislative proposal is enacted, an appropriation of \$481,000 to the Office of the Executive Secretary will be required to redesign the Juvenile Case Management System. Other associated costs attributable to the training of court personnel, revisions to court forms and other court policies will be absorbed within existing OES fiscal resources.

A delayed effective date 12 months from enactment of the proposal will be necessary to allow time to undertake the significant reprogramming of court technology, clerk staff training and other administrative tasks associated with this change in case processing.

Appendices

- HB 438 Child custody or visitation; petition. Bill Tracking
- House Bill No. 438 Full Text - 2014
- Survey to Juvenile and Domestic Relations District Court Clerks – Response to Proposed Legislation Allowing Single Petition for Custody and Visitation Cases
- Department of Planning and Budget 2015 Fiscal Impact Statement
- Form DC-511 – PETITION
- Form DC-573 – ORDER FOR CUSTODY/VISITATION GRANTED TO INDIVIDUAL(S)

11/1/14

CIP/OES/SCV

2014 SESSION

HB 438 Child custody or visitation; petition.Introduced by: James M. LeMunyon | [all patrons](#) ... [notes](#) | [add to my profiles](#)**SUMMARY AS INTRODUCED:**

Petition for child custody or visitation. Provides that issues of child custody or visitation may be included in a single petition in juvenile and domestic relations district court and that such issues may be included in a single petition involving two or more children if such children have the same parents or legal guardians. The bill also provides that any person, agency, or institution authorized to inspect the case files relating to any juvenile subject to such a petition may inspect the entire case file related to the petition. The bill further requires that the court records in a case in which a single petition for multiple children has been filed be destroyed after (i) the youngest child subject to the petition has reached 19 years of age and (ii) five years have elapsed since the last hearing in the case.

FULL TEXT**01/04/14 House: Prefiled and ordered printed; offered 01/08/14 14101966D** [pdf](#) | [impact statement](#)**HISTORY**

01/04/14 House: Prefiled and ordered printed; offered 01/08/14 14101966D

01/04/14 House: Referred to Committee for Courts of Justice

01/09/14 House: Assigned Courts sub: Civil

01/13/14 House: Subcommittee recommends reporting (8-Y 1-N)

01/13/14 House: Subcommittee recommends referring to Committee on Appropriations

01/20/14 House: Reported from Courts of Justice (20-Y 1-N)

01/20/14 House: Referred to Committee on Appropriations

01/23/14 House: Assigned App. sub: General Government & Capital Outlay

02/05/14 House: Subcommittee recommends laying on the table by voice vote

02/12/14 House: Left in Appropriations

14101966D

HOUSE BILL NO. 438

Offered January 8, 2014

Prefiled January 4, 2014

A BILL to amend and reenact §§ 16.1-260, 16.1-305, and 16.1-306 of the Code of Virginia, relating to petitions for child custody and visitation.

Patrons—LeMunyon and Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260, 16.1-305, and 16.1-306 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) designated nonattorney employees of the Department of Social Services may complete, sign and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) (a) is not alleged to have committed a violent juvenile felony or (ii) (b) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the

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59 court. The intake officer may defer filing the complaint for 90 days and proceed informally by
60 developing a truancy plan. The intake officer may proceed informally only if the juvenile has not
61 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
62 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,
63 guardian or other person standing in loco parentis must agree, in writing, for the development of a
64 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
65 guardian or other person standing in loco parentis participate in such programs, cooperate in such
66 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's
67 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
68 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
69 interagency interdisciplinary team approach. The team may include qualified personnel who are
70 reasonably available from the appropriate department of social services, community services board, local
71 school division, court service unit and other appropriate and available public and private agencies and
72 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
73 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then
74 the intake officer shall file the petition.

75 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child
76 is in need of services, in need of supervision or delinquent, the intake officer shall ~~(i)~~ (1) develop a plan
77 for the juvenile, which may include restitution and the performance of community service, based upon
78 community resources and the circumstances which resulted in the complaint, ~~(ii)~~ (2) create an official
79 record of the action taken by the intake officer and file such record in the juvenile's case file, and ~~(iii)~~
80 (3) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and
81 the complainant that any subsequent complaint alleging that the child is in need of supervision or
82 delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to
83 § 16.1-241 will result in the filing of a petition with the court.

84 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
85 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
86 deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such
87 child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment,
88 rehabilitation or other services which are required by law, (iv) family abuse has occurred and a
89 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of
90 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
91 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
92 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
93 be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer
94 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
95 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
96 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
97 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
98 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
99 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
100 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
101 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
102 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

103 *A single petition may be filed with regard to any or all custody or visitation issues for a child, and a*
104 *single petition may be filed with regard to such issues for two or more children if such children have*
105 *the same parents or legal guardians.*

106 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
107 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
108 in need of supervision have utilized or attempted to utilize treatment and services available in the
109 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
110 the intake officer determines that the parties have not attempted to utilize available treatment or services
111 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
112 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility
113 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake
114 officer determines that the parties have made a reasonable effort to utilize available community
115 treatment or services may he permit the petition to be filed.

116 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
117 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
118 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
119 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
120 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake

121 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
 122 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the
 123 juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake
 124 officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a
 125 status offense, or a misdemeanor other than Class 1, his decision is final.

126 Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the
 127 intake officer shall accept and file a petition founded upon the warrant.

128 F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition
 129 which alleges facts of an offense which would be a felony if committed by an adult.

130 G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall file a
 131 report with the division superintendent of the school division in which any student who is the subject of
 132 a petition alleging that such student who is a juvenile has committed an act, wherever committed, which
 133 would be a crime if committed by an adult, or that such student who is an adult has committed a crime
 134 and is alleged to be within the jurisdiction of the court. The report shall notify the division
 135 superintendent of the filing of the petition and the nature of the offense, if the violation involves:

136 1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299
 137 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;

138 2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

139 3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of
 140 Title 18.2;

141 4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

142 5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances,
 143 pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

144 6. Manufacture, sale or distribution of marijuana or synthetic cannabinoids pursuant to Article 1
 145 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

146 7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

147 8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

148 9. Robbery pursuant to § 18.2-58;

149 10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

150 11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or

151 12. An act of violence by a mob pursuant to § 18.2-42.1.

152 The failure to provide information regarding the school in which the student who is the subject of
 153 the petition may be enrolled shall not be grounds for refusing to file a petition.

154 The information provided to a division superintendent pursuant to this section may be disclosed only
 155 as provided in § 16.1-305.2.

156 H. The filing of a petition shall not be necessary:

157 1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and
 158 other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating
 159 surfing or any ordinance establishing curfew violations, animal control violations or littering violations.
 160 In such cases the court may proceed on a summons issued by the officer investigating the violation in
 161 the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle
 162 accident may, at the scene of the accident or at any other location where a juvenile who is involved in
 163 such an accident may be located, proceed on a summons in lieu of filing a petition.

164 2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H
 165 of § 16.1-241.

166 3. In the case of a misdemeanor violation of § 18.2-250.1, 18.2-266, 18.2-266.1, or 29.1-738, or the
 167 commission of any other alcohol-related offense, provided the juvenile is released to the custody of a
 168 parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a
 169 parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons
 170 requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the
 171 charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so
 172 charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a
 173 sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to
 174 §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed
 175 except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be
 176 served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to
 177 the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons,
 178 the juvenile shall be entitled to have the charge referred to intake for consideration of informal
 179 proceedings pursuant to subsection B, provided such right is exercised by written notification to the
 180 clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1
 181 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge

182 referred to intake on a form approved by the Supreme Court and make return of such service to the
183 court. If the officer fails to make such service or return, the court shall dismiss the summons without
184 prejudice.

185 4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or
186 Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in
187 § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as
188 provided by law for adults provided that notice of the summons to appear is mailed by the investigating
189 officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

190 I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of
191 the jurisdiction granted it in § 16.1-241.

192 **§ 16.1-305. Confidentiality of court records.**

193 A. Social, medical and psychiatric or psychological records, including reports or preliminary
194 inquiries, predisposition studies and supervision records, of neglected and abused children, children in
195 need of services, children in need of supervision and delinquent children shall be filed with the other
196 papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and
197 records of the court and shall be open for inspection only to the following:

198 1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic
199 relations district courts;

200 2. Representatives of a public or private agency or department providing supervision or having legal
201 custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

202 3. The attorney for any party, including the attorney for the Commonwealth;

203 4. Any other person, agency or institution, by order of the court, having a legitimate interest in the
204 case or in the work of the court. However, for the purposes of an investigation conducted by a local
205 community-based probation services agency, preparation of a pretrial investigation report, or of a
206 presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a
207 background report for the Parole Board, adult probation and parole officers, including United States
208 Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or
209 operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a
210 local community-based probation services agency established or operated pursuant to the Comprehensive
211 Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an
212 accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the
213 discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the
214 court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial
215 services or probation officer shall have access to the defendant's records in juvenile court without a
216 court order;

217 5. Any attorney for the Commonwealth and any local pretrial services or community-based probation
218 officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court
219 delinquency records maintained in an electronic format by the court for the strictly limited purposes of
220 preparing a pretrial investigation report, including any related risk assessment instrument, any
221 presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment
222 instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

223 A copy of the court order of disposition in a delinquency case shall be provided to a probation
224 officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing
225 guidelines. The copies shall remain confidential, but reports may be prepared using the information
226 contained therein as provided in §§ 19.2-298.01 and 19.2-299.

227 6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for
228 purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

229 A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A
230 1 through A 4 shall be authorized to have copies made of such records, subject to any restrictions,
231 conditions, or prohibitions that the court may impose.

232 A2. *In any case in which a single petition with regard to any or all custody or visitation issues for*
233 *two or more juveniles was filed in accordance with subsection C of § 16.1-260, any person, agency, or*
234 *institution that may inspect juvenile case files pursuant to subsection A for any juvenile subject to the*
235 *petition is authorized to inspect the entire case file related to the petition.*

236 B. All or any part of the records enumerated in subsection A, or information secured from such
237 records, which is presented to the judge in court or otherwise in a proceeding under this law shall also
238 be made available to the parties to the proceedings and their attorneys.

239 B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the
240 basis of an act which would be a felony if committed by an adult, all court records regarding that
241 adjudication and any subsequent adjudication of delinquency, other than those records specified in
242 subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that
243 certain records or portions thereof remain confidential to the extent necessary to protect any juvenile

244 victim or juvenile witness.

245 C. All other juvenile records, including the docket, petitions, motions and other papers filed with a
246 case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by
247 those persons and agencies designated in subsections A and B of this section. However, a licensed bail
248 bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a
249 juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any
250 other portion of his principal's juvenile court records.

251 D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for
252 which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles,
253 which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney
254 shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney
255 that such papers are needed as evidence in a pending criminal, traffic, or habitual offender proceeding
256 and that such papers will be only used for such evidentiary purpose.

257 D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act
258 that would be a felony if committed by an adult, which show the charge, finding, disposition, name of
259 the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for
260 the Commonwealth upon his certification that such papers are needed as evidence in a pending criminal
261 prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary
262 purpose.

263 E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to
264 the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an
265 award to the victim of a crime, and such information shall not be disseminated or used by the
266 Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

267 F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the
268 disposition in a case involving a juvenile who is committed to state care after being adjudicated for a
269 criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the
270 victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a
271 written request, the Department of Juvenile Justice shall provide advance notice of such juvenile
272 offender's anticipated date of release from commitment.

273 G. Any record in a juvenile case file which is open for inspection by the professional staff of the
274 Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the
275 court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted
276 shall be subject to the provisions of § 16.1-300.

277 **§ 16.1-306. Expungement of court records.**

278 A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations
279 district court shall, on January 2 of each year or on a date designated by the court, destroy its files,
280 papers and records, including electronic records, connected with any proceeding concerning a juvenile in
281 such court, if such juvenile has attained the age of 19 years and five years have elapsed since the date
282 of the last hearing in any case of the juvenile which is subject to this section, *except that in any case in*
283 *which a single petition with regard to any or all custody or visitation issues for two or more juveniles*
284 *was filed in accordance with subsection C of § 16.1-260, such files, papers, and records, including*
285 *electronic records, shall be destroyed when the youngest of the juveniles subject to the petition has*
286 *attained the age of 19 years and five years have elapsed since the date of the hearing.* However, if ~~the~~
287 a juvenile was found guilty of an offense for which the clerk is required by § 46.2-383 to furnish an
288 abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has
289 attained the age of 29. If ~~the~~ a juvenile was found guilty of a delinquent act ~~which~~ that would be a
290 felony if committed by an adult, the records shall be retained.

291 B. In all files in which the court records concerning a juvenile contain a finding of guilty of a
292 delinquent act which would be a felony if committed by an adult or an offense for which the clerk is
293 required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings
294 of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained
295 and available for inspection as provided in § 16.1-305.

296 C. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found
297 innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the
298 destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion
299 shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records
300 should not be destroyed, the court shall grant the motion, and shall send copies of the order to all
301 officers or agencies that are repositories of such records, and all such officers and agencies shall comply
302 with the order.

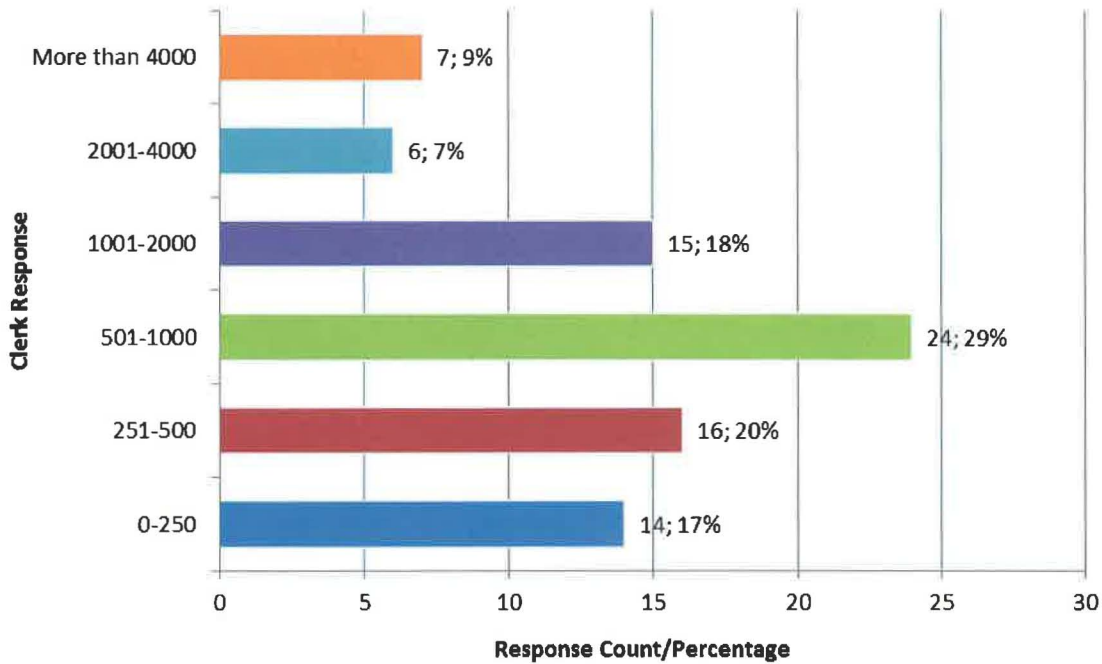
303 D. Each person shall be notified of his rights under subsections A and C of this section at the time
304 of his dispositional hearing.

305 E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the
306 violation of law shall be treated as if it never occurred. All index references shall be deleted and the
307 court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that
308 no record exists with respect to such person.
309 F. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the
310 docket sheet.

**Survey to Juvenile and Domestic Relations District Court Clerks
Response to Proposed Legislation Allowing Single Petition for Custody and Visitation Cases**

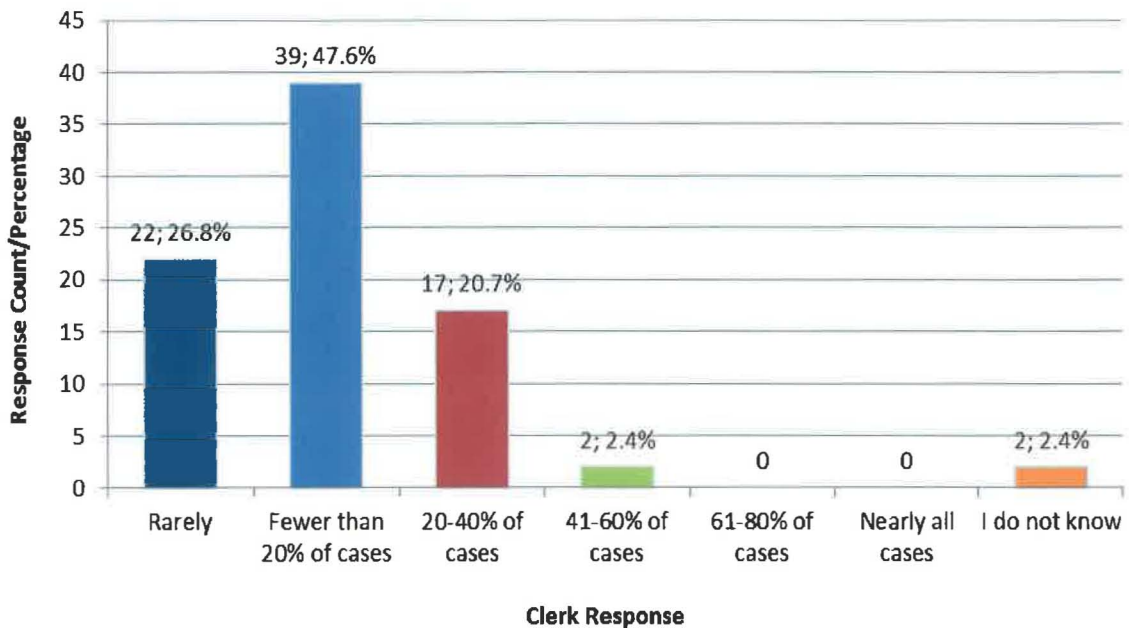
1. What is the approximate custody/visitation caseload of your court?

Approximate custody and visitation caseload of responding J&DR District Court Clerks.



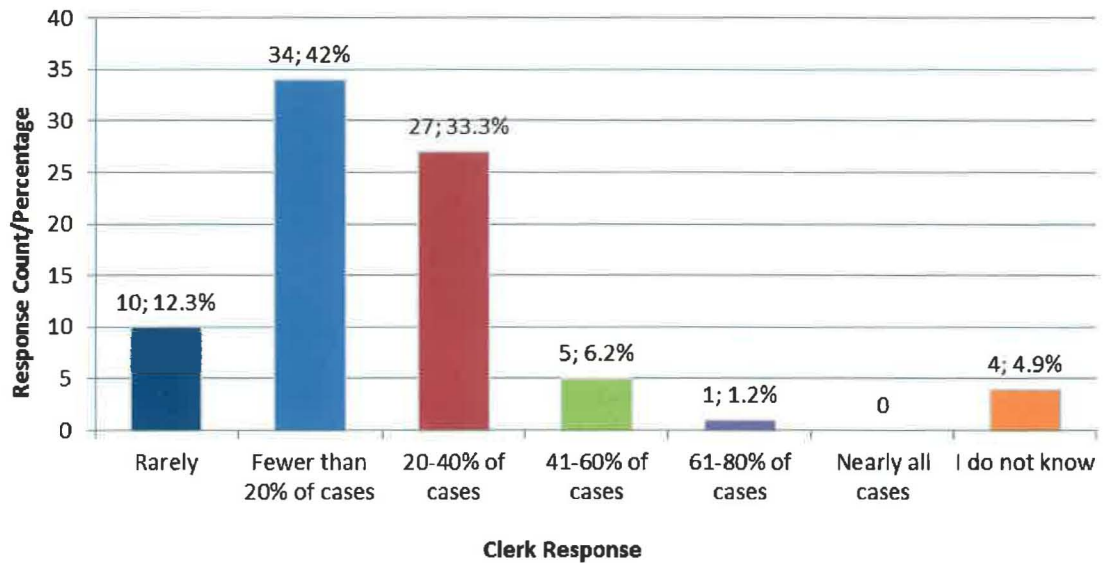
2. Considering your overall custody/visitation caseload, what is the frequency with which attorneys file on behalf of their clients, custody or visitation petitions/pleadings directly with the Clerk's Office as opposed to self-represented litigants filing such cases through an Intake Officer in the Court Services Unit?

Seventy-four percent (74%) of Clerks indicated that the frequency with which attorneys file on behalf of their clients, custody or visitation petitions/pleadings directly with the Clerk's Office, is less than 20% of cases filed.



3. After a custody/visitation case has been filed by a self-represented litigant with the assistance of an Intake Officer, how frequently do these litigants thereafter retain legal counsel to represent them in the trial of the case?

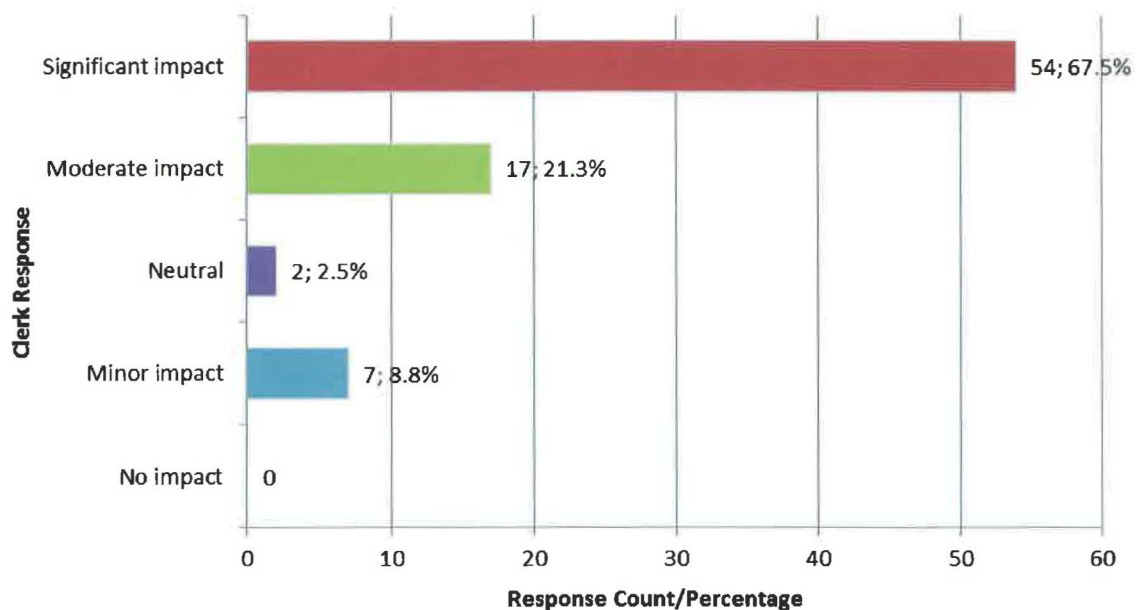
Fifty-four percent (54%) of Clerks indicated that the frequency with which self-represented litigants retain legal counsel after filing a custody case and/or a visitation case through the Court Services Unit is less than 20% of cases filed.



Questions 4-10: Assessment by Clerk of the affect on case file management in their court, if a change is made in the law to permit the filing of custody/visitation issues on one petition for multiple children with the same parents or legal guardian.

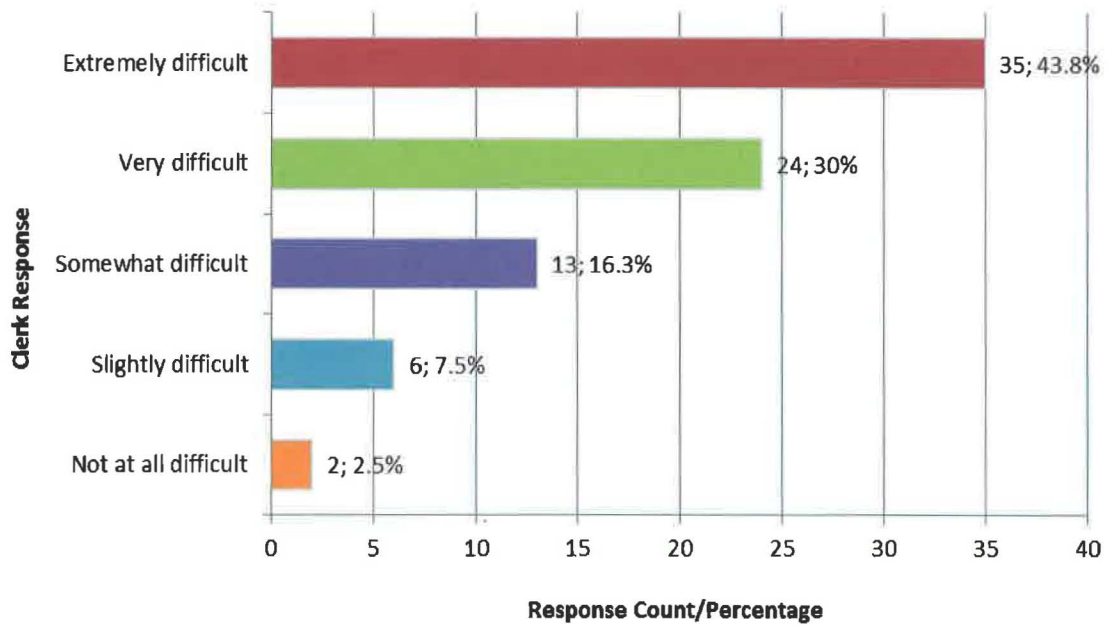
4. What impact would a change in the law have on your court management of custody/visitation case files?

All Clerk respondents indicated some level of impact on their court management of custody case and visitation case files.



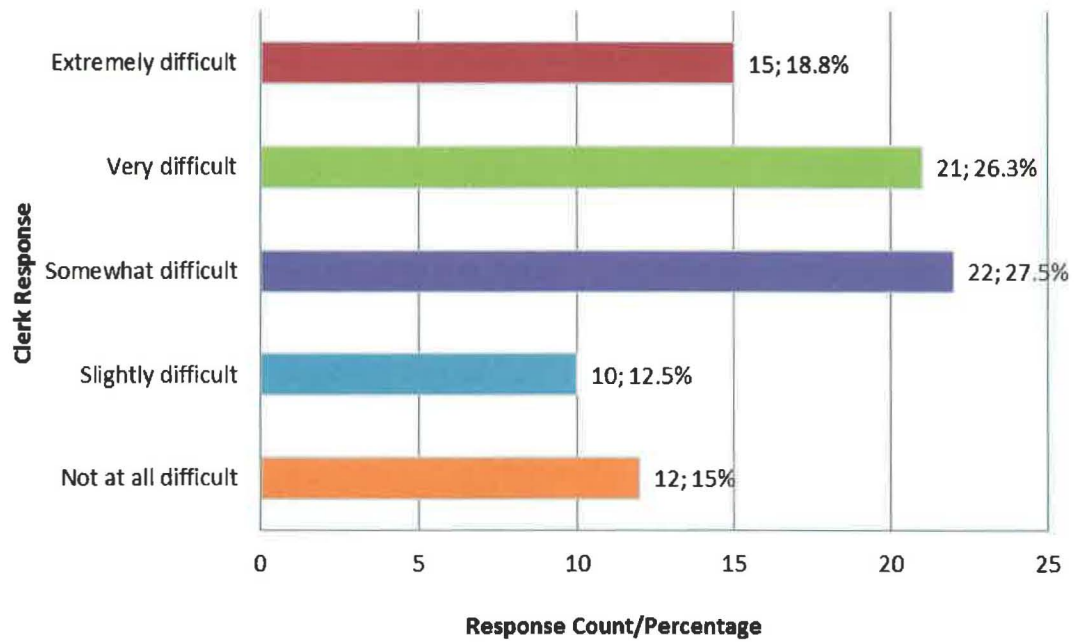
5. Managing and tracking combined files for children in one family will be:

Seventy-four percent (74%) of Clerks indicated that managing and tracking combined files for children in one family will be "very" to "extremely" difficult.



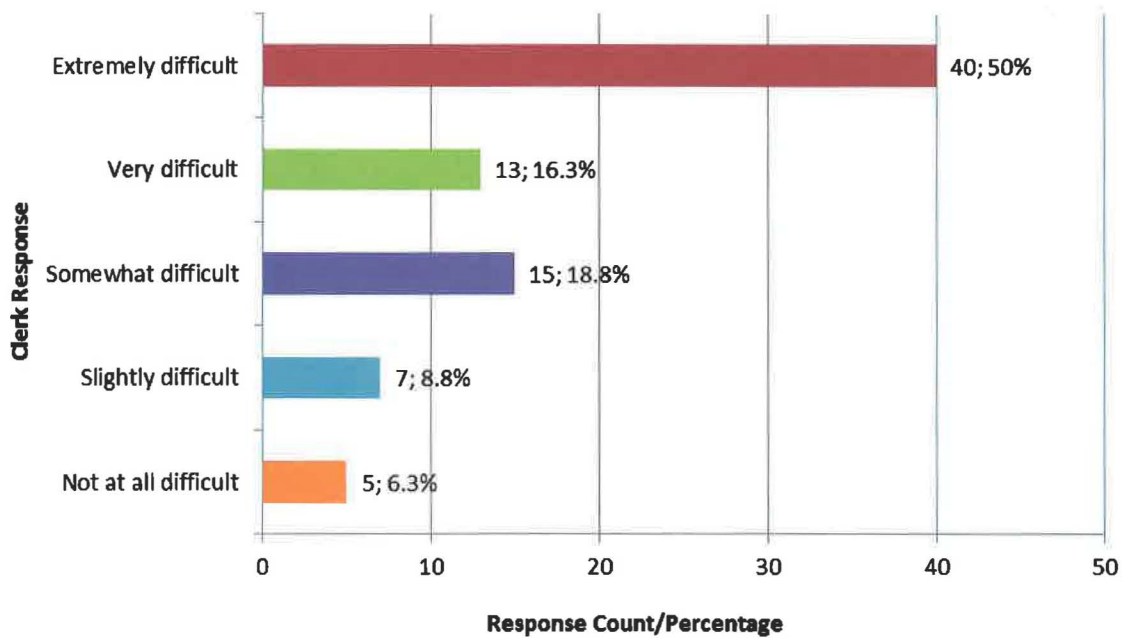
6. Determining when a parent is eligible to file a single custody/visitation petition may be:

Eighty-five percent (85%) of Clerks assessed some level of difficulty to determining when a parent is eligible to file a single custody and or visitation petition.



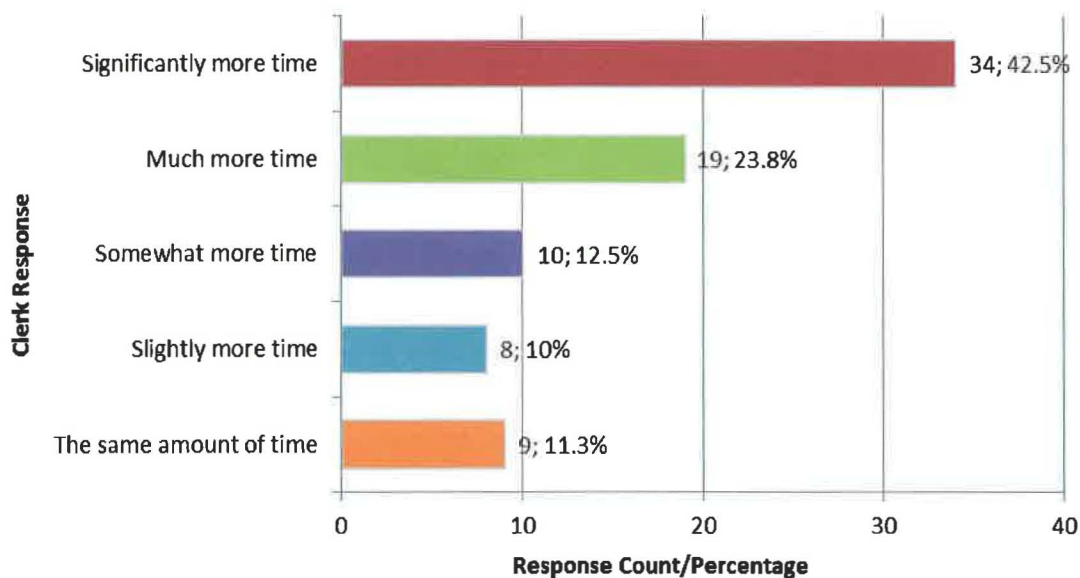
7. Scheduling a case when the motion to amend a custody/visitation order addresses only one child, yet the underlying order addresses multiple children, will be:

Ninety-four percent (94%) of Clerks noted some difficulty in scheduling a case when a motion to amend a custody and/or visitation order addresses only one child, yet the underlying order addresses multiple children.



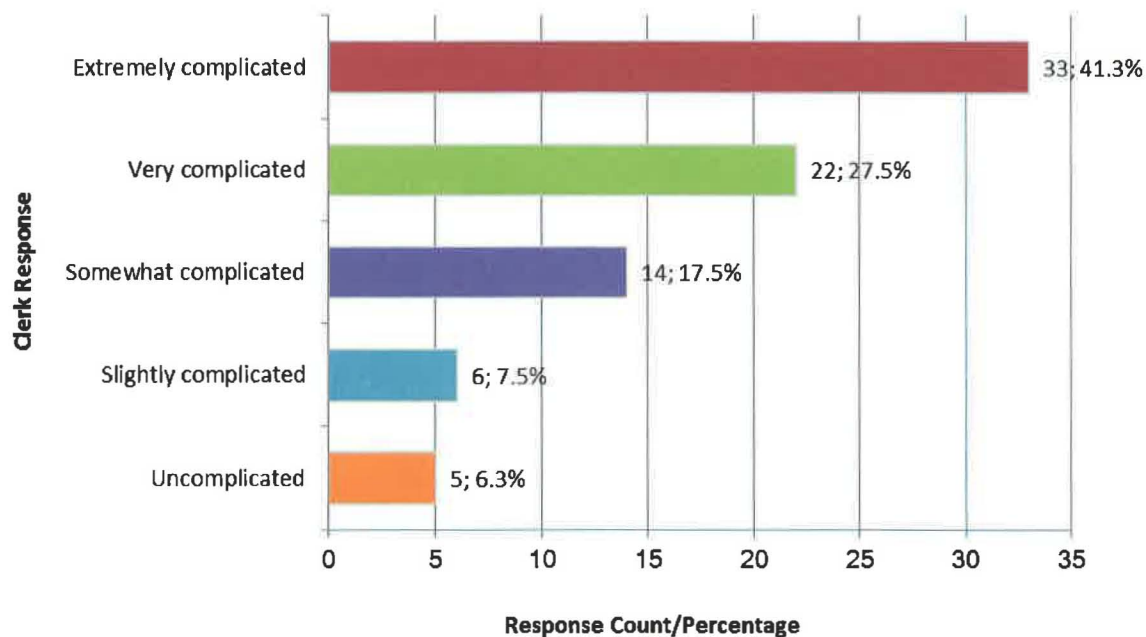
8. The time it takes to prepare custody/visitation dockets and determine which file(s) to provide to a judge when a single child is on the docket for a custody/visitation matter for which the underlying custody/visitation order involved all children in the family will take:

Eighty-nine percent (89%) of Clerks indicated that it will take longer to prepare custody and visitation dockets and determine which files to provide to a judge when a single child is on the docket for a custody and/or visitation matter for which the underlying custody and/or visitation order involved all children in the family.



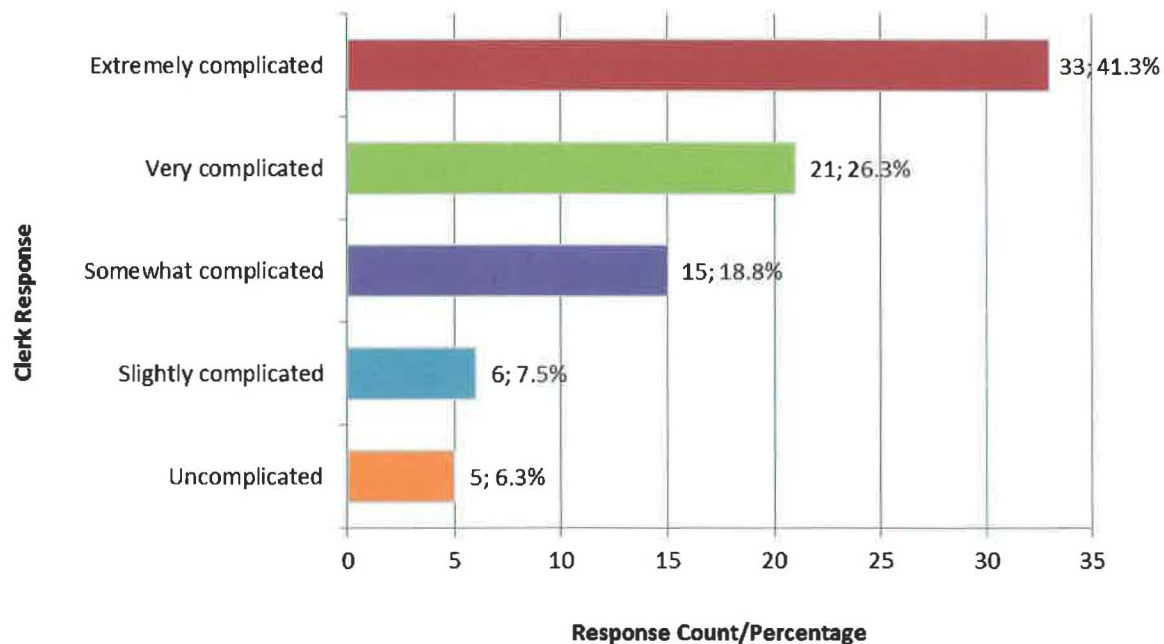
9. Managing a case file for an individual child who is before the court, or later comes before the court, in a delinquency, truancy or foster care case, and is also involved in a custody/visitation matter with other siblings, will be:

Sixty-nine percent (69%) of Clerks indicated that managing a case file for an individual child who is before the court, or later comes before the court, in a delinquency, truancy or foster care case, and is also involved in a custody or visitation matter with other siblings, will be "very" to "extremely" complicated.



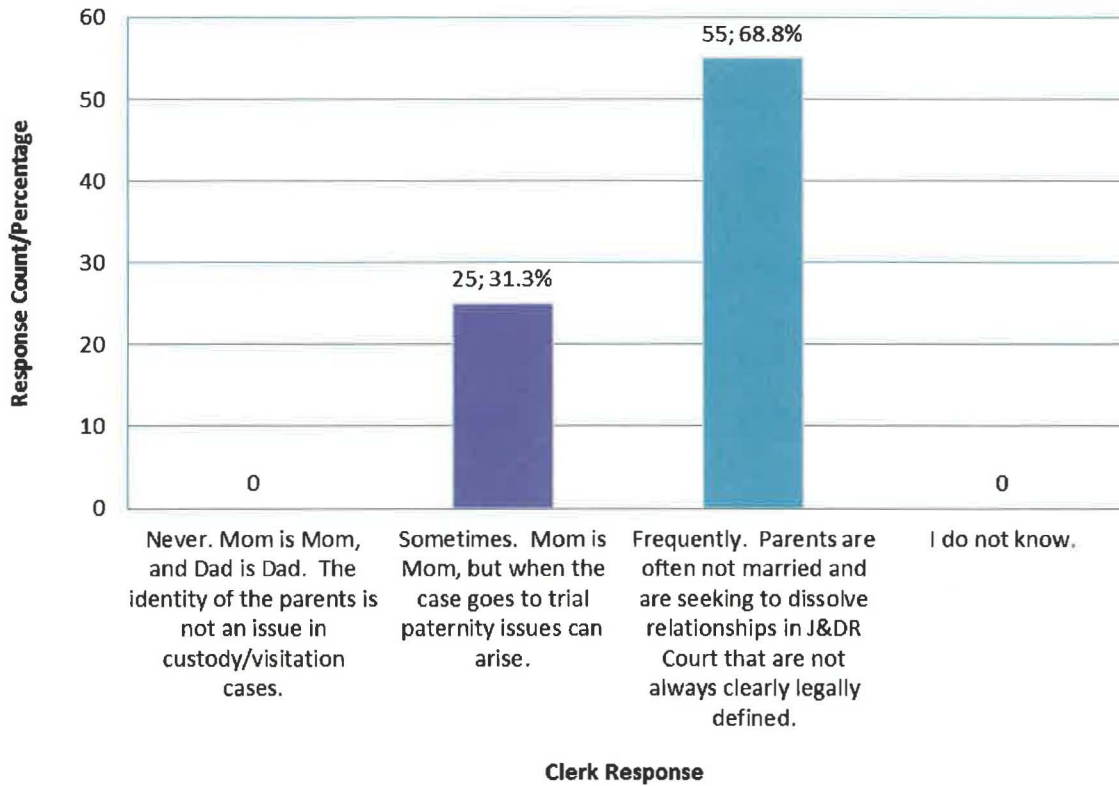
10. Managing, scheduling and tracking motions filed and subpoenas issued on behalf of one child in a case in which the underlying custody/visitation order involved multiple children will be:

Ninety-four percent (94%) of Clerks indicated some level of complication in managing, tracking and scheduling motions to amend and subpoenas issued on behalf of one child in a custody case and/or visitation case that involves multiple children.



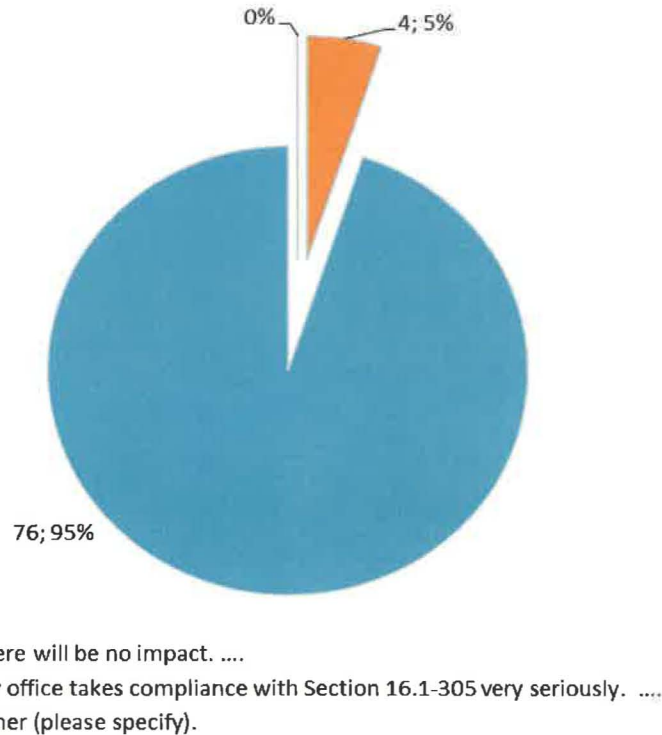
11. The proposed law will permit the filing of custody/visitation issues on one petition for multiple children with the same parents. Considering your overall custody/visitation caseload, how frequently do issues of parentage arise in these matters?

All Clerks indicated that parentage issues arise in custody cases and visitation cases. Sixty-nine percent (69%) of respondents noted that parentage issues arise “frequently.” The remaining 31% indicated parentage issues arise “sometimes.”



12. If the law is changed to permit the filing of custody/visitation issues on one petition for multiple children with the same parents or legal guardian, how will this affect your management of access to custody/visitation records and compliance with confidentiality statutes?

The manner in which clerk's office manage access to custody cases and visitation cases and comply with confidentiality statutes will be affected. The majority (95%) of respondents indicated that their "office takes compliance with Section 16.1-305 very seriously. Changes to this law which would allow access to documents containing the names and information regarding multiple children would be difficult to manage in the Clerk's Office. Questions may arise from parents or parties regarding the release of information beyond what is necessary."

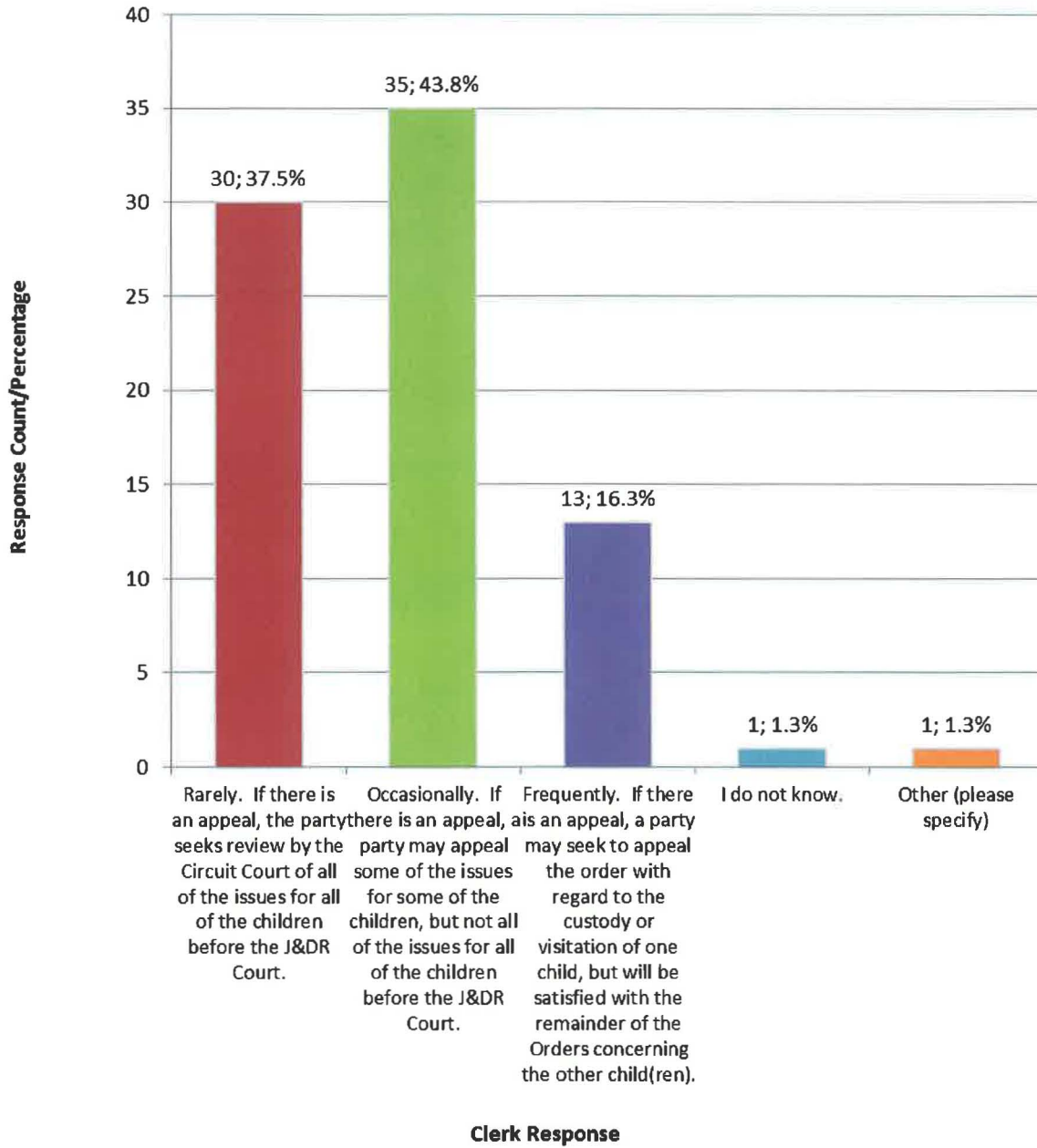


There will be no impact. The entire case file will be made available to all adult parties in the case. Individual children in the family will not have separate consideration. This policy will make it easier to share confidential records since all children in one family will be treated the same.

My office takes compliance with Section 16.1-305 very seriously. Changes to this law which would allow access to documents containing the names and information regarding multiple children would be difficult to manage in the Clerk's Office. Questions may arise from parents or parties regarding the release of information beyond what is necessary.

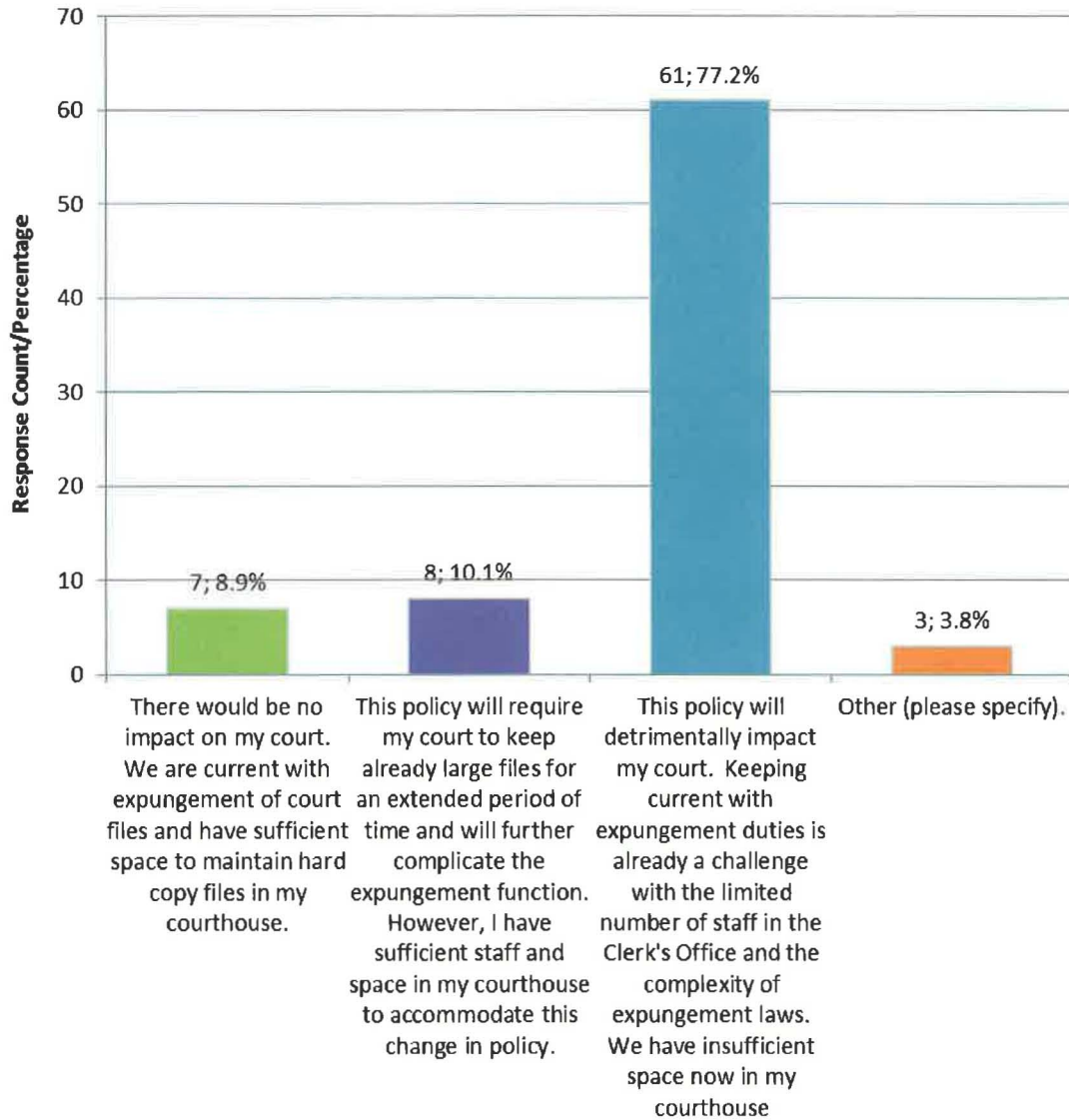
13. Under current law, when multiple children in one family are before the court in a custody/visitation case, how frequently does one of the parties appeal a custody order and/or visitation order for only one of the children before the J&DR Court?

A majority of Clerks indicated that it is uncommon for a party in a custody case and/or a visitation case to appeal an order for only one child in a family when multiple children are before the court. Thirty-eight percent (38%) of Clerks indicated an appeal of this nature is rare, while 44% indicated an appeal of this nature happens "occasionally."



14. The proposed changes to the expungement statute provide that custody/visitation case records will be kept until the youngest of the children subject to the petition has attained the age of 19 years and 5 years have elapsed since the date of the hearing. How will this new policy affect your court?

Seventy-seven percent (77%) of Clerks indicated that maintaining custody and visitation case records until the youngest of the children subject to the petition has attained the age of 19 years and 5 years have elapsed since the date of the hearing would “detrimentally impact my court. Keeping current with expungement duties is already a challenge with the limited number of staff in the Clerk’s Office and the complexity of expungement laws. We have insufficient space now in my courthouse for hard copy case files.” Another 10% noted that the change in expungement will require their courts to keep already large files for an extended period of time and further complicate the expungement function, but acknowledged sufficient staff and space in their courthouses to accommodate the change.



Clerk Response

Department of Planning and Budget 2015 Fiscal Impact Statement

1. **Bill Number:** HBXXX

House of Origin Introduced Substitute Engrossed
 Second House In Committee Substitute Enrolled

2. **Patron:**

3. **Committee:**

4. **Title:** **Petition for child custody or visitation**

5. **Summary:** Provides that issues of child custody or visitation may be included in a single petition in juvenile and domestic relations district court, and that such issues may be included in a single petition involving two or more children, if such children have the same parents or legal guardians. The bill also provides that if a person, agency, or institution is authorized to inspect the case files relating to any juvenile subject to such a petition, the person, agency, or institution may inspect the entire case file related to the petition. The bill further provides that the court records in a case where a single petition for multiple children has been filed will be expunged after the youngest child subject to the petition has reached 19 years of age and five years have elapsed since the last hearing in the case.

6. **Budget Amendment Necessary:** Yes, Item XX.

7. **Fiscal Impact Estimates:** Preliminary

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2015	\$0		
2016	\$481,000		0100 General Fund
2017	\$0		
2018	\$0		
2019	\$0		
2020	\$0		

7b. Revenue Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2015		
2016		
2017		
2018		
2019		
2020		

8. Fiscal Implications: The Office of the Executive Secretary of the Supreme Court notes that the consolidated petitions filed pursuant to this bill would be significantly more complex than current custody and visitation petitions, because a single petition will encompass multiple children and multiple discrete legal issues. The increased complexity of petitions will require extensive programming changes to the court system's automated Case Management System ("CMS"). This assessment is based on the required change from a legal case-based system to a family-based system for these petitions.

Programming changes required by this legislation include changes to existing user interface screens, database architecture, system functionality, batch reports, and various other associated systems. Consolidated petitions will associate much more data with a single case than is possible in the current database. Since modifying existing tables to handle the additional information would introduce an excessive level of risk to other areas of CMS, much of the case information associated with consolidated petitions will be stored in a new set of tables within that database.

Having cases stored in a new area of the database means many other areas of the CMS application must be modified to account for the cases in those tables. Some areas of existing functionality of CMS that must be changed to handle the consolidated petitions include searches for parties' names, case numbers or attorneys, the means by which these proceedings generate either initial pleadings for service or subsequent form pleadings or orders, the creation of docket information and the transmission of case data from J&DR court to circuit court when cases are appealed.

It is estimated that the reprogramming of CMS required by this legislation will consume 707 "person days" of work, at a cost of \$481,000. In addition, a delayed effective date one year from the enactment of the proposal will be necessary to allow time to undertake the reprogramming, clerk staff training and other administrative tasks associated with this significant change in case processing.

9. Specific Agency or Political Subdivisions Affected: Courts

10. Technical Amendment Necessary: No

11. Other Comments:

October 30, 2014

PETITION

Commonwealth of Virginia VA. CODE §§ 16.1-262; 16.1-263

Case No. _____

DATE OF HEARING

Juvenile and Domestic Relations District Court

In re a Child under eighteen years of age

CHILD'S NAME 1.	SSN:	DATE OF BIRTH 2.	AGE 3.	SEX M.F.	RACE
CHILD'S ADDRESS 4.			TELEPHONE NO.		
FATHER'S NAME 5.	SSN	DATE OF BIRTH	TELEPHONE NO.		
FATHER'S ADDRESS 6.					
MOTHER'S NAME 7.	SSN	DATE OF BIRTH	TELEPHONE NO.		
MOTHER'S ADDRESS 8.					
GUARDIAN/LEGAL CUSTODIAN OR PERSON IN <i>LOCO PARENTIS</i> NAME AND ADDRESS 9.				TELEPHONE NO	
GUARDIAN'S /LEGAL CUSTODIAN OR PERSON IN <i>LOCO PARENTIS</i> RELATIONSHIP TO CHILD 10.					
OTHER(S) NAME AND ADDRESS 11.			TELEPHONE NO.		
12. Child held in CUSTODY [] Yes [] No					
13. Place of Detention or Shelter Care _____					
14. Date and Time Taken into Custody		13. Date and Time Placed in Detention or Shelter Care			
____ / ____ / ____ : ____ m.		____ / ____ / ____ : ____ m.			
15. The above information is not known to the petitioner: No(s).					

I, the undersigned petitioner, state under oath to the best of my knowledge, that the above-named child is within the purview of the Juvenile and Domestic Relations District Court Law in that, within this city/county, the child:

(FOR ADMINISTRATIVE USE ONLY IN DELINQUENCY CASES) Virginia Crime Code: _____
WHEREFORE, the Petitioner requests that the child and the persons having his or her custody and control be summoned to appear before this Court, and that this Court enter such orders and judgments as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

DATE

PETITIONER'S NAME (PRINT OR TYPE)

PETITIONER'S SIGNATURE

PETITIONER'S ADDRESS AND TELEPHONE NUMBER (COURT COPY ONLY)

Sworn/affirmed and signed before me on _____

Title: _____

Signature: _____

Filed by: _____	DATE _____
[] INTAKE OFFICER [] ATTORNEY	

FOR NOTARY PUBLIC'S USE ONLY:	
State of _____ [] City [] County of _____	
Acknowledged, subscribed and sworn to before me this _____ day of _____, 20 _____	
NOTARY REGISTRATION NUMBER _____	NOTARY PUBLIC (My commission expires: _____)

**NOTICE OF RIGHTS TO DESTRUCTION OF JUVENILE AND
DOMESTIC RELATIONS DISTRICT COURT RECORDS**

(Va. Code § 16.1-306)

■ Records relating to a proceeding where a juvenile is found guilty of a delinquent act which would be a felony if committed by an adult will not be destroyed.

■ Records related to other proceedings concerning a juvenile will be destroyed automatically when:

such juvenile is nineteen (19) years old or older and

five years have passed since the date of the last hearing in the case. However, if the juvenile was found guilty of an offense reportable to the Virginia Department of Motor Vehicles, the records shall not be destroyed until the juvenile is twenty-nine (29) years old.

■ You may request the earlier destruction of the court records in this case ONLY IF:

1. You were the subject of a delinquency or juvenile traffic proceeding, and
2. You were found innocent of the charge or the charge was otherwise dismissed, and
3. You file a motion with this court requesting destruction of the records connected with such charge with notice being given to the Commonwealth's Attorney.

Unless good cause is shown why the records should not be destroyed, this court shall grant the motion.

**ORDER FOR CUSTODY/VISITATION
GRANTED TO INDIVIDUAL(S)**
Commonwealth of Virginia VA. CODE §§ 16.1-278.15, 20-124.2

Case No.

DATE OF HEARING

Juvenile and Domestic Relations District Court

In re:
NAME OF CHILD DATE OF BIRTH

- Present: Father Father's attorney
 Mother Mother's attorney
 Child Guardian *ad litem*
 Other Attorney
 Other Attorney

The above-named child has been brought before this Court upon the filing of a written petition or motion concerning custody or visitation or for which transfer of custody is a dispositional alternative. Legal notice has been given to all proper and necessary parties. All provisions of the Juvenile and Domestic Relations District Court Law have been duly complied with in assuming jurisdiction over the child, and all determinations have been made in accordance with the standards set forth in Virginia Code § 16.1-278.4, § 16.1-278.5, § 16.1-278.6 or § 16.1-278.8 or § 16.1-278.15 and §§ 20-124.1 through 20-124.10.

HAVING CONSIDERED ALL RELEVANT AND MATERIAL EVIDENCE PRESENTED AND THE BEST INTEREST OF THE CHILD, THE COURT FINDS THAT THE CHILD IS WITHIN THE JURISDICTION OF THIS COURT AND FURTHER FINDS AND ORDERS THAT:

1. The parties are in agreement on the arrangement for the child's custody and visitation:
 - as set forth in the agreement dated which is incorporated by reference.
 - as set forth in the attached document, which is incorporated.
 - as set forth below.
2. **Custody/Visitation**

The basis for the decision determining custody or visitation has been communicated to the parties orally or in writing. Except in cases of consent orders for custody and visitation, the findings regarding the relevant factors set forth in Virginia Code § 20-124.5 have been communicated to the parties.

3. A **supplemental sheet** with additional findings and/or orders is attached and incorporated.
4. **Relocation.** Each party intending a change of address shall give 30 days advance written notice of such change of address to the court and other party, pursuant to Virginia Code § 20-124.5. Unless otherwise provided in this order, this notice shall contain the child's full name, the case number of this case, the party's new telephone number and new street address and, if different, the party's new mailing address. Unless otherwise provided in this order, the notice shall be mailed by first-class or delivered to this court and to the other party.
5. **Access to Records.** In accordance with Virginia Code § 20-124.6, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child, unless otherwise provided in this order or, in the case of health records, if the minor's treating physician or clinical psychologist has made a part of the child's health record a written statement that furnishing to or review by the parent of such health records would be reasonably likely to cause substantial harm to the minor or another person.
6. **Deployed Military Parents and Guardians.** In accordance with § 20-124.10, the nondeploying parent or guardian shall reasonably accommodate the leave schedule of the deploying parent or guardian, (ii) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the deploying parent or guardian and the child during the deployment period, and (iii) the deploying parent or guardian shall provide timely information regarding his leave schedule to the nondeploying parent or guardian.

7. This Order is FINAL TEMPORARY and a final hearing on this matter will be held on
 at m.
 DATE TIME

 DATE JUDGE

**SUPPLEMENTAL SHEET TO
ORDER FOR CUSTODY/VISITATION
GRANTED TO INDIVIDUAL(S)**

Case No.

DATE OF HEARING

In re:

NAME OF CHILD

DATE OF BIRTH

Having ordered in Paragraph 3 of the first page of this order the attachment and incorporation of
this **supplemental sheet** for additional findings and/or orders of this Court,

THE COURT FURTHER FINDS AND ORDERS THAT:

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