

Report to the Governor and the General Assembly of Virginia

Improving Virginia's Foster Care System

2018



Joint Legislative Audit and Review Commission

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Summary: Improving Virginia’s Foster Care System

WHAT WE FOUND

Requirements to ensure children’s health and safety are followed in most foster care cases, but lack of adherence to requirements in some cases puts children at risk

In most cases, the basic steps required by federal and state laws to ensure the safety of children in foster care are being followed in Virginia, and most children are receiving required physical and mental health services. However, a lack of adherence to federal and state requirements for ensuring children’s health and safety, even if they are infrequent, creates avoidable risks for children in the government’s custody.

A review of foster care cases by the Virginia Department of Social Services (VDSS) found that basic safety requirements have not always been followed. In 98 sampled cases (four percent), the requirements to ensure the safety of placement settings were not followed. Additionally, despite the requirement that caseworkers visit children at least once a month—and the importance of these visits for monitoring children’s safety and well-being—caseworkers in some local departments were found to not be conducting monthly visits, and some children in foster care are not being visited for multiple consecutive months. Evidence also shows that children do not always receive required health screenings, and the proportion of children in foster care in Virginia who did not receive required screenings in FY16 was higher than in some other states.

VDSS has recently taken steps to collect case-level information that—once it is prioritized by VDSS staff—will allow VDSS to identify practices that unnecessarily place children’s health and safety at risk and work with local departments to resolve identified problems.

Expanded state-level policies and investments are needed to place more children in family-based foster care settings

Local departments of social services do not do enough to place children in foster care with relatives, and the state does not take sufficient steps to ensure non-relative foster families are available to care for children when relatives are unavailable. Although state requirements, federal law, and child welfare best practices prioritize placement with

WHY WE DID THIS STUDY

In 2017, the Joint Legislative Audit and Review Commission directed its staff to study the foster care and adoption services delivered by Virginia’s local departments of social services and supervised by the Virginia Department of Social Services (VDSS). JLARC staff examined the extent to which local departments follow requirements to ensure the safety and well-being of children in foster care and effectively manage foster care cases; the appropriateness of foster care placements; efforts to place children in permanent homes; and the role of VDSS in supervising the delivery of foster care and adoption services.

ABOUT VIRGINIA’S FOSTER CARE SYSTEM

Virginia’s foster care system is intended to provide temporary protection and care for children who cannot remain safely in their homes. About 5,300 Virginia children are in foster care, and total federal, state, and local spending on foster care and adoptions amounts to nearly \$500 million annually. Both the number of children in foster care and expenditures for administering the system have increased in recent years.

relatives, local departments in Virginia are not using relatives nearly as frequently as other states. In 2016, only six percent of children in foster care were placed with relatives, about one-fifth as often as the national average (32 percent). Virginia's low rate of placement with relatives can be explained, at least in part, by inconsistent efforts by caseworkers to identify relatives who may be willing and able to assume the role of foster parent.

A key resource for family-based placements, particularly when relatives are not an option, are non-relative foster families, but the statewide shortages of non-relative foster families in Virginia are long standing and well known. Despite the persistent nature of these shortages, Virginia still has no plan, dedicated funding, or staff to systematically recruit non-relative foster families, in contrast to other states.

Because of the shortage of both relative and non-relative foster families, many local departments have had to rely on costlier, more restrictive placements for children whose needs are not effectively met in such placements. Virginia's use of congregate care (group homes and residential treatment centers) is higher than other states' and has been increasing. A substantial proportion of children in congregate care settings in Virginia do not have a clinical need to be there, according to two separate indicators of clinical need and observations from foster care caseworkers across many local departments of social services. In some instances, short stays in congregate care are necessary for children in foster care, but research shows that unnecessary time in congregate care can have negative effects on children's healthy development. In some other states, the rates of congregate care placements have been a factor in federal class-action litigation against state child welfare systems.

Additional casework is needed to improve the likelihood that children in foster care will find a permanent home

Federal and state law require local departments to minimize the time children spend in foster care by working diligently to reunify children with their birth parents as soon as it is safe and appropriate to do so, or to find relatives or others willing to permanently care for children when timely reunification is not possible. Compared to children in other states, a higher proportion of children "age out" of Virginia's foster care system before finding a permanent family. For example, of children 12 and older who entered foster care between 2012 and 2016, 54 percent aged out before finding a permanent home—approximately double the 50-state average (25 percent). Virginia has been among the worst three states annually for children aging out of foster care since at least 2007.

Compared to other states, Virginia takes fewer children into foster care, and it is commonly assumed that the children who enter foster care in Virginia have more severe challenges and are more difficult to place. This assumption is sometimes used to explain lengthy stays in foster care in Virginia, but analysis shows that a more likely explanation is the combination of inadequate casework by local departments and certain barriers outside caseworkers' control, such as the court system and service availability.

Reunification with birth families appears to be the type of permanency with the greatest opportunity for improvement in Virginia. VDSS data indicates that local departments are not involving birth parents and other key individuals in critical decision points in the foster care process, and children in Virginia are significantly less likely to be reunified with their birth parents than children in other states.

Some children are waiting an unnecessarily long time for adoptions to occur, due in part to the practices of local departments with respect to the “termination of parental rights” (TPR) process. TPR permanently eliminates all legal rights and responsibilities of birth parents and is legally required to occur before a child may be adopted. However, in some cases foster care caseworkers do not request TPR at the milestones required by federal and state law, delaying a child’s ability to become eligible for adoption. The often lengthy TPR appeals process in Virginia can also prolong the amount of time taken for children to be placed in a permanent home, and steps need to be taken to ensure birth parents are aware of a voluntary TPR option that could potentially avoid the appeals process and make children eligible for adoption sooner.

Fifteen percent of caseworkers carry high foster care caseloads, and high caseloads affect nearly one-third of children

Fifteen percent of foster care caseworkers in Virginia carry caseloads of more than 15 children at a time—higher than the widely accepted caseload standard of 12 to 15 children per caseworker. Caseworkers with these high caseloads are in 32 local departments distributed across all five regions of the state. The number of foster care caseworkers with caseloads of more than 15 has been increasing, and a relatively large number of children in foster care are affected. Foster care caseworkers with high caseloads were collectively responsible for managing the cases of 1,657 children (31 percent of all children in foster care). Higher foster care caseloads are associated with lower rates of routine medical exams, fewer in-home visits by caseworkers, and fewer contacts between children and their birth families each month, according to JLARC analysis of VDSS data.

VDSS has not effectively supervised the foster care system and does not have an effective means to identify and resolve poor performance

Many stakeholders—social services staff, foster parents, judges, and others—expressed concerns about the lack of accountability in Virginia’s foster care system and the impact this has on children and families. VDSS has historically narrowly interpreted its supervisory responsibilities, which are set in statute, and past VDSS leaders have equivocated about the state’s ability to assertively supervise foster care services and hold local departments of social services accountable. The current VDSS commissioner has signaled that VDSS may be more proactive in its supervisory role under his leadership, but state law should be clarified to ensure that VDSS has unequivocal statutory direction regarding its responsibilities for holding local departments accountable for providing foster care services in a manner consistent with federal and state

laws. For example, although the commissioner of VDSS has the statutory authority and responsibility to intervene when local departments of social services fail to provide services to those who need their assistance, current state law is not clear about the *circumstances* under which VDSS should intervene to resolve cases in which children are not receiving needed services.

To improve its effectiveness as supervisor of the system, VDSS also needs to more closely monitor local departments' child welfare practices. VDSS initiated a case review process in 2017 to identify problems with the administration of child welfare services, but the results of the case reviews—which have been conducted for nearly two years—have not been systematically reviewed by central office staff, and VDSS has no process to ensure that identified problems are resolved. The information from case reviews could be leveraged to make improvements, and the current case review process could be replaced with a more comprehensive and structured quality assurance review process that prioritizes those departments that appear to be at the greatest risk of providing inadequate services.

WHAT WE RECOMMEND

Legislative action

- Direct VDSS to examine the results of regional consultants' 2017 and 2018 case file reviews and certify that all safety-related concerns identified in those reviews have been resolved.
- Direct VDSS to develop and maintain a strategic plan for recruiting foster families and to maintain a statewide inventory of foster families.
- Direct VDSS to identify all children who do not have a clinical need to be in a congregate care setting and take steps to move them to a more appropriate placement.
- Establish a standard for the number of foster care cases managed by a single caseworker.
- Specify VDSS's supervisory responsibilities for the state's foster care system and the actions it is authorized to take to ensure local departments comply with state foster care laws and regulations.

Executive action

- Require local department staff to routinely search for the relatives of children in foster care and issue clear guidance to local departments on the existing policies that can facilitate the approval of relatives to serve as foster parents.
- Identify children who have been in foster care for longer than 36 months and provide technical assistance and resources to local departments to minimize prolonged stays in foster care for these children.
- Develop clear guidance that should be distributed to all birth parents on their ability to voluntarily terminate parental rights.

The complete list of recommendations is available on page v.

Recommendations: Improving Virginia's Foster Care System

RECOMMENDATION 1

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to thoroughly review all the information collected through the agency case reviews conducted in 2017 and 2018 by regional staff, re-communicate all serious case-specific or systemic safety-related concerns identified in past reviews to the relevant departments of social services, communicate such concerns to the relevant local boards of social services, and work with local department staff to resolve all identified safety problems. The commissioner should be directed to submit a letter to the House Health, Welfare and Institutions Committee and the Senate Rehabilitation and Social Services Committee certifying that all safety-related concerns identified in the 2017 and 2018 reports have been resolved no later than November 1, 2019. (Chapter 2)

RECOMMENDATION 2

The Virginia Department of Social Services (VDSS) should convene a work group to address the underutilization of the CANS assessment in case planning and service provision for children in the foster care system. The work group should include case-workers, supervisors, and directors from all regions of the state. VDSS should report its findings and recommendations to the Virginia Board of Social Services no later than July 1, 2020. (Chapter 2)

RECOMMENDATION 3

The General Assembly may wish to consider amending § 63.2-200 of the Code of Virginia and including sufficient funding in the Appropriation Act to create a new position, director of foster care health and safety, within the Virginia Department of Social Services. (Chapter 2)

RECOMMENDATION 4

The Virginia Board of Social Services should promulgate regulations to require staff of local departments of social services to at least annually conduct a search for relatives of every child who (i) is not placed with relatives and (ii) has no clear permanent placement options. The amended regulation should further require that relative searches be conducted when a child's placement changes, if such a search has not been conducted in the 90 days prior. (Chapter 3)

RECOMMENDATION 5

The General Assembly may wish to consider amending Chapter 11 of Title 16.1 of the Code of Virginia to require juvenile and domestic relations courts to order the birth parents of children who have been removed from their homes to provide to local departments of social services contact information for all immediate relatives and extended family members. (Chapter 3)

RECOMMENDATION 6

The Virginia Department of Social Services (VDSS) should issue clear guidance that presents the options available to local departments of social services to facilitate the approval of relatives to serve as foster parents. Guidance materials should be issued to all local departments and regional VDSS staff. (Chapter 3)

RECOMMENDATION 7

The General Assembly may wish to consider amending Title 63.2, Chapter 9 of the Code of Virginia to require every local department of social services to provide semi-annually to the Virginia Department of Social Services a list of all licensed foster families who reside in their locality. The list should, at a minimum, include foster families' contact information, preferences regarding the age, number, and needs of children each family would consider fostering, key demographic information for each family, the number and ages of children each family is currently fostering, the total number of other children in each family's home and their ages, and biological relationships (if any) between each family and the children they are fostering. (Chapter 3)

RECOMMENDATION 8

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to develop and maintain a statewide strategic plan for recruiting and retaining foster families. (Chapter 3)

RECOMMENDATION 9

The General Assembly may wish to consider including language in the Appropriation Act to establish six positions—five regional staff and one at the central office—at the Virginia Department of Social Services responsible for implementing the statewide strategic plan for recruiting and retaining foster families and supporting local recruitment and retention efforts. (Chapter 3)

RECOMMENDATION 10

The General Assembly may wish to consider including language in the Appropriation Act to direct the Virginia Department of Social Services (VDSS) to (i) determine the amount of funding necessary to implement the statewide strategic plan for recruiting and retaining foster parents; and (ii) identify all possible sources of funding that could be used to support statewide recruitment and retention efforts, including Title IV-E funds, limits on these funding sources, and general fund match requirements. VDSS could be required to submit its findings to the House Appropriations and Senate Finance Committees by November 1, 2019. (Chapter 3)

RECOMMENDATION 11

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to (i) conduct an immediate review of the circumstances of every child in foster care currently in congregate care, to identify children who do not have a clinical need to be in congregate care; (ii) communicate its findings to each local department of social services; (iii) direct the local departments to make concerted efforts to identify appropriate family-based placements for these children; and (iv) direct the local departments to move identified children to an appropriate family-based placement, if feasible. (Chapter 3)

RECOMMENDATION 12

The General Assembly may wish to consider amending Title 63.2, Chapter 9 of the Code of Virginia to direct the Virginia Department of Social Services (VDSS) to review, at least annually, the circumstances of every child in foster care who is placed in a congregate care setting, and identify children for whom such a placement is not justified by their needs. When it is determined that a child's placement in a congregate care setting is not justified by their needs, and the local department of social services does not take reasonable steps to find an appropriate family-based placement, the local department should be required to pay all costs associated with the congregate care placement out of local funds until VDSS determines that the local department has made reasonable efforts to place the child in an appropriate family-based placement. (Chapter 3)

RECOMMENDATION 13

The Virginia Department of Social Services should (i) modify its guidance to require caseworker visits with birth parents at least once every two months as long as reunification remains the foster care goal, and require caseworkers to document these visits in the electronic case management system; (ii) monitor the frequency of these visits on an ongoing basis; and (iii) notify the relevant directors and boards of local departments of social services when required visits with birth parents have not occurred over an extended duration, such as five months. (Chapter 4)

RECOMMENDATION 14

The General Assembly may wish to consider amending § 63.2-900 of the Code of Virginia to require local departments of social services to hold structured meetings, facilitated by a trained, neutral moderator, with birth parents, relatives, and other relevant stakeholders, to make decisions that are in the best interest of the child in foster care, prior to all critical decision points during a child's stay in foster care. (Chapter 4)

RECOMMENDATION 15

The General Assembly may wish to consider amending § 63.2-1305 of the Code of Virginia to create a state-funded Kinship Guardianship Assistance program that waives the requirement for potential guardians to serve as a licensed foster parents for six consecutive months and limit eligibility for this program to children who are least likely to be placed in a permanent home or who have been in foster care for an extended period of time. (Chapter 4)

RECOMMENDATION 16

The Virginia Department of Social Services should (i) develop in guidance a list of acceptable reasons for not filing for termination of parental rights after 15 months in foster care and (ii) require local departments to document at least one of these reasons in the state's electronic case management system whenever a decision is made to delay filing for termination of parental rights. (Chapter 4)

RECOMMENDATION 17

The General Assembly may wish to consider amending § 16.1-282.1 of the Code of Virginia to require, for all permanency planning hearings after 15 months in foster care in which termination of parental rights (TPR) has not occurred, that the local departments of social services include the reason for not initiating TPR in the petition for the hearing. (Chapter 4)

RECOMMENDATION 18

The General Assembly may wish to consider including language in the Appropriation Act directing the Supreme Court of Virginia to evaluate the feasibility, costs, and effectiveness of the following options to expedite the appeals process for termination of parental rights (TPR) cases: (i) designate juvenile and domestic relations courts as courts of record for TPR hearings and send appeals directly to the court of appeals; (ii) originate TPR hearings in circuit courts; (iii) shorten the 90-day deadline for circuit courts to hold TPR hearings; (iv) establish a deadline for the court of appeals to hold TPR hearings; and (v) any other options that could expedite the appeals process for TPR cases. The executive secretary of the Supreme Court of Virginia should submit the results of this evaluation to the House and Senate Courts of Justice Committees; the House Health, Welfare and Institutions Committee; and the Senate Rehabilitation and Social Services Committee by November 1, 2020. (Chapter 4)

RECOMMENDATION 19

The Virginia Department of Social Services should develop a clear guidance document to educate birth parents about their option to voluntarily terminate parental rights and require local departments of social services to provide this document to all birth parents no later than at the first foster care review hearing. (Chapter 4)

RECOMMENDATION 20

The Virginia Department of Social Services (VDSS) should develop a list of children who have been in foster care for more than 36 months, to be updated quarterly. Each quarter, VDSS should require regional staff to review each case and authorize them to respond with direct technical assistance or referrals to relevant VDSS contractors, as necessary and appropriate, to minimize unnecessarily lengthy stays in foster care. (Chapter 4)

RECOMMENDATION 21

The Virginia Department of Social Services should prepare reports each quarter on (i) the percentage of children in each locality in foster care for over 12 months, 24 months, and 36 months, and (ii) the regional and state average lengths of stay in foster care. The reports should be sent at least quarterly to relevant local directors and boards of social services and juvenile and domestic relations courts. (Chapter 4)

RECOMMENDATION 22

The State Board of Social Services should promulgate regulations to (i) require that independent living needs assessments and transition plans be conducted within 30 days of a child turning 14 in foster care or entering foster care at age 14 or older; and (ii) require that the needs assessments and transition plans be updated annually. (Chapter 4)

RECOMMENDATION 23

The Virginia Department of Social Services should update its guidance on the Fostering Futures program to allow local departments of social services to disenroll youth for substantial violation of the written agreement. This guidance should include information on the types of requirements that the agreements may and may not include. (Chapter 4)

RECOMMENDATION 24

The General Assembly may wish to consider amending § 63.2-905 of the Code of Virginia to require the Virginia Department of Social Services to (i) establish a caseload standard for foster care caseworkers; (ii) notify relevant local boards of social services when foster care caseworkers carry caseloads that exceed this standard for an extended period of time; and (iii) periodically review and update the caseload standard, as appropriate, to account for changes in the time and work required to effectively manage each foster care case. (Chapter 5)

RECOMMENDATION 25

The Virginia Department of Social Services (VDSS) should develop plans of action for ensuring that local departments of social services that have foster care caseworkers carrying caseloads in excess of 15 children are able to reduce those caseloads to 15 or fewer without compromising the safety or well-being of children. VDSS should assist local departments, as necessary, in implementing these plans. These plans of action should be developed in collaboration with regional office staff and local department directors and sent to the relevant local boards of social services by June 30, 2019. (Chapter 5)

RECOMMENDATION 26

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services (VDSS) to (i) identify local departments of social services in greatest need of assistance with recruiting and retaining foster care caseworkers; (ii) recommend solutions for the specific barriers to caseworker recruitment and retention; and (iii) identify additional funding needs, and federal funding that could be leveraged, to implement the recommendations. VDSS should report its findings and recommendations to the House Appropriations and Senate Finance Committees no later than November 1, 2019. (Chapter 5)

RECOMMENDATION 27

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services (VDSS) to review the feasibility and costs of establishing a standard for supervisory spans of control within Virginia's foster care system. VDSS should report its findings to the House Appropriations and Senate Finance Committees no later than November 1, 2020. (Chapter 5)

RECOMMENDATION 28

The Virginia Department of Social Services should monitor foster care staffing problems on an ongoing basis and assist local departments in addressing these problems, as necessary. For the purposes of targeted interventions and support, the following should be monitored, at a minimum: (i) competencies and compensation of caseworkers and supervisors; (ii) vacancy and turnover rates among caseworkers and supervisors; (iii) foster care caseloads; (iv) supervisory spans of control; and (v) specific opportunities to use caseworkers' and supervisors' time more efficiently and effectively. (Chapter 5)

RECOMMENDATION 29

The General Assembly may wish to consider amending § 63.2-900 of the Code of Virginia to authorize and direct the Virginia Department of Social Services to (i) annually conduct structured reviews of a representative sample of foster care cases to ensure that local departments of social services are complying with state and federal laws and policies, and are implementing effective practices; (ii) communicate to the relevant local departments and boards of social services problems and areas for improvement that are identified through these reviews; (iii) work with local departments to develop strategies to resolve all identified problems; (iv) monitor the performance of these departments to ensure problems are satisfactorily resolved; and (v) report annually on the results of the reviews to the Virginia Board for Social Services. (Chapter 6)

RECOMMENDATION 30

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services (VDSS) to develop a plan to phase in structured, comprehensive annual quality assurance reviews for a representative sample of foster care cases and report findings to the Virginia Board for Social Services. The plan should describe (i) the design of a comprehensive quality assurance review process; (ii) strategies for recruiting and training qualified reviewers; (iii) the role of VDSS central office staff in reviewing and acting on the findings of quality assurance reviews; and (iv) criteria for phasing in quality assurance reviews, prioritizing those departments that are, according to evidence, at the highest risk for providing inadequate services. The plan should be submitted to the House Appropriations and Senate Finance Committees by June 30, 2020. (Chapter 6)

RECOMMENDATION 31

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to (i) continue conducting agency case reviews at all local departments of social services as a more structured, comprehensive quality assurance review process is phased in; (ii) require central office staff to examine the results of agency case reviews and continue to communicate all identified problems to the relevant local departments; (iii) communicate such concerns to the relevant boards of social services; (iv) work with local departments to develop strategies to resolve all identified problems; and (v) monitor local departments' efforts to resolve all identified problems. (Chapter 6)

RECOMMENDATION 32

The General Assembly may wish to consider amending Chapter 2 of Title 63.2 of the Code of Virginia to create an independent office of child welfare ombudsman, which would report directly to the Secretary of Health and Human Resource and be responsible for (i) receiving and responding to complaints related to the safety and well-being of children in foster care; (ii) reporting annually to the governor, the General Assembly, and the Court Appointed Special Advocate program at the Department of Criminal Justice Services on the complaints received and actions taken; and (iii) making recommendations to improve services and outcomes for children in foster care and their families. (Chapter 6)

RECOMMENDATION 33

The General Assembly may wish to consider amending § 63.2-900 of the Code of Virginia to specify the conditions under which the Virginia Department of Social Services (VDSS) should intervene at local departments of social services to address shortcomings with the delivery of foster care services and to expressly authorize VDSS action to ensure that local departments comply with state foster care laws and regulations. (Chapter 6)

RECOMMENDATION 34

The General Assembly may wish to consider including language in the Appropriation Act requiring the Virginia Department of Social Services to develop a plan for staffing its regional offices in such a way that facilitates effective state supervision of the delivery of foster care services by local departments of social services. The plan should be submitted to the House Appropriations and Senate Finance Committees no later than November 1, 2020. (Chapter 6)

1 Overview of Virginia's Foster Care System

SUMMARY Virginia's foster care system is intended to provide temporary protection and care for children who cannot safely remain in their homes. Virginia's 120 local departments of social services administer the state's foster care system and take legal custody and care of children who enter foster care under the supervision of the Virginia Department of Social Services. In recent years, the number of children in foster care in Virginia has grown, their demographics and circumstances have changed, and total spending on foster care and adoptions has increased. In June 2018, about 5,340 children were in foster care in Virginia, 25 percent more than in 2013. The growth in the size of Virginia's foster care population is attributable to both an increase in the number of children younger than 18 entering the foster care system and a 2016 change that extended the age until which children can remain in foster care. Virginia's foster care population has changed in other notable ways in recent years. Children in foster care are younger, more likely to enter foster care because of parental drug abuse, and less likely to be removed due to their own behavior problems. Total federal, state, and local spending on foster care and adoptions was about \$495 million in FY17—an increase of about 11 percent compared to FY13.

In 2017 the Joint Legislative Audit and Review Commission (JLARC) directed its staff to review the administration of Virginia's foster care system and the provision of services to children in foster care and their families. Staff were directed to identify trends in foster care caseloads and reasons for any recent increases; evaluate the capacity of local departments of social services to provide foster care services; and assess the effectiveness of state and local efforts to recruit and retain foster care and adoptive parents and place foster care youth in permanent homes. (See Appendix A.)

To address the study mandate, JLARC staff analyzed state and national-level data on the safety, well-being, placements, and outcomes of children in foster care; analyzed data on state and local spending on foster care; conducted site visits and interviews with local, state, and regional social services staff; surveyed local department of social services staff and foster parents; interviewed a group of youth who were currently in or had recently exited foster care; interviewed national subject-matter experts and staff of social services departments in other states; and reviewed the research literature on topics related to foster care. (See Appendix B for the research methods used in this study.)

Children most often enter foster care due to neglect and are most often placed with non-relatives

Foster care is intended to provide temporary care for children who cannot safely remain in their homes. Children who have been removed from their normal place of residence and placed into the custody, control, and care of a local department of social services are considered to have “entered foster care.” About 5,340 children younger than 21 were in foster care in Virginia in June 2018, according to data from the Virginia Department of Social Services (VDSS).

Almost all children in foster care in Virginia (97 percent) in FFY16 were removed from their home through a court order, but a small proportion (3 percent) were voluntarily placed into foster care by their caregivers.

Mandated reporters are required by law to report suspected abuse or neglect. Professionals who are considered mandated reporters include teachers, hospital staff, and child care workers. However, anyone from the general public can report suspected child abuse or neglect.

Children enter foster care in various ways, but most often the process involves an investigation of reported maltreatment and a court order for removal (sidebar). When a local department receives a report of child maltreatment from a mandated reporter or the general public, child protective services staff first review the report and determine whether there is sufficient information to warrant further investigation (sidebar). If so, child protective services staff conduct an investigation and make a determination as to whether the incident of child maltreatment is believed to have occurred (*founded* or *unfounded*) and assign a risk level to the case. In high-risk cases, such as cases in which the child is found to have been seriously harmed or is at high risk of future harm, the local juvenile and domestic relations court may order that the child be removed from the home and placed in foster care.

As in other states, almost half of the children who enter foster care in Virginia do so because they were neglected by their parents or caretakers, but children also enter foster care for other reasons, such as parental drug or alcohol abuse, physical or sexual abuse, or inadequate housing. Children can also be placed in foster care due to their own behavior problems when a court determines that their behavior represents a serious threat to themselves or other people.

Children who enter foster care are placed into one of three types of foster care placement settings: (1) a relative foster family, (2) a non-relative foster family, or (3) a congregate care facility, usually a group home or a children's residential treatment facility. State law and regulations require that local departments first look to relatives as a placement option and use congregate care facilities only when needed to meet children's specific needs for intensive supervision and treatment. According to research literature, this is considered a best practice. Of the 2,352 children who entered foster care in 2017, most were initially placed with non-relative foster families, while a smaller proportion were placed with relatives (Table 1-1).

TABLE 1-1

Most children entering Virginia's foster care system in 2017 were initially placed with non-relative foster families

Foster care placement setting	Number of children who entered foster care in 2017	Proportion of children who entered foster care in 2017
Foster home, relative	98	4%
Foster home, non-relative	1,806	77%
Congregate care facility	280	12%
Other	174	7%

SOURCE: Child-level data from the Chapin Hall (University of Chicago) Multi-State Foster Care Data Archive.

NOTE: Includes children who first entered foster care in 2017 and reflects the first placement setting. The "other" category includes runaways and youth in supervised independent living.

Because foster care is intended to be temporary, local departments of social services are directed by state law to find appropriate permanent placements as quickly as possible to minimize the time children spend in foster care. The first goal is to provide services to return children home to their birth parents, also called "reunification." If children and birth parents cannot be reunified, the other three permanent placement options are (1) adoption by another family or relative, (2) custody transfer to a relative, or (3) relative guardianship. The decision between the latter two options is made by a juvenile and domestic relations court judge, who is required to determine which option is in the child's best interest.

Virginia's foster care system is locally administered but must conform to federal and state laws

States are responsible for administering child welfare services (including foster care) and ensuring these services are in compliance with federal laws and regulations. The federal law governing all states' administration of foster care and adoption services is Title IV of the Social Security Act. Further specificity on the implementation of Title IV is provided in Virginia state law and regulations, which local departments of social services must follow.

Virginia is one of nine states that provide child welfare services through a state-supervised, locally administered structure, rather than through a state-administered structure. The system includes local departments of social services, which provide direct services to children and their families and make service delivery decisions, and local boards of social services, which provide policy guidance and supervision over local departments. Local administration of foster care services is supervised by the Virginia Department of Social Services and periodically reviewed by the U.S. Department of Health and Human Services.

Local departments of social services are supervised by local boards

Virginia's 120 local departments of social services, under the supervision and management of local directors of social services, are responsible for implementing state laws and regulations related to foster care and providing direct services to children in foster care, their families, and foster and adoptive families. Specific responsibilities and powers of local departments of social services include

- taking children into their custody and care;
- approving foster care and adoptive homes;
- placing children into appropriate foster care settings;
- ensuring adequate care of children in foster care;
- providing services to children and their families to support reunification; and
- facilitating adoption.

Most day-to-day casework is conducted by local foster care caseworkers, also known as family services specialists.

Local departments of social services in Virginia operate under the supervision of local boards of social services, which are either administrative or advisory boards. Administrative boards, which are more common than advisory boards, establish, review, and revise local policy; prepare and submit budgets to the state and local governments; and appoint and review the performance of local directors of social services. Advisory boards are less directly involved in the provision of social services but are still responsible for monitoring the implementation of social services by the local department.

Although local departments administer their foster care programs, many decisions are subject to the review of juvenile and domestic relations courts. Judges in the juvenile and domestic relations courts ultimately make the decisions about removing children from the custody of their parents, approving foster care case plans and permanency goals, and returning children to their homes or transferring custody to relatives.

VDSS is responsible for supervising the foster care system and ensuring laws and regulations are implemented

In Virginia, state supervision of local foster care services is provided through the State Board of Social Services and VDSS, which is headed by the commissioner of social services. The state board promulgates regulations related to foster care that local boards must follow. The state board also advises the commissioner and has the authority to conduct investigations into problems related to the provision of social services in Virginia. The state board can issue subpoenas and hold hearings as needed to conduct its investigations and carry out its other statutory responsibilities.

The commissioner of social services, who is appointed by the governor, is responsible for ensuring that all laws related to foster care are implemented and that the practices of local departments of social services conform to the regulations adopted by the state board. The commissioner executes these responsibilities through VDSS, which

provides guidance and oversight of local departments through its Richmond-based central office and staff in five regional offices.

VDSS distributes federal and state funding to local departments for their administrative and programmatic expenses related to foster care. In FY17, 49 percent of the \$146 million spent on local administrative staffing and operations for Virginia's foster care and adoption services was paid for through federal pass-through funds; 15 percent was paid through state general funds; and the remaining 36 percent was paid through local funds.

In 2017, VDSS began monitoring local practices and compliance with federal requirements through two types of reviews of local child welfare services, including foster care. The first type of review (agency case review) is conducted by VDSS regional staff and includes a review of documentation related to certain required child welfare practices, such as foster care caseworker visits with children and foster care service planning. These reviews are conducted for a small sample of cases in each department at least once a year. The second type of review, conducted by VDSS central office staff, is intended to ensure that local departments are in compliance with certain federal and state requirements, such as regular physical and dental examinations and authorized expenditures using federal Title IV-E funds. This second type of review is narrower in scope than the agency case review but involves a larger sample of foster care cases and is conducted more frequently (quarterly at each local department). The results of both types of reviews are communicated to local departments, often with guidance on ways to improve local practices.

Federal Children's Bureau provides guidance, funding, and monitoring for foster care systems in all states

At the federal level, support and monitoring of state child welfare systems is conducted by the Children's Bureau, an office of the U.S. Department of Health and Human Services. The Children's Bureau provides guidance on federal law and regulations, and it distributes funding for foster care services.

The Children's Bureau also monitors states' foster care systems through periodic Child and Family Services Reviews. These reviews, which are intended to ensure that state practices conform to federal law, focus primarily on the safety and well-being of children in the foster care system and whether diligent efforts are being made to find permanent homes for children in foster care. In contrast with the recent state reviews mentioned above, Child and Family Services Reviews include a more in-depth review of child welfare practices, including interviews with children, birth parents, and foster parents. The federal reviews are limited to the practices of a sample of cities and counties across each state, rather than a sample of cases in all local departments.

In all three Child and Family Services Reviews in Virginia (2004, 2009, and 2017), the Children's Bureau documented concerns with Virginia's practices related to the safety and well-being of children in foster care, as well as with the state's efforts to find permanent homes for children in foster care.

Virginia's foster care population is changing

Noteworthy changes have occurred in Virginia's foster care population over the past decade. In addition to a recent increase in the number of children—particularly young children—entering foster care, there has been an increase in the proportion of children entering due to parental drug abuse, and an increase in the proportion of children with diagnosed disabilities. There has been a decrease in the proportion of children who enter foster care due to their own behavior problems over the past decade.

The number of children in foster care per 1,000 children in Virginia increased each year between 2013 and 2017, from 2.3 per 1,000 to 2.7 per 1,000.

Virginia's foster care population has increased in recent years

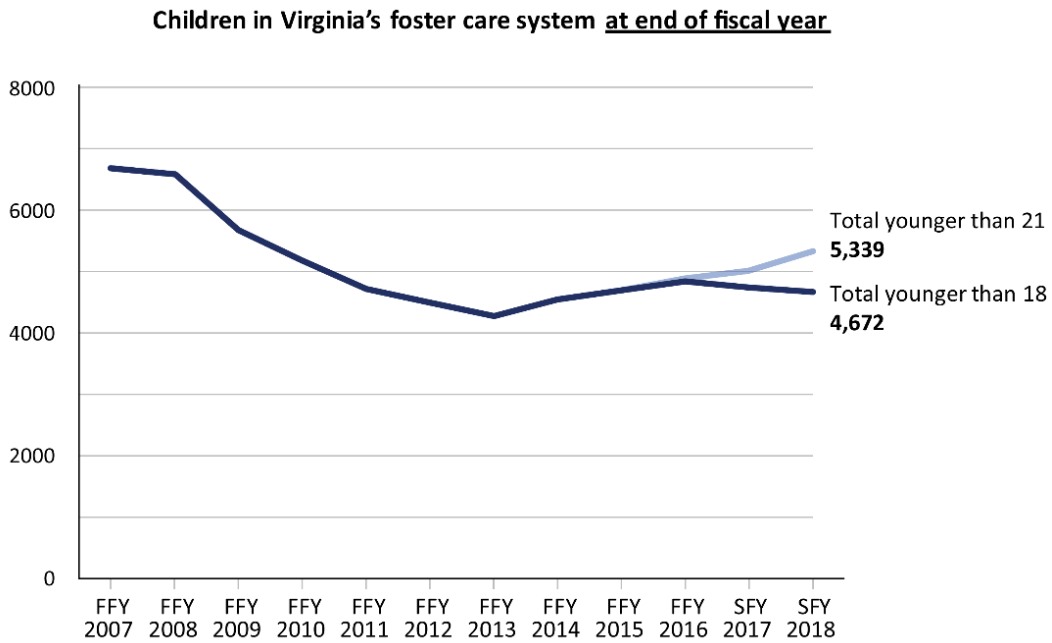
The number of children in foster care in Virginia has decreased over the past decade, but it has started to increase again recently, consistent with a nationwide trend. The number of children younger than 18 in foster care in Virginia decreased from 6,700 in 2007 to 4,270 in 2013. After 2013, the number of children younger than 18 began increasing again, as more children entered the system than exited. The number was around 4,670 as of June 2018—a nine percent increase from 2013 (Figure 1-1).

The Fostering Futures program was created in 2016 and is intended to provide extended financial assistance, support, and services for certain older children, including those who were still in foster care at age 18. The program is intended to help these children successfully transition to independent living. Eligible individuals may continue to receive assistance until age 21.

The Fostering Futures program, which was created in 2016, raised the age at which children exit foster care from 18 to 21. This program contributed to the increase in the size of Virginia's foster care population in recent years (sidebar). As of June 30, 2018, an additional 667 children between the ages of 18 and 20 were in the foster care system—bringing Virginia's total foster care population (ages 0 to 21) in June 2018 to about 5,340, 25 percent larger than in 2013.

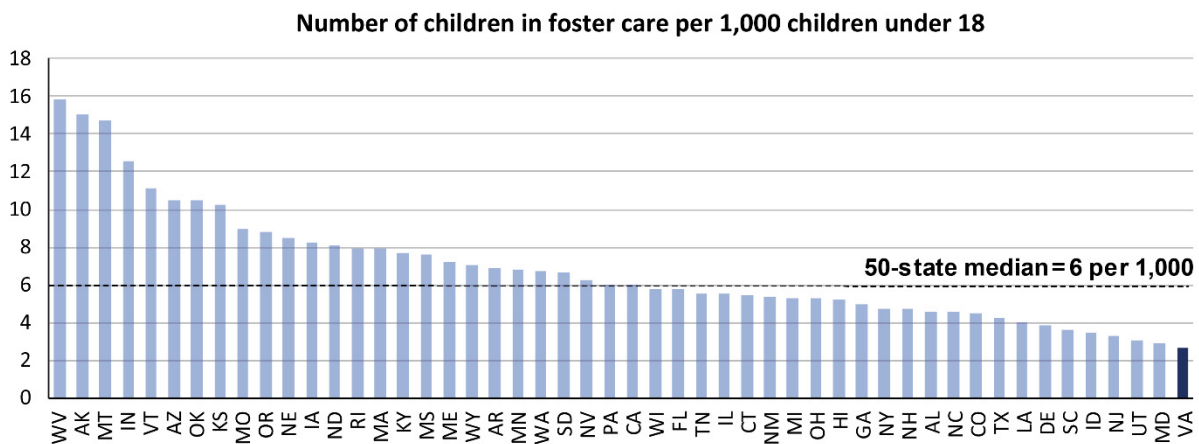
Although the size of Virginia's foster care population has increased in recent years, Virginia removes children from their homes and places them in foster care at a lower rate than all other states. In September 2016, the proportion of children in foster care in Virginia was 2.6 per 1,000 children—the lowest rate of any state in the country (Figure 1-2). The precise reasons for Virginia's low rate are unclear, but the low rate does not necessarily result in Virginia's foster care population being more challenging to serve compared to those in other states.

FIGURE 1-1
Virginia's foster care population has increased in recent years



SOURCE: JLARC analysis of data from federal Adoption and Foster Care Analysis and Reporting System (AFCARS), FFY07 to FFY16; VDSS OASIS data, SFY17 and SFY18.
 NOTE: Federal fiscal year (FFY) ends September 30; state fiscal year (SFY) ends June 30. SFY data was used for 2017 and 2018 because federal data is only available to 2016.

FIGURE 1-2
Virginia places children in foster care at the lowest rate in the country



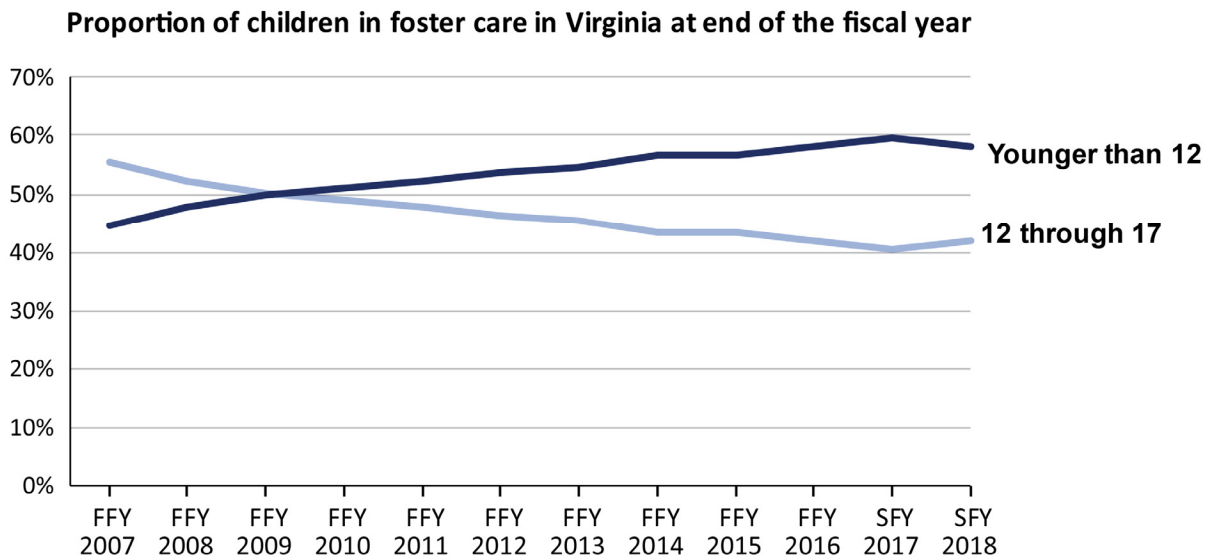
SOURCE: JLARC analysis of federal AFCARS data for FFY16 and U.S. Census Bureau, 2016 American Community Survey data.
 NOTE: Excludes children in foster care ages 18 and older.

An increasing percentage of Virginia children in foster care are younger than age five

One of the most notable changes in Virginia’s foster care population over the past decade is that children have been entering foster care at younger ages, and younger children now make up a greater proportion of Virginia’s foster care population. In 2007, children younger than 12 comprised 45 percent of all children in foster care in Virginia. By 2018, this age group comprised 58 percent of all children in foster care (Figure 1-3).

The shift to a younger foster care population in Virginia has been most pronounced among children younger than five, particularly in recent years. Between 2013 and 2018, there was a 21 percent increase in the number of children younger than five in foster care in Virginia—more than double the overall rate of increase (nine percent) for children under 18 during the same time period.

FIGURE 1-3
Virginia’s foster care population has shifted to include more young children over the past decade



SOURCE: JLARC analysis of federal AFCARS data, FFY07 to FFY16; VDSS OASIS data, SFY17 and SFY18.
NOTE: Federal fiscal year (FFY) ends September 30; state fiscal year (SFY) ends June 30. SFY data was used for 2017 and 2018 because federal data is only available to 2016.

The proportion of children who enter foster care due to parental drug abuse has increased

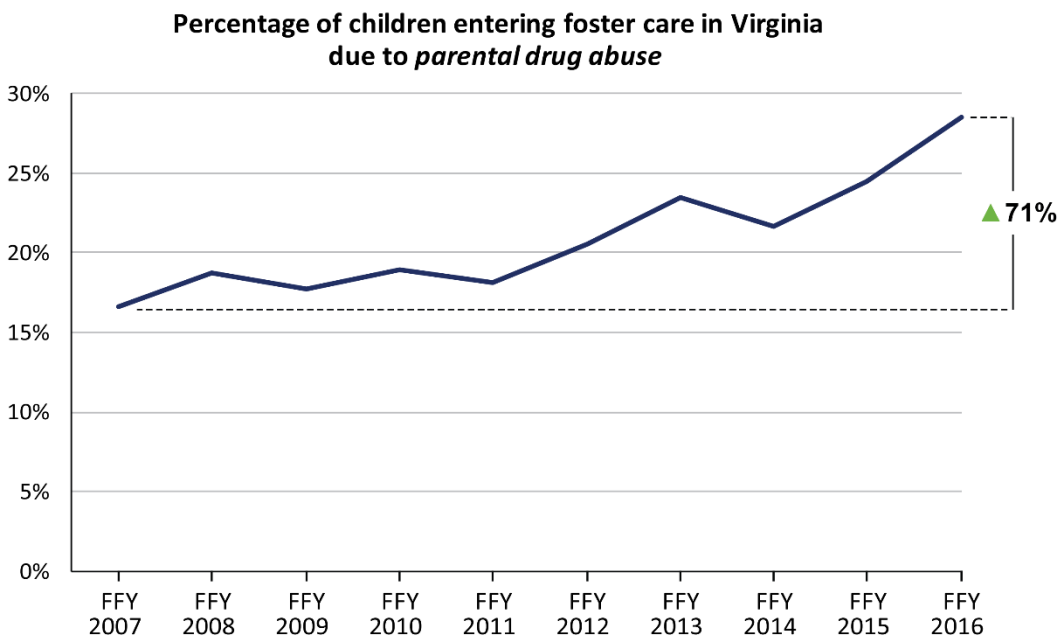
A driving factor behind both the increase in the number of children in foster care in recent years and the shift to a younger population appears to be an increase in parental drug abuse. Between FFY07 and FFY16, the proportion of children whose entry into foster care in Virginia was related to parental drug abuse increased by 71 percent (Figure 1-4). Of the 839 children who entered foster care because of parental drug abuse in FFY16, 81 percent were younger than 12.

The increase in foster care entries due to parental drug abuse is a nationwide trend, but Virginia's growth rate has been faster than other states. Between FFY07 and FFY16, the nationwide rate of growth in the number of children who entered foster care due to parental drug abuse was 47 percent, while the rate of growth in Virginia was 71 percent.

Parental drug abuse has contributed to foster care entries to varying degrees across local departments of social services (sidebar). Of the children in the custody of the smallest local departments of social services in June 2018, 33 percent were removed due to parental drug abuse—compared to 24 percent among children in foster care in the custody of the largest local departments of social services, which serve the most populous localities in Virginia.

As of June 2018, the proportion of children in foster care in Virginia who were removed due to parental drug abuse ranged from zero to 73 percent of children in care across local departments with at least 10 children in foster care. The median proportion was 27 percent. Of the 120 local departments, 104 (87 percent) had at least one child who was in foster care due to parental drug abuse.

FIGURE 1-4
A larger proportion of children now enter foster care in Virginia due to (or partly due to) parental drug abuse



SOURCE: JLARC analysis of federal AFCARS data, FFY07 to FFY16.
 NOTE: Children can enter foster care for more than one reason.

JLARC's 2018 survey was administered to staff at all local departments of social services. A total of 385 staff with responsibility and/or oversight of foster care or adoption services responded to the survey. Staff from 110 (92%) of the 120 local departments of social services responded. (See Appendix B.)

Opioids are a class of pain-relieving drugs that include heroin, fentanyl, and prescription pain relievers, such as oxycodone, hydrocodone, and morphine.

Data on foster care entries does not provide detail on which specific drugs parents were found to have been abusing when their children were removed. Fifty-one percent of the local department directors and supervisors responding to a JLARC survey reported a substantial increase in the number of children on their staff's foster care caseload who were removed due to opioid abuse over the past three years (sidebar). Additionally, a 2017 report from the Virginia Departments of Forensic Services and Criminal Justice Services indicates that heroin, other opioids, and methamphetamine use have increased the most rapidly in Virginia over the past five years.

Children in foster care have more documented health problems than a decade ago

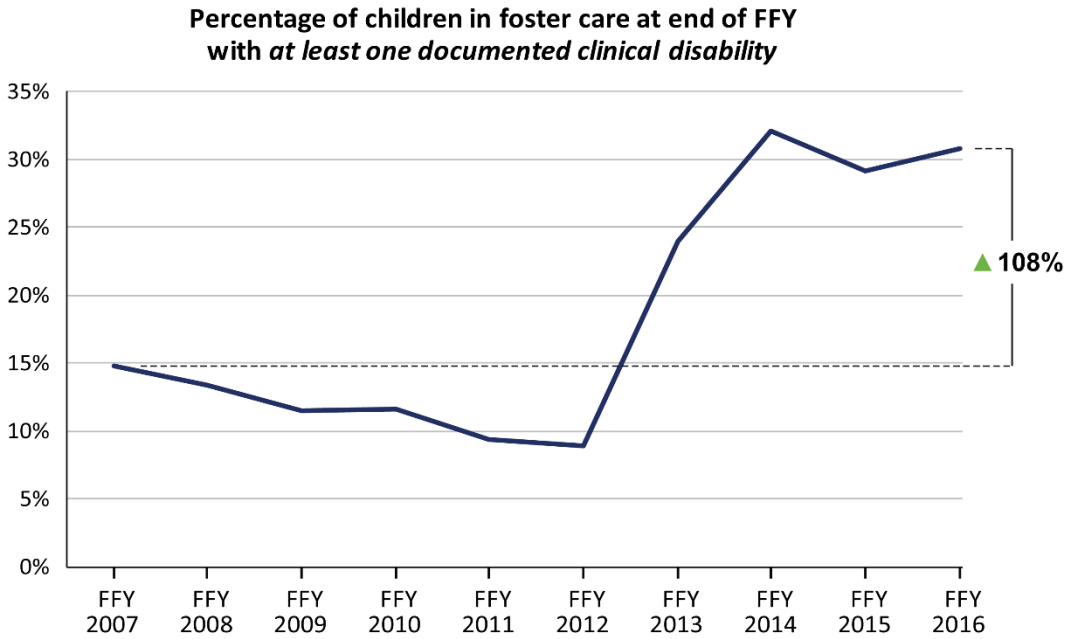
Nationwide, children and youth entering foster care experience a higher prevalence of physical, developmental, dental, and behavioral health problems than any other group of children. According to the American Academy of Pediatrics,

Children and adolescents in foster care are a group with special health care needs. They are a uniquely disadvantaged group... High rates of premature birth, prenatal drug and alcohol exposure, and postnatal abuse and neglect contribute to the extremely poor health status of children and adolescents entering foster care. In addition, health care prior to foster care placement often is inadequate, meaning that children and adolescents entering foster care have multiple unmet health care needs, far exceeding even those of other children who are poor.

The full extent of health problems among children in foster care in Virginia is not known, but 31 percent of the children in foster care in September 2016 were known to have at least one diagnosed physical, mental, or behavioral disability. Among the 1,503 children in foster care who had a diagnosed disability in September 2016, 1,145 children (76 percent) were diagnosed as having a mental disorder, a category that includes disorders such as post-traumatic stress, separation anxiety, and depression.

The proportion of children in Virginia's foster care system with at least one diagnosed disability has doubled over the past decade, from 15 percent in 2007 to 31 percent in 2016, although it is not clear the extent to which this represents an increase in the actual prevalence of disabilities, an increase in efforts to assess and document disabilities, or a combination of these reasons (Figure 1-5). Increased rates of diagnosed mental disorders drove this increase, as the rate more than doubled between 2007 and 2016 (from 10 percent of children in foster care to 23 percent).

FIGURE 1-5
Children in foster care in Virginia are more likely to have one or more documented health problems than a decade ago



SOURCE: JLARC analysis of AFCARS data, FFY07 to FFY16.
 NOTE: Children can enter foster care for more than one reason.

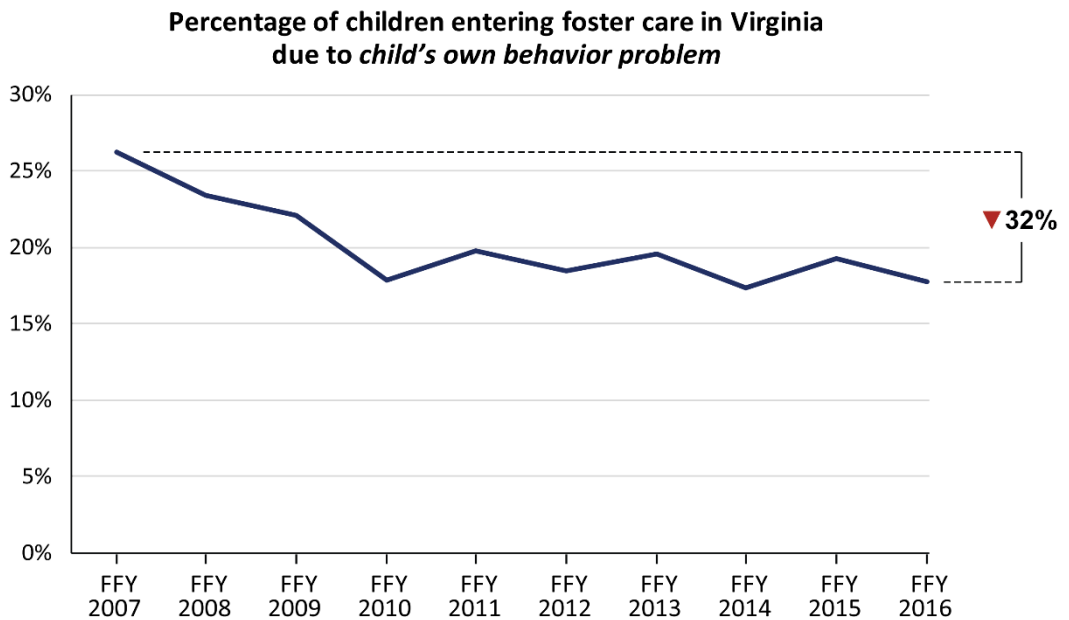
Children are less likely than in the past to enter foster care because of their own behavior problems

Local departments of social services face particular challenges related to children who are removed from their homes for their own behavior problems. Because of these behavior problems, such as running away from home or acting out aggressively at school, there are potentially fewer viable placement options for these children, and they require a greater level of services. In such cases, local departments often have difficulty finding suitable family foster care, reunifying children with birth parents, or finding other permanent families, such as relatives or adoptive parents.

Between 2007 and 2016, the *number* of children in Virginia who entered foster care due to their own behavior problems declined from 883 to 521, and the *proportion* declined from 26 percent to 18 percent (Figure 1-6).

Child behavior problems, as used in this report and by the federal government, are defined as behaviors in the school and/or community that adversely affect socialization, learning, and moral development.

FIGURE 1-6
Children are less likely than a decade ago to be removed from their homes because of their own behavior problems



SOURCE: JLARC analysis of AFCARS data, FFY07 to FFY16.
 NOTE: Some children enter foster care for more than one reason.

Virginia's foster care population is supported mostly through state funds

Federal Title IV-E funds make up about 16 percent of Virginia's funding to support children in foster care and those who have been adopted. Title IV-E funds are provided to states for foster care maintenance payments and adoption assistance payments. Such payments are provided to families to help offset the cost of fostering or adopting children, and payment amounts vary by a child's age and service needs. While the rate of reimbursement varies by the nature of the activities performed, it is generally around 50 percent of the cost of these payments. Title IV-E funds are only issued for children who meet Title IV-E eligibility criteria. To be eligible for Title IV-E funding, children must be in foster care, either through a judicial determination or voluntary placement, be living in an approved, licensed foster care placement setting, and have been removed from a family with income levels that are below the Aid to Families with Dependent Children income limits that were established in 1996.

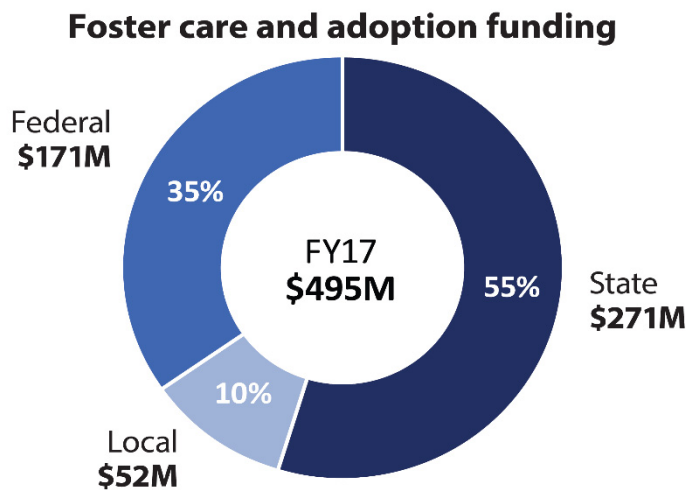
State general funds are used to pay for foster care and adoption services and supports in two ways. First, general funds are used for the state's share of foster care maintenance and adoption assistance payments for Title IV-E-eligible children. Second, general funds are the primary source of funding for services and supports funded through the state's Children's Services Act (CSA) program. CSA funds are used to pay the full

cost of foster care maintenance payments for children who are not eligible for Title IV-E and for all or a portion of the cost of all services (e.g., case management or therapy) provided to children in foster care. Medicaid would cover approximately half the cost of these services, with the state and local governments covering the remaining half. State CSA funds would be used to pay for the entire cost of those services that Medicaid does not cover. (Title IV-E funds cannot be used to cover the cost of services.)

Local funds are used to pay for a portion of CSA- and Medicaid-funded services, and local match rates vary depending on the extent to which they use community-based services for children in foster care or services provided in congregate care settings. Local governments are also required to provide sufficient funding to meet the needs of children in foster care if these costs are not fully covered through federal and state sources.

State funds comprised a slight majority of the funding for foster care and adoptions in FY17. State funds accounted for about 55 percent of total funding for foster care and adoptions, and combined federal and local funds accounted for the remaining 45 percent (Figure 1-7). Funding was received, in roughly equivalent proportions, from three major sources: Title IV-E (federal and state funds), Medicaid (federal and state funds), and Children's Services Act (CSA) (state and local funds).

FIGURE 1-7
State is largest funder of foster care and adoption services



SOURCE: JLARC analysis of data from VDSS, Office of Children's Services, Department of Medical Assistance Services. NOTE: Excludes funding for foster care prevention and local departments' staffing and operations expenses (\$146 million in FY17). Numbers do not sum due to rounding.

Funding for foster care is primarily coordinated through local CSA programs, which are intended to coordinate services for children in foster care and ensure that they receive services in the least restrictive setting possible. Local family assessment and planning teams, which are part of local CSA programs, are required by state law to assess the needs of children in foster care and their families and develop an individualized plan to provide appropriate and cost-effective services to meet their needs. These individualized plans determine child-level funding for services.

Foster care spending has increased in recent years and most spending is on services for children

Total spending on foster care and adoptions increased by 11 percent, adjusted for inflation, between FY13 and FY17—from about \$445 million to about \$495 million 2017 dollars. This increase was largely driven by a 25 percent increase in spending on medical services for children through Medicaid and a 17 percent increase in the number of children in foster care during the same time period. Total CSA spending on children in foster care decreased by about three percent between FY13 and FY17.

Of the \$495 million spent on foster care and adoption services in FY17, 62 percent was on foster care (\$305 million) and 38 percent was on adoptions (\$190 million). Both categories of spending include services and monthly payments to foster parents and adoptive parents for assisting them with the costs associated with children's care. In total, about 78 percent of foster care spending (\$237 million) was on services for children in foster care, with the remaining 22 percent (\$68 million) spent on maintenance payments.

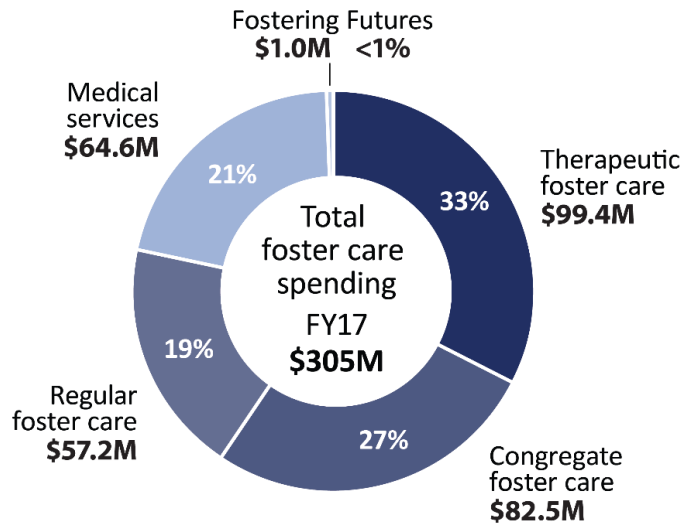
About 60 percent of the \$305 million spent specifically on foster care in FY17 was spent on children who were placed in therapeutic foster care or congregate care facilities, including residential treatment facilities. The remaining 40 percent was spent on medical services, regular foster care placements, and the Fostering Futures program (Figure 1-8).

Most adoption-related spending is on monthly payments to adoptive parents of children with special needs who were adopted out of the foster care system (sidebar). Of the \$190 million spent on adoptions in FY17, \$113 million (60 percent) was spent on adoption assistance payments, and the remaining \$77 million was spent on services for children adopted out of the foster care system (Figure 1-9). Most of this \$77 million was for medical services, paid for through Virginia's Medicaid program. Eligibility for Medicaid continues after adoption for children who are eligible for federal and state adoption assistance payments.

Basic monthly foster care maintenance payment rates range from \$471 to \$700 per month, depending on the age of the child. Foster parents also receive a supplemental clothing allowance of between \$315 to \$473 each year.

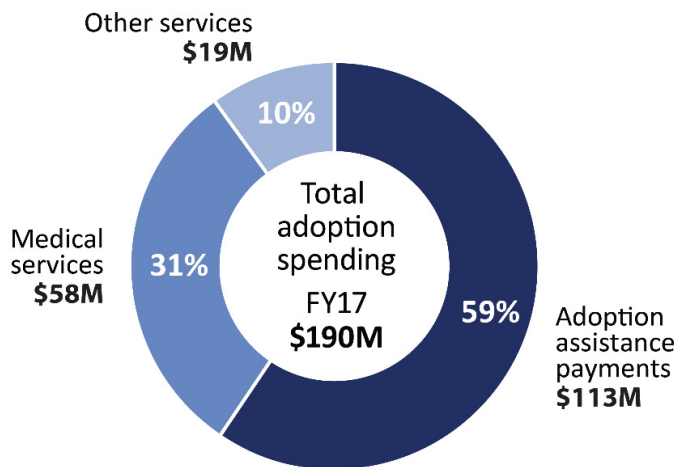
Adoption assistance payments are available only to certain children who are adopted out of the foster care system. According to state law, adoption assistance is intended to facilitate adoptions for children with special needs who are unlikely to be adopted within a reasonable period of time.

FIGURE 1-8
Majority of total foster care spending was for children placed in congregate care and therapeutic foster care (FY17)



SOURCE: JLARC analysis of data from VDSS, Office of Children’s Services, Department of Medical Assistance Services. NOTE: Excludes spending on foster care prevention, as well as spending on staffing and operations of local departments for foster care and adoption services (\$146 million in FY17). Numbers may not sum due to rounding. Medical services include non-residential and non-therapeutic medical services provided to children in all three types of settings. Categories include monthly maintenance payments, where applicable (i.e., regular foster care, therapeutic foster care, and Fostering Futures program). Includes Title IV-E (federal and state) spending, Children’s Services Act (state and local) spending, and Medicaid (federal and state) spending.

FIGURE 1-9
Majority of total adoption spending was for monthly adoption assistance payments (FY17)



SOURCE: JLARC analysis of data from VDSS, Office of Children’s Services, Department of Medical Assistance Services. NOTE: Excludes spending on staffing and operations of local departments related to foster care and adoption services (\$146 million in FY17). Includes Title IV-E (federal and state) spending, Children’s Services Act (state and local) spending, and Medicaid (federal and state) spending.

Past state efforts sought to improve Virginia's foster care system

The Children's Services System Transformation, an effort that started in late 2007, sought to improve Virginia's foster care system through various initiatives to reduce the number of children in foster care, reduce the use of congregate care, and improve the quality of services for children and their families. In support of these efforts, the 2008 General Assembly took a number of budget actions, including an increase in the monthly payments to foster care and adoptive families, funding for recruitment and retention of foster and adoptive families, and additional funding for child welfare worker training.

These efforts appear to have resulted in some measurable positive changes in the number of children in foster care and the proportion of children in foster care placed in family-based settings in the five years that followed the reforms. For example, the proportion of children placed in congregate care settings decreased from 24 percent in 2007 to 14 percent in 2011, while the proportion of children in family-based settings (non-relatives, relatives) increased from 69 percent to 79 percent during the same time period.

2 Ensuring the Safety and Well-Being of Children in Foster Care

SUMMARY Local departments of social services are responsible for ensuring the safety of the children in their custody and for identifying and providing appropriate services to address their complex needs, including those related to their physical and mental health. Most foster care caseworkers appear to be taking the basic steps required by federal and state laws and regulations to ensure the safety of the children in their care, including placing children only in approved, licensed foster care settings and conducting monthly visits with each child. However, these steps are not being taken consistently for all children in Virginia’s foster care system. Additionally, not all children in foster care in Virginia are receiving the physical, dental, mental, and behavioral health services they are entitled to by law, and their needs are not being thoroughly assessed. The Virginia Department of Social Services could be directed to take certain steps to ensure that immediate and sustained attention is placed on the safety and well-being of children in foster care.

After removing children from their birth parents, local boards of social services are required by federal and state law to ensure that the children in their custody are safe from further harm and to ensure their well-being. In practice, these requirements are fulfilled by local departments of social services. There are several key mechanisms through which local departments are required to fulfill their responsibilities:

- Placing children only in approved foster care settings, with complete background and child protective services checks for all adults living in the household;
- Visiting children where they live and spending sufficient face-to-face time with each child to be aware of and address any risks to their safety or well-being;
- Conducting initial and ongoing assessments of children’s needs; and
- Providing or connecting children to services required by federal and state law or identified through needs assessments as necessary to support each child’s safety and well-being.

Ensuring the well-being of children in foster care is challenging and requires considerable effort by the foster care system. Children entering foster care are more susceptible to health and developmental problems than their same-age peers. Children who enter foster care “often do so with complicated and serious medical, mental health, developmental, oral health, and psychosocial problems rooted in their history of childhood trauma” (American Academy of Pediatrics). They are also at a higher risk of medical, social, and behavioral disabilities than children in the general population, according to national research.

State-level policies and actions must ensure the protection of the children in Virginia's foster care system; any failure to do so may be costly for the state. Many states have faced class-action litigation on the basis of their foster care systems' failure to ensure the safety and well-being of the children in their custody. States that have been successfully sued for systemic failures in their foster care systems have not only incurred the costs of lengthy litigation but also been subjected to extensive monitoring, and even outright control of their foster care systems, by outside entities.

Requirements to ensure children's safety are mostly followed, but lack of adherence to requirements in some cases puts children at risk

According to recent federal and state reviews of Virginia's foster care system, as well as Virginia Department of Social Services (VDSS) data, it appears that foster care caseworkers at most local departments of social services in Virginia are taking the basic steps that federal and state laws and regulations require to ensure the safety of all of the children in their care. These basic steps include placing children only in approved, licensed foster care settings and conducting monthly visits with each child. However, recent state reviews and data indicate that these steps are not being taken consistently for all children in Virginia's foster care system.

In the existing records, very few cases of maltreatment in foster care have been documented in Virginia; however, data is limited and likely incomplete. According to state and national data, Virginia has performed slightly better than the national standard for the percentage of children who were *not* reported to have experienced maltreatment in foster care every year from FY09 through FY17. However, because not all children in foster care are receiving regular monthly visits by their caseworkers, it is possible that there have been instances of maltreatment in foster care that the state has not identified. Additionally, through recent reviews, VDSS regional staff have raised concerns about the child protective services practices of some local departments, which can affect whether maltreatment in foster care is identified. Federal reviews since 2004 have raised similar concerns. (See Appendix C for the concerns identified by regional staff and federal reviews.)

In most cases, basic safety requirements are followed for placements, but some children have been placed in unapproved settings

Placing children only in approved, licensed foster care settings that meet minimum safety requirements is a basic step for ensuring children's safety and well-being and is required by both federal and state law. All foster care placements must meet certain safety standards in order to secure and maintain approval. For example, children in foster care can only be placed in homes where all adults have passed criminal and child

maltreatment background checks. Approved foster homes must meet basic safety requirements related to the home environment, such as being in good physical repair with working smoke detectors.

Basic safety requirements related to foster care placements appear to be mostly fulfilled, according to recent reviews conducted by VDSS staff. In a sample of 2,654 cases reviewed by VDSS staff in FY18, 2,556 (96 percent) were found to have met federal and state safety requirements, including ensuring that children are placed only in licensed foster care settings and completing background checks for all adults in each home. However, VDSS also identified 98 cases (four percent) in which basic placement safety requirements were not met. These cases were found in 34 departments. VDSS reviews have identified circumstances in which children were placed in unapproved foster care settings or important safety documentation could not be found. For example, one local department was found to have placed a child in a relative foster home without conducting an initial CPS check, and the child resided in that home for 10 months. In another case, a local department allowed a child in foster care to spend nearly three weeks with a relative out-of-state without having conducted a background check on that relative.

Most children are visited by their caseworkers as required, but some children are not visited often enough

Another essential step for ensuring the safety of children in foster care is making sure their caseworkers regularly visit and spend adequate time with them. Visits allow caseworkers to identify safety concerns, monitor and support children's health and well-being, and ensure progress toward placement in permanent homes. Federal and state laws require that each child in foster care receive "a face-to-face contact with an approved service worker at least once per calendar month regardless of the child's permanency goal or placement," and that more than half of these visits occur in the child's place of residency. The purpose of these visits is "to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child" (22VAC40-201-90).

Caseworker visits are especially important for very young children, who cannot (or are less likely to) speak up when they feel unsafe or inadequately cared for. When caseworkers do not visit children often enough or spend adequate time with them, foster care systems are more likely to overlook potential or even actual maltreatment of the children in their care. Inadequate worker visits have been identified as a key reason for class-action litigation against states' foster care systems.

Foster care caseworkers in Virginia are visiting most children at least once a month and ensuring that more than half of these visits occur in the child's place of residence, as required. According to VDSS data, 81 percent of all children who were in foster care at any point from April 2017 to March 2018 received all required monthly caseworker visits (sidebar). Most of those children (82 percent) received more than half of their visits in their place of residence, as required.

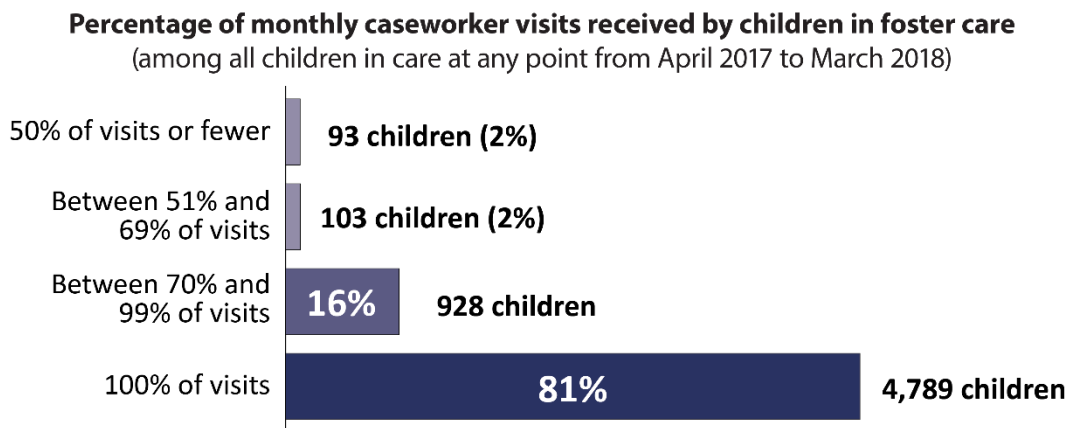
JLARC staff analyzed data from Virginia's foster care system of record (OASIS) using a data reporting tool called SafeMeasures, to which VDSS subscribes. SafeMeasures creates monthly summaries at the child, LDSS, region, or state level for key federal and state performance measures, such as monthly worker visits. (See Appendix B.)

However, caseworkers in some local departments are *not* consistently conducting monthly visits, including with very young children in foster care. According to VDSS data, 19 percent of children did not receive all required caseworker visits (Figure 2-1). Of those children, 93 (two percent) received *half or fewer* of the required monthly visits, and many of these children were age three or younger. Notably, 24 children received *no visits*.

VDSS regional staff in 2017 and 2018 documented similar concerns about some children not being seen at least monthly, as well as with the quality of the visits that did occur, in 14 local departments. Regional staff noted that some children in foster care went several months or more without being seen by their caseworker. For example, in a 2017 review of one local department, regional staff noted that in two of five sampled cases, there were no worker visits documented during a period in which the child was on a trial home visit (sidebar). In another case, regional staff found that two children in foster care (ages four and six) were visited in their foster home only three times in an entire year, despite the fact that “multiple bruises, knots, and various other injuries were noted on these children throughout the case.” In reviews of multiple local departments, regional staff have found that problems identified in 2017 with caseworker visits were also occurring in different cases that were reviewed in 2018—indicating that the general problems had not been resolved even after local departments were notified of them.

A **trial home visit** occurs as a final step in the reunification process. Trial home visits, during which birth parents or prior custodians must demonstrate that they can safely care for the child who was removed from their custody, can last up to six months.

FIGURE 2-1
Most children are visited at least once a month, though some children do not receive all required visits



SOURCE: JLARC analysis of VDSS SafeMeasures data, which uses data from OASIS, Virginia’s foster care system of record. NOTE: Percentages may not sum due to rounding. Includes children in foster care under the age of 18. The 93 children who received half or fewer of their required caseworker visits were in the custody of 35 local departments. The 24 children (of those 93) who received no visits were in the custody of 13 local departments.

Foster parents responding to a JLARC survey expressed some concern about the low frequency and short duration of caseworker visits with the children placed in their homes. Of the current foster parents responding to the survey, 19 percent indicated that local department staff had not visited the child in their home at least once per month. One foster parent indicated that the local department of social services had not visited the child in foster care “since she was placed into our care almost six months ago.” Additionally, 31 percent of foster parents disagreed with the statement “Local department of social services staff spend adequate face-to-face time with the child(ren) in my care to assess their well-being.”

Problems with caseworker visits in Virginia are not new. In the three federal reviews of Virginia’s foster care system that have been conducted since 2004, all have documented concerns about the insufficient frequency and quality of caseworker visits.

VDSS should take action to address known safety concerns

Although the basic requirements related to children’s safety are followed for most children, where problems have been identified, immediate action by VDSS is warranted. VDSS regional staff have reviewed cases and reported concerns related to the safety of children in foster care, yet there is currently no process at the VDSS central office level to review these reports or notify the commissioner when significant safety concerns are identified. Instead, the reports are saved on a shared network drive by regional staff but not reviewed by staff in the central office. In addition, while regional staff communicate the results of reviews directly to local departments, there is no process for ensuring that the issues identified in the reviews are resolved.

VDSS central office staff should examine the results of all reviews conducted by regional staff in 2017 and 2018 and take immediate action to ensure that all safety-related concerns raised in these reviews have been resolved.

Virginia’s mechanisms for identifying and resolving problems related to the safety of children in foster care are not as thorough as those used in other states; in the longer term, these mechanisms should be improved. Most importantly, VDSS should establish a process to notify the commissioner of the department of social services, who is statutorily responsible for ensuring laws and regulations are implemented, of all serious concerns related to children’s safety. (See Chapter 6 for more information on approaches used by other states and recommendations related to VDSS’s supervisory role.)

JLARC’s 2018 survey was administered to current foster families with the assistance of NewFound Families, Virginia’s adoption, foster care, and kinship association. NewFound Families distributed the foster family survey to their social media networks, such as Facebook and Twitter. (See Appendix B.)

The 2017 federal review of Virginia’s foster care system, the *Child and Family Services Review*, included a review of a sample of 44 cases in all five regions of Virginia. (See Appendix B.)

RECOMMENDATION 1

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to thoroughly review all the information collected through the agency case reviews conducted in 2017 and 2018 by regional staff, re-communicate all serious case-specific or systemic safety-related concerns identified in past reviews to the relevant departments of social services, communicate such concerns to the relevant local boards of social services, and work with local department staff to resolve all identified safety problems. The commissioner should be directed to submit a letter to the House Health, Welfare and Institutions Committee and the Senate Rehabilitation and Social Services Committee certifying that all safety-related concerns identified in the 2017 and 2018 reports have been resolved no later than November 1, 2019.

Some children in foster care are not receiving services needed to support their well-being

In addition to ensuring children are placed in safe settings and monitoring their safety and well-being, local departments are responsible for connecting children in foster care with necessary health care services as early as possible. According to the American Academy of Pediatrics, ongoing provision of health screenings and services to children in foster care is especially important because these children “require more frequent monitoring of their health status.” Several states, including Tennessee, South Carolina, Arizona, and Texas, have faced class-action litigation that explicitly identifies failure to provide health screenings and services as evidence of systemic harm.

Evidence indicates that some children in Virginia’s foster care system are not receiving the physical, mental, and behavioral health services they are entitled to by law. Additionally, local departments’ ability to ensure children’s safety and well-being is undermined by the systemic underutilization of the state’s needs assessment instrument.

Some children in foster care are not receiving needed health services

Federal law requires that children in foster care receive certain initial and ongoing health services within established deadlines. States’ foster care systems must ensure that children receive initial physical and dental services upon entry into care, coordinate children’s health services, identify needs through screenings and assessments, and provide the services needed. Ensuring that children in foster care receive initial and ongoing health services is a key component of local boards’ state-mandated responsibility to ensure “adequate care” of the children in their custody. Neither federal nor state law specifies *how* needed health services are to be provided to children, only that foster care systems are responsible for ensuring this occurs, whether facilitated by foster parents, private providers, or caseworkers.

Local departments of social services are required by Virginia regulation to assess and meet the health care needs of children at the point of entry into foster care and throughout their time in care. The state’s Early and Periodic Screening, Diagnostic,

State regulations require local departments to provide both “**developmental and medical examinations**” to each child in foster care in accordance with the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) schedule established by DMAS and **preventive dental care** in accordance with guidance issued by the American Academy of Pediatric Dentistry.

and Treatment schedule, which follows guidelines from the American Academy of Pediatrics, requires all age-appropriate immunizations and comprehensive “well-child visits,” including assessments of physical health as well as screenings for developmental delays and mental and behavioral health needs. Younger children generally need more frequent well-child visits than older children because of the rapid rate of development in the first three years of life and the importance of early detection of developmental delays.

Physical and dental health services

The majority of children in foster care are receiving at least some basic health services. For example, 66 percent of children in foster care in FY18 received a physical exam within 30 days of entry into foster care as required by federal law, according to a VDSS review of all children eligible for Title IV-E. Similarly, more than 90 percent of children in foster care enrolled in Medicaid had at least one visit with a “primary care type” provider in FY16, according to a 2017 report (sidebar). Most children in foster care also received at least one dental visit during FY16, according to the same report.

However, evidence indicates that many children in foster care in Virginia are not receiving basic physical and dental health services they should be receiving. For example:

- Of 492 children in foster care whose medical records were reviewed in 2017, only 10 percent were found to have records indicating they had received all recommended immunizations, and 45 percent “had no medical record documentation showing evidence of immunizations administered at any time in the child’s life” (2017 DMAS report).
- Of 163 children in foster care who were under the age of three and whose medical records were reviewed in 2017, 38 percent did not receive at least one well-child visit in FY16 (2017 DMAS report).
- Nearly half of children entering foster care in FY18 did not receive an initial dental exam and cleaning within 60 days of entry as required by federal law. According to VDSS data, 624 children in foster care (14 percent) in Virginia in March 2018 were overdue for a dental visit by a year or more.

The rate at which children of all ages in foster care in Virginia *did not receive* required health screenings in FY16 is higher than similar rates found in other states. A 2015 U.S. Department of Health and Human Services review of Medicaid records in four states (CA, IL, NY, and TX) found that 29 percent of children in foster care were missing the initial health screening or at least one required periodic screening—compared to 45 percent in Virginia (according to the 2017 DMAS report).

Mental and behavioral health services

There are some indications that children in foster care are not receiving the mental and behavioral services they both need and are entitled to by law, even though a significant proportion of children in foster care in Virginia have clinical levels of mental

A 2017 report, prepared for DMAS by Health Services Advisory Group, examined **Medicaid claims data and medical records for a representative sample of children in foster care**. Researchers reviewed Medicaid claims data for 4,282 children and medical records for 492 children.

Almost one-fourth of children entering foster care in Virginia in September 2016 had been **clinically diagnosed with an emotional disorder** (e.g., anxiety, depression, or post-traumatic stress disorder), according to national data.

Psychotropic medications are those that affect the mind, emotions, and behavior, such as antidepressants and medications for ADHD. Of a sample of 2,617 children ages 6 to 17 in foster care in Virginia, 44% were prescribed ADHD medication as of June 2016, according to the 2017 DMAS report.

JLARC's 2018 survey was administered to staff at all local departments of social services. A total of 385 staff with responsibility and/or oversight of foster care or adoption services responded to the survey. Staff from 110 of the 120 local departments of social services responded. (See Appendix B.)

CANS assesses children's needs related to both safety and well-being. Specifically, CANS rates children's needs in the domains of life functioning; child strengths and resiliency; school; child behavioral or emotional needs; and child risk behaviors.

or behavioral health needs (sidebar). According to a 2017 federal review, local departments of social services did *not* adequately assess the mental and behavioral health needs of children in foster care in nine of 34 applicable sampled cases. Local departments did not ensure that appropriate services were provided in 10 of those 34 cases.

The same 2017 federal review also found that local departments did not exercise appropriate oversight of children's prescription medications for mental and behavioral health issues in 11 of 23 applicable cases, and similar concerns were identified in the 2009 federal review. In interviews, foster care staff and stakeholders from around the state, including former foster youth, voiced concerns about the use of psychotropic medications for children in care—and about local departments' inability to exercise necessary oversight of that use.

In interviews and survey responses, foster care caseworkers identified mental and behavioral health services as the type of services children in foster care most often need but do not receive. About one-third of caseworkers responding to the survey indicated that there have been health services needed but not received by children on their caseload and most often selected “mental/behavioral health assessments” and “trauma-informed services” as those most commonly missing or delayed.

Similarly, foster parents responding to the JLARC survey noted their inability to obtain mental and behavioral health services for children. Of those foster parents who indicated that the children in their care have needed mental or behavioral health services over the past 12 months, 46 percent indicated they were *rarely or only sometimes* able to obtain these services for the children in their care. Many foster parents specifically described a lack of responsiveness or follow-through from local department staff as a key underlying reason for delayed or missed mental and behavioral health services.

Service needs of children in foster care are not always adequately assessed

Structured, validated assessments can play a key role in understanding the complex needs of children in foster care, planning the services needed to meet those needs, and measuring their progress in addressing those needs as they receive services. Using a validated, structured assessment can also help communicate children's needs to others who are involved in the case. Assessment records are particularly important in foster care, considering the high levels of turnover and inexperience among foster care caseworkers in Virginia and nationwide.

Most states mandate the use of validated needs assessments for children in foster care, and 38 states, including Virginia, mandate the use of a specific needs assessment called the Child and Adolescent Needs and Strengths (CANS). The CANS assessment measures child well-being and needs across multiple domains (sidebar) and was specifically designed “to support decision making, including level of care and service planning, to facilitate quality improvement initiatives, and to allow for the monitoring of

outcomes of services.” The use of CANS has been mandated by VDSS for all children in foster care since 2015.

Although state regulations require the uniform assessment instrument to be integrated and used in service planning (as is done in other states), CANS is not being used by foster care caseworkers in Virginia for these purposes. Instead, CANS is widely viewed by foster care caseworkers as nothing more than a requirement and “form” for obtaining funding for services, according to staff at VDSS and local departments of social services in all regions of the state. Foster care staff consistently described a “check-the-box mentality” toward CANS, and some expressed confusion about why they have to administer CANS at all.

Virginia has not maximized the benefits of the CANS assessments in service planning for children in foster care, for reasons that are not clear and may vary across the state. VDSS should convene a work group of local foster care caseworkers, supervisors, and directors to identify and address the reasons why caseworkers and supervisors do not use the CANS assessment in service planning. After the work group concludes its work, it should report its findings and recommendations to the State Board of Social Services, which develops regulations pertaining to foster care.

RECOMMENDATION 2

The Virginia Department of Social Services (VDSS) should convene a work group to address the underutilization of the CANS assessment in case planning and service provision for children in the foster care system. The work group should include caseworkers, supervisors, and directors from all regions of the state. VDSS should report its findings and recommendations to the Virginia Board of Social Services no later than July 1, 2020.

Without greater attention from VDSS, well-being concerns about children in foster care are likely to continue to be unaddressed

Statewide problems with the ability of Virginia’s foster care system to ensure the well-being of children in care have been known since at least 2004, and there are no effective mechanisms in place to begin to resolve them. Improvements to VDSS’s case review process would help the state gain a better understanding of the extent of the problems and their root causes, and begin to resolve them. (See Chapter 6 for problems with and solutions for the VDSS case review process.)

In an effort to place more attention on the well-being of children in foster care, several states have created a position with responsibility to monitor and support the well-being of these children across the state. For example, in 2018, Maryland enacted legislation that created a state medical director position for children in foster care. The new state medical director must be a licensed physician, have experience providing medical care to children, and be knowledgeable about the unique health needs of children in foster care. The position’s responsibilities include

Virginia regulation requires ongoing assessment of service needs of children in foster care; caseworkers are responsible for referring children for appropriate services when needs are identified (22VAC40-201-60).

“ We have to use CANS for funding. It ends up becoming a checkbox the way it is set up. It could be more. ”

— Caseworker
Local department of
social services

- collecting data on the timeliness and effectiveness of health care services to children in foster care;
- tracking the health outcomes of children in foster care (including immunization rates and psychotropic medication management);
- periodically assessing the availability of health care services needed by children in foster care;
- working with others in the foster care system to identify systemic problems affecting children; and
- reporting annually to the Maryland legislature on the status of health care services for children in foster care.

The legislation that created the new position indicates that it was created because the state had found “significant problems and difficulties in the identification of health problems, the provision of health care, and the monitoring of the health needs of foster children and the health care provided to them.”

Other states, including Tennessee and New Jersey, have created the equivalent of a state medical director position within their state foster care systems as a condition of exiting the consent decrees resulting from the class-action lawsuits brought against their foster care systems.

Currently, there are no staff at VDSS responsible for monitoring the health and safety of children in Virginia’s foster care system, but the General Assembly could create such a position to maintain attention on this problem and to assist VDSS and local departments in addressing it. The position should have access to confidential information related to the health and safety of children in foster care as necessary to meet its responsibilities. The position could be tasked with reviewing and reporting on the circumstances of child maltreatment and child fatalities in foster care; collecting data on the timeliness of physical and mental health care services for children in foster care; tracking the health outcomes of children; evaluating trends in prescriptions for psychotropic medications and assisting local departments with the management of these prescriptions; and evaluating whether children’s placements in more restrictive or intensive settings, such as congregate care, are clinically justified. (See Chapter 3 on appropriate foster care placements.)

RECOMMENDATION 3

The General Assembly may wish to consider amending § 63.2-200 of the Code of Virginia and including sufficient funding in the Appropriation Act to create a new position, director of foster care health and safety, within the Virginia Department of Social Services.

3 Appropriate Foster Care Placements

SUMMARY When children enter foster care, local departments of social services are expected to place them with a relative or non-relative foster family unless the child needs intensive treatment or supervision. Local departments in Virginia do not do enough to place children in foster care with relatives, nor does the state take sufficient steps to find non-relative foster families when relatives are unavailable. Consequently, many children entering foster care are placed in group homes or residential treatment facilities without a clinical need to be there. Overusing congregate care settings for children in foster care can be damaging to children’s healthy development, has been a common criterion used to bring class-action lawsuits against other states’ child welfare systems, and can be costly to the state. Other states, particularly those that have already been the subject of class-action lawsuits, have developed more systematic processes than currently exist in Virginia to ensure children are placed in congregate care settings only when they have a need for intensive treatment or supervision.

When a judge determines that a local board of social services should take custody of a child, the local department of social services must immediately place the child in an appropriate foster care placement. In some cases, the local department may know that a removal hearing has been scheduled for a child and can arrange an appropriate placement in advance of the child coming into local custody. In other cases, the child is removed from the home in an emergency, and the local department must work quickly to find an appropriate placement.

Regardless of how a child enters foster care, federal and state law require that the local department of social services “place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child” (sidebar). Further, local departments are required to attempt to place the child as close in proximity as possible to the custodial parent’s home, take reasonable steps to place the child with siblings, and prioritize placing the child with a relative.

Unless otherwise specified, federal law refers to **Title IV-E of the Social Security Act.**

Children entering foster care can be placed in one of four foster care settings:

- **Relative foster care**, when a child is placed with a relative or family friend who has been trained and approved by a local department as a licensed foster parent;
- **Non-relative foster care**, when a child is placed with foster parents previously unknown to the child who have been trained and approved by a local department as licensed foster parents;
- **Non-relative therapeutic foster care**, when a child who needs a higher level

Licensed child placing agencies are private entities licensed by the state to place children in foster and adoptive homes or independent living arrangements and provide case management support.

- of care is placed with foster parents who receive training and case management support through a licensed child placing agency (sidebar); and
- **Congregate care**, when a child who needs the highest level of care or supervision is placed in a group home or residential treatment facility.

State law directs local departments to prioritize relative foster care for children unless it is unavailable or inappropriate for a specific child. VDSS guidance also directs local departments to engage “other individuals who have significant relationships with the child,” sometimes referred to as “fictive kin.” Regulation directs local departments to place children in the *least restrictive* setting that meets their needs. The research literature suggests that congregate care should only be used as a last resort, when the child has a clear clinical need for intense treatment and supervision, and no other placement options can meet those needs.

Virginia does not take adequate steps to find or place children in family-based foster care settings

National research shows that, compared to children in other placements, children placed with relatives tend to experience improved outcomes, including reduced trauma, improved placement stability, and increased ability to maintain community and cultural connections while in foster care.

After local departments rule out relatives as a placement option for children in foster care, they must rely on a pool of non-relative foster families. If a locality does not have a non-relative foster family with whom they can place a child, they may place the child in another locality, in a therapeutic foster home, or in congregate care. For a child, this can mean being placed far away from his or her community, school, and family, or in unnecessary, overly restrictive congregate placement. For localities and the state, this can mean paying extra for therapeutic or congregate care services that are unnecessary and do not improve outcomes.

Local departments do not prioritize relatives as a foster care placement option

Contrary to state requirements, federal law, and child welfare best practices, local departments in Virginia are not placing children in foster care with relatives nearly as frequently as other states. In 2016, only six percent of children in foster care were placed with relatives, about one-fifth as often as the national average (32 percent). In interviews, many stakeholders at the local, regional, and state levels expressed concerns about Virginia’s low utilization of relatives.

Virginia’s low rate of placement with relatives can be explained, at least in part, by a lack of effort by local departments to find relatives who would accept such placements. For example, recent reviews conducted by the Virginia Department of Social Services (VDSS) found that the “person locator” tool was not used in 22 percent of

970 sampled foster care cases, while letters were not sent to relatives in 44 percent of 965 sampled cases (FY18) (sidebar).

Relatives may hesitate to take on the role of a foster parent for a variety of reasons. Of 161 local department caseworkers who responded to JLARC’s survey, about half said that, in the past 12 months, they had asked relatives to be foster parents, and relatives had ultimately declined (sidebar). The most commonly cited reasons for declining were (1) the high needs of the child in foster care, such as challenging behavioral or medical needs, (2) an inability or unwillingness to go through the foster parent approval process, (3) an inability to meet the criteria for approval, and (4) an inability to assume the financial responsibilities of caring for the child.

Other states and some Virginia localities have taken more structured approaches to finding relatives willing to serve as foster parents. Though VDSS guidance directs local departments to conduct ongoing searches for relatives, the actual requirements in Virginia regulation are weaker than requirements in other states. Virginia regulation only requires department staff to identify and notify relatives “within 30 days of the child being placed in the custody of the local board.” In contrast, other states require caseworkers to continue to search for children’s relatives throughout the life of a foster care case:

- In **Tennessee**, caseworkers must search for relatives within 30 days of when the child comes into custody, again within three months of when the child enters custody, and again within six months.
- In **Utah**, kinship searches are required when children not placed with kin are in custody for over 12 months with no permanent option, or when there is any placement change, unless a kinship search was done in the past 90 days.

Virginia could take a similar approach to ensure that local departments continually search for relatives of children in foster care.

RECOMMENDATION 4

The Virginia Board of Social Services should promulgate regulations to require staff of local departments of social services to at least annually conduct a search for relatives of every child who (i) is not placed with relatives and (ii) has no clear permanent placement options. The amended regulation should further require that relative searches be conducted when a child’s placement changes, if such a search has not been conducted in the 90 days prior.

Another apparent barrier to Virginia’s use of relatives is a lack of willingness of birth parents to disclose information about relatives to department staff, according to interviews with local departments of social services in Virginia as well as juvenile and domestic relations court judges.

The extent of birth parents’ unwillingness to disclose information about children’s relatives is unknown, but other states have taken steps to address this barrier. For ex-

Local departments use a **person locator tool** to identify relatives of children in foster care. Virginia currently contracts with CLEAR for person-locator services.

JLARC’s 2018 survey was administered to staff at all local departments of social services. A total of 385 staff with responsibility and/or oversight of foster care or adoption services responded to the survey. Staff from 110 of the 120 local departments of social services responded. (See Appendix B.)

ample, in Utah, the court must order parents to disclose information regarding relatives and friends who may be able and willing to care for the child within five working days of the removal hearing. According to staff at the Utah Division of Child and Family Services, this requirement is effective in helping staff identify relatives who may be appropriate for placement. Using this and other strategies, Utah more than doubled its use of relative foster families over the past 10 years. In Virginia, one juvenile and domestic relations court (Hampton) takes a similar approach and issues an addendum order that requires birth parents to disclose information about relatives to the local department in any case that has relative placement as a goal for the child. Virginia could implement a similar statewide requirement.

RECOMMENDATION 5

The General Assembly may wish to consider amending Chapter 11 of Title 16.1 of the Code of Virginia to require juvenile and domestic relations courts to order the birth parents of children who have been removed from their homes to provide to local departments of social services contact information for all immediate relatives and extended family members.

Emergency approval requirements allow for relatives to provide a home for a child in foster care while the process of approving the home is completed. An emergency approval requires a home visit (which may be completed when the child is brought to the home), criminal background checks, and a CPS registry search.

Variations allow case-by-case, non-safety-related exceptions to the general foster parent approval standards for relatives. Variations are requested by local departments and approved by regional VDSS staff.

As of March, 2018, **Charlottesville placed 33 percent of children in foster care with relatives**, compared to six percent statewide.

Additionally, local departments of social services may not be taking full advantage of existing policies that make it easier for relatives to become approved foster parents, according to local and regional staff. Because relatives may not be fully prepared to become foster parents when a child enters foster care, these policies provide flexibility that improves the likelihood of successful placement with relatives and preserves children's connections to their family.

One key option is emergency approval, which may be granted for placements with relatives or other adults known to the family, or for placements that keep children in their community (sidebar). When local departments identify a relative who is willing to care for a child in foster care, departments have the option to conduct emergency approval and immediate placement with the relative. Emergency approvals can be used for 60 days, during which time relative foster parents can complete the requirements to become fully licensed foster parents. (With some exceptions, non-relatives are not eligible for emergency approval and must complete the entire foster care licensing process before taking a child into their care.)

If a relative cannot complete the necessary requirements during the 60-day time period, the local department may request a variance from VDSS regional staff to give the relative even more time to complete certain non-safety-related requirements (sidebar). Additionally, local departments may request a waiver from the commissioner of social services of non-safety-related requirements for relatives. Some localities, such as Charlottesville, have demonstrated success in using emergency approvals to license kin as foster parents and have a much higher proportion of children in foster care placed with relatives than the state as a whole (sidebar).

Local departments may reduce the burden of training on relatives by offering one-on-one, relative-specific training. In Virginia, localities may use Traditions of Caring, the Child Welfare League of America’s kinship training, to train relative foster parents and provide that training one-on-one at a location convenient for the relative caregiver. This approach to delivering training is less burdensome and may make it more likely that relatives agree to training. According to local and regional staff, some localities are not aware that this is an option, suggesting that additional guidance on relative approvals may be necessary.

It is unclear whether Virginia’s low utilization of relatives as foster parents is attributable to an inability or unwillingness to meet requirements for relative licensure, caseworker shortages, or a lack of awareness about the emergency approval, variance, waiver, and training processes. However, because some confusion exists at both the regional and local levels about the existence and parameters of these options, VDSS should provide clearer guidance to local departments. VDSS should summarize the options in a single relative approval guidance document.

RECOMMENDATION 6

The Virginia Department of Social Services (VDSS) should issue clear guidance that presents the options available to local departments of social services to facilitate the approval of relatives to serve as foster parents. Guidance materials should be issued to all local departments and regional VDSS staff.

VDSS has no plan, funding, or staff to recruit foster families, despite well-known, long-standing statewide shortages

Although relative foster care is appropriate for many children, Virginia localities primarily rely on non-relative foster families as placements for children. In 2017, 81 percent of the children who entered foster care were placed with a non-relative family for the majority of their time in care. Despite this frequent use of non-relative foster families, survey evidence—from both inside and outside local departments—indicates a shortage. In response to the JLARC survey, 79 percent of respondents (local department staff) identified a shortage of foster families in their localities (sidebar). In response to a recent Office of Children’s Services survey, 53 percent of respondents identified a shortage of foster families as one of five most critical service gaps (sidebar). The exact extent of Virginia’s foster family shortage, however, is unknown, since VDSS does not maintain a list of all foster parents licensed statewide.

In surveys and interviews, local department staff noted that they had more difficulty finding foster homes for particular groups of children than others. Local department staff across the state indicated that it is especially difficult to find foster homes for children with disabilities, children with mental illnesses, large sibling groups, and teenagers. The majority of survey respondents noted gaps in foster homes for children with multiple mental health diagnoses and children with sexually offending or reactive behaviors.

JLARC’s 2018 survey was administered to staff at all local departments of social services. A total of 385 staff with responsibility and/or oversight of foster care or adoption services responded to the survey. Staff from 110 of the 120 local departments of social services responded. (See Appendix B.)

A 2017 Office of Children’s Services survey of local CSA teams received responses from 111 localities. The survey asked respondents to choose up to five most critical service gaps from a list of 27 services. “Family foster care homes” was the second most frequently cited service gap.

The 2017 federal Child and Family Services Review (CFSR) also found that “Virginia does not have a single statewide foster and adoptive parent diligent recruitment plan” and that “each LDSS is responsible for developing its own recruitment plan.”

Previous JLARC reports found the same problem: unnecessary reliance on specialized foster care placements for children who do not need specialized services. (*Review of the Comprehensive Services Act*, JLARC 1998; *Evaluation of Children’s Residential Services Delivered Through the Comprehensive Services Act*, JLARC 2007.)

All JLARC reports are available at jlarc.virginia.gov.

Current VDSS guidance on who within the foster care system is responsible for recruiting foster parents is unclear, but regional VDSS staff and local department of social services staff said that this responsibility often is ultimately placed on foster care caseworkers.

A lack of non-relative foster families for children in foster care has resulted in many local departments relying on costlier therapeutic foster care and congregate care for children who do not need to be in those foster care settings. For example, 70 percent of surveyed foster care caseworkers who indicated that they had children in therapeutic foster care homes on their caseload said that *at least a few* of those children could be placed in a regular foster home if one were available, and 27 percent said that *at least a majority* of those children could be placed in a regular foster home if one were available. Further, VDSS regional staff in all five regions of the state indicated that some children are placed in congregate care because of a shortage of less restrictive placements rather than because of a child’s needs. (See page 36 for information on overuse of congregate care in Virginia.)

The overreliance on therapeutic foster care settings is not a new problem and results in unnecessary costs to the state (sidebar). In FY17, the average annual cost to place children in a therapeutic foster care setting for a full year was \$40,673 per child, compared to an average of \$9,725 per child for children placed in regular family-based foster homes.

Despite the known shortage of foster families in Virginia, and the fact that the shortage has been documented for years, VDSS currently has no plan, dedicated funding, or staff to systematically recruit non-relative foster families. In contrast, several other states have implemented strategies to develop a pool of foster families in order to place more children in the most appropriate, least restrictive foster care setting possible.

Developing a plan

One clear barrier to developing a recruitment and retention plan for non-relative foster families is the absence of reliable statewide information on current family availability. Without this information, it is not possible for the state to identify shortages of foster families, such as for particular groups of children or areas of the state. The state could use information on foster family shortages to better target foster family recruitment, but VDSS cannot currently assess the extent of the foster family shortage, nor can it make targeted efforts to recruit families for children who are most difficult to place.

RECOMMENDATION 7

The General Assembly may wish to consider amending Title 63.2, Chapter 9 of the Code of Virginia to require every local department of social services to provide semi-annually to the Virginia Department of Social Services a list of all licensed foster families who reside in their locality. The list should, at a minimum, include foster families’ contact information, preferences regarding the age, number, and needs of children each family would consider fostering, key demographic information for each family, the number and ages of children each family is currently fostering, the total number of other children in each family’s home and their ages, and biological relationships (if any) between each family and the children they are fostering.

Other states, and some Virginia localities, have targeted strategies to recruit foster families that Virginia could follow. These include state-led recruitment, state-contracted recruitment, and collaborative efforts across local departments. Tennessee, North Dakota, Missouri, and Nevada use data on the demographics, skill levels, and preferences of prospective foster families in their localities, as well as demographic data on children in foster care, to plan and target regional recruitment efforts. New Jersey, Utah, and some Virginia localities take a similarly structured approach to recruitment planning but implement their plans in different ways:

- **New Jersey** conducts state-led recruitment. The Department of Children and Families sets recruitment targets annually for each of its counties. Targets are based on counties' specific needs, including the number of children in foster care and the number of sibling groups. To address difficulties with placement of large sibling groups, New Jersey's Office of Resource Families has focused efforts on recruiting families willing to foster such groups.
- In **Utah**, the state contracts with Utah Foster Care (UFC), a private nonprofit group created by the Utah legislature to recruit and train foster families. UFC meets annually with Utah's Division of Child and Family Services and each of its regions to develop region-specific recruitment, training, and retention plans. UFC's contract contains a recruitment goal, which UFC has met every year since its inception in 1999. UFC focuses efforts to recruit families willing to foster certain groups, such as siblings and teenagers.
- In Virginia, Charlottesville, Albemarle County, and Greene County work with Community Attention Foster Families (**CAFF**), a nonprofit public agency and a division within Charlottesville's Department of Human Services, to recruit, train, and support foster families in their localities. CAFF focuses its recruiting efforts to keep children within their home district.

Charlottesville and Hampton cities **attribute their low use of congregate care to their focus on recruiting foster families** that meet the individual needs of children in their care.

Utah, New Jersey, and CAFF **include approving relative foster parents** in their recruitment plans.

JLARC has previously highlighted two of these approaches to implementation. In JLARC's 2007 report of residential services provided through the Comprehensive Services Act (now the Children's Services Act), JLARC proposed that the state evaluate the feasibility of contracting with another entity to carry out the recruitment and retention of foster families. In its 2012 report on opportunities for local collaboration, JLARC proposed regional foster family recruitment that would be achieved through the combined efforts of two or more local departments. Interviews conducted for this study indicate that there is still local interest in state-supported grants for regional collaboration on foster family recruitment and retention.

Although there is no clear best practice for which approach to implementation Virginia should take, VDSS could use strategies used by Utah, New Jersey, and CAFF to develop a statewide strategic plan for recruiting and retaining foster families. Even with different approaches to implementation, Utah, New Jersey, and CAFF's recruitment strategies share similar elements, including clear, targeted recruitment plans and a focus on both recruitment *and* retention. The statewide plan should, at a minimum, (1) identify the localities that have the greatest near- and long-term need for foster families; (2) articulate state- and local-level strategies that will be implemented for fulfilling these

needs; and (3) specify the roles and responsibilities of staff in the state’s local departments of social services, regional offices, and central office in implementing the plan and monitoring the availability of foster families.

RECOMMENDATION 8

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to develop and maintain a statewide strategic plan for recruiting and retaining foster families.

Dedicating staff

A lack of staff inhibits the state from developing its pool of non-relative foster families for children placed in foster care. At the local level, recruitment responsibilities often fall to caseworkers, who have many other time-sensitive responsibilities. The state does not specify who at the local level should be responsible for recruitment of foster families. Information collected from interviews, surveys, and agency case reviews shows that few localities have a full-time staff person assigned to recruitment and that, in some localities, no one conducts recruitment activities. Local department staff survey results show that, of respondents who indicated that they have resource family recruitment responsibilities, about 90 percent also had additional foster care and adoption service responsibilities.

VDSS established a Resource Family Unit in 2008 that included a program manager, policy specialist, and five regional adoption and resource family staff (regional staff). The initial purpose of the regional staff positions was to provide technical assistance to local agencies regarding approval of foster families. However, these positions were working without clear direction because there was no statewide recruitment strategy to guide their efforts, according to VDSS staff. Consequently, their recruitment responsibilities were deprioritized in favor of assisting local departments with adoptions. Additionally, in 2017, adoption and resource family consultants began conducting reviews of a sample of cases at each local department of social services. Although these reviews have produced some important information about problems in Virginia’s foster care system, regional staff now spend most of their time conducting them rather than recruiting foster parents.

Virginia could follow other states and some Virginia localities and fund staffing for Virginia’s recruitment and retention goals. New Jersey, Utah, and CAFF all have dedicated funding and staff for both recruitment and retention efforts:

- In **New Jersey**, each local social services office has a foster family support unit, receives technical support from the state Office of Resource Families, and receives funding to hold events to help retain foster families.
- In **Utah**, each region of the state has its own foster-adoptive consultant, trainer, and retention services specialist to support the recruitment and retention of foster families. UFC organizes local support groups for foster,

Though Virginia does not employ recruitment staff, VDSS does make **Mutual Family Assessment Consultant and Specialists and regional Consortium for Resource, Adoptive, and Foster Family Training (CRAFT) coordinators** available to localities to support localities’ efforts to approve and train prospective foster and adoptive families.

“ Only five percent of my job is dedicated to recruitment. Initially, we were hired to do recruitment and retention, but that has changed over the years. ”

– Regional staff

adoptive, and kinship families and provides funds to help state-licensed foster parents pay for common childhood activities and expenses not covered by maintenance payments.

- **CAFF**, in Charlottesville, employs about 20 staff to serve three local departments and provides a clinical support service called Family Support Services (FSS) to all CAFF foster families. Through FSS, CAFF workers work with foster families to help them best meet the needs of children in their care and navigate the foster care system, among other services. CAFF credits FSS as helping with recruitment and retention of qualified foster parents.

Community Attention Foster Families (CAFF) has a **parent organization** that meets monthly to provide feedback and help CAFF generate ideas around how to recruit non-relative foster parents.

Developing and monitoring statewide and local recruitment goals and retaining foster families would likely require additional staff at VDSS. The General Assembly could fund additional regional positions as well as a state-level staff person to develop a statewide recruitment and retention plan, monitor local recruitment goals, and manage any funding allocated to support the implementation of the statewide plan. The General Assembly could specify that these new staff positions work exclusively on foster family recruitment and retention and should not be assigned other responsibilities, as they have been in the past.

RECOMMENDATION 9

The General Assembly may wish to consider including language in the Appropriation Act to establish six positions—five regional staff and one at the central office—at the Virginia Department of Social Services responsible for implementing the statewide strategic plan for recruiting and retaining foster families and supporting local recruitment and retention efforts.

Investing funds

In order to implement a strategic plan for recruiting and retaining foster families, localities would need additional funding. There is currently very little state funding available to support local efforts to recruit foster parents, even though local departments are ultimately responsible for doing so. In FY17, Virginia spent a total of about \$5,300 for recruitment of foster families, according to data from VDSS and the Virginia Office of Children’s Services. By increasing funding to localities, the state could better leverage federal Title IV-E matching funds. Recruitment is an allowable expense under Title IV-E, which is not capped and is matched at 50 percent of a state’s Title IV-E utilization rate (the proportion of children in foster care supported through Title IV-E funds). In 2017, Virginia’s IV-E utilization rate was 62 percent, so for every \$1 spent on foster family recruitment and training, Virginia could draw down an estimated additional 31 cents in IV-E funds.

Localities could use the additional state and federal funding for a variety of purposes. Localities could, for example, follow the lead of CAFF and use funds to hire a full-time position dedicated to foster care recruitment and retention—a resource that many

staff interviewed and surveyed by JLARC staff indicated has been helpful to their efforts to recruit and retain foster parents. Local department staff also indicated that community outreach (e.g., at schools and churches), partnering with other local departments, and marketing campaigns have been effective recruitment strategies. Localities could use funding to support these activities. In addition, localities that contract out to other entities for recruitment and retention work could continue to do so using the new funds.

Eligibility for funding could be contingent on localities' willingness to share locally recruited foster families with other localities in need of a family-based placement. Many local departments are reportedly reluctant to share the families they recruit. To incentivize local collaboration, additional funding could be made available to localities that choose to collaborate with nearby local departments on foster family recruitment and retention efforts.

In addition, the state could incentivize good performance with bonus funds for localities that meet or exceed foster family recruitment goals.

RECOMMENDATION 10

The General Assembly may wish to consider including language in the Appropriation Act to direct the Virginia Department of Social Services (VDSS) to (i) determine the amount of funding necessary to implement the statewide strategic plan for recruiting and retaining foster parents; and (ii) identify all possible sources of funding that could be used to support statewide recruitment and retention efforts, including Title IV-E funds, limits on these funding sources, and general fund match requirements. VDSS could be required to submit its findings to the House Appropriations and Senate Finance Committees by November 1, 2019.

“*Stays in congregate care should be based on the specialized behavioral and mental health needs or clinical disabilities of children. It should be used only for as long as is needed to stabilize the child or youth so they can return to a family like setting.*”

— The Children's Bureau

Local departments place children in congregate care more often than is necessary to meet their needs

National experts agree that congregate care, including group homes and residential treatment facilities, should only be used to deliver short-term, intensive services and supervision to children in foster care with clinical needs for restrictive treatment. Although there are some instances in which short stays in congregate care are necessary for children in foster care, research shows that unnecessary congregate care can have negative effects on children's healthy development, including limiting children's (including teenagers') ability to form healthy attachments with caregivers and limiting their ability to develop a level of independence that is appropriate for their age.

In other states, rates of congregate care placements have been a factor in federal class-action litigation against state child welfare systems:

- The original complaint in Tennessee’s *Brian A. v. Haslam* cited “a ‘bed-driven’ system that sticks children wherever there is a bed, regardless of the appropriateness.” Under the settlement agreement, no children could be placed in group homes or residential settings with more than eight children unless that setting was the least restrictive setting that could meet individual children’s needs.
- The original complaint in New Jersey’s *Charlie and Nadine H. v. Corzine* similarly mentions children “being placed wherever there is an available bed regardless of their particular needs.” Under the settlement agreement, children must be placed in the least restrictive setting that meets their needs.

Virginia regulations and VDSS guidance for the use of congregate care for children in foster care align with this research consensus and direct local departments to place children in the “least restrictive, most family like setting that is committed to meeting the child’s best interests and needs.”

Unnecessary congregate care placements are costly to the state. In FY17, the average total cost of congregate care was \$98,750 per child for a full year, compared to an average of \$40,673 per child in therapeutic foster care for a year, and \$9,725 per child in regular family-based foster homes for a year.

One goal of the federal Families First Prevention Services Act, which was signed into law in February 2018, is to reduce the incidence of unnecessary or poor-quality congregate care placements. To achieve this goal, the new law will make some congregate care placements even more costly to the state. When it takes effect in 2019, the law will limit federal maintenance payments for congregate care placements to two weeks, with some exceptions for specially qualified residential treatment programs. The state will then have to pay all costs related to congregate care that are no longer eligible for federal reimbursement. States can delay implementation of this part of the legislation for up to two years, but they must then also delay the receipt of other federal funding under the act.

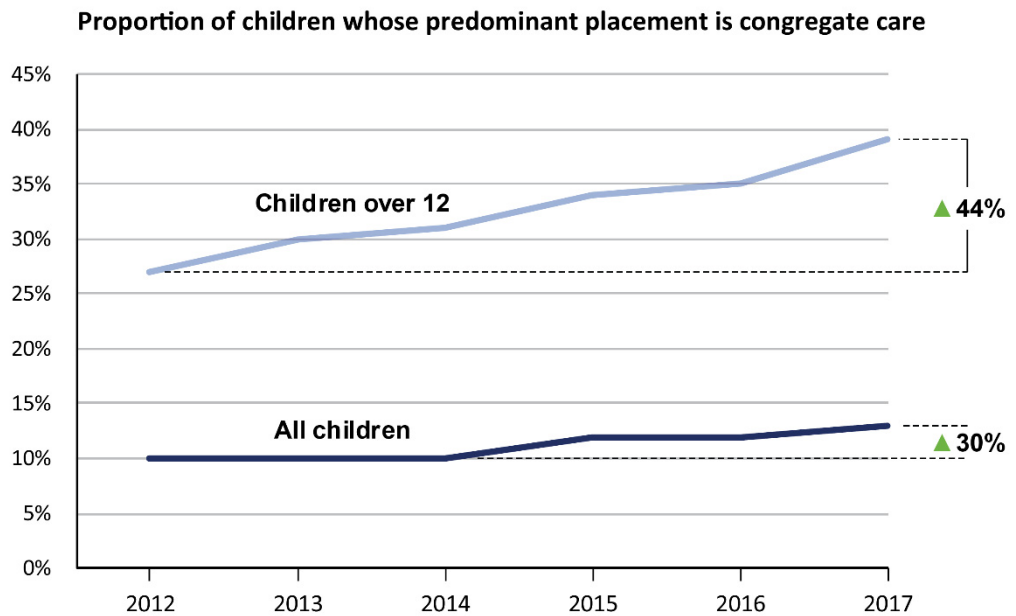
Virginia’s use of congregate care is high

Children in Virginia are placed in congregate care more frequently than children in other states. At the end of FFY16, 17 percent of children in foster care in Virginia were living in congregate care settings, compared to 12 percent of children in foster care nationwide.

Although the proportion of children in congregate care nationwide has *decreased* over the past five years, the proportion of children in congregate care in Virginia has *increased* over that same time period, especially for children over age 12. The proportion of children over age 12 who experienced congregate care as their predominant placement has increased each of the past five years, from about 27 percent in 2012 to 39 percent in 2017 (sidebar) (Figure 3-1).

Predominant placement refers to the type of placement where children spent more than 50 percent of their time in foster care.

Figure 3-1
The proportion of children in congregate care placements has increased over the past five years, especially for children over 12



CANS—the Child and Adolescent Needs and Strengths Assessment—is Virginia’s mandatory needs assessment for all children in foster care and is also used in 37 other states. Virginia’s version of CANS includes a **residential treatment algorithm**, which uses information collected in CANS to indicate whether a child needs residential treatment.

SOURCE: JLARC analysis of Chapin Hall data.

NOTE: Data is percentage of all first entries by age and predominant placement type. Predominant placement refers to the type of placement where children spent more than 50 percent of their time in foster care.

Children with no clinical or behavioral indicator reported in AFCARS did not have a diagnostic and statistical manual (DSM) mental health diagnosis, a child behavior problem as a reason for removal, or a diagnosed disability.

A substantial proportion of children in congregate care settings in Virginia do not have a clinical need to be there, according to two separate indicators of clinical need. About 60 percent of children in foster care in Virginia who entered congregate care between 2012 and 2016 did not meet the standard CANS threshold indicating a need for residential treatment, according to a JLARC analysis of CANS data (sidebar). Data from a separate source, the federal Adoption and Foster Care Analysis and Reporting System (AFCARS), provides supporting evidence that a substantial number of children in foster care in Virginia are placed in congregate care without a clinical need to be there. AFCARS data indicated that 23 percent of children in congregate care in 2016 had no clinical or behavioral indicator of a need for the intense level of supervision and treatment provided by congregate care (sidebar).

Regional and local department staff expressed concerns that some Virginia children placed in congregate care settings do not need to be there. VDSS regional staff in all five regions of the state indicated that some children are placed in congregate care because of a shortage of less restrictive placements rather than because of a child’s needs. Fifty-one percent of surveyed foster care caseworkers who indicated that they had children in congregate care on their caseload said that *at least a few* of those children could be placed in a foster care home (either therapeutic or regular) if one were available. Seventeen percent said that *at least a majority* of those children could be placed in

a foster care home if one were available. That 17 percent represented 20 caseworkers who had, all together, 219 children on their caseloads at the time of the survey.

Overuse of congregate care for children in foster care is a long-standing problem. The Children's Services System Transformation initiative, launched in 2007, identified overuse of congregate care as an area of concern for Virginia. Though the state did have initial success in reducing the use of congregate care, through methods such as increasing the local CSA match rate for residential services, trends have since reversed. Virginia's use of congregate care for children in foster care dropped from 24 percent to 14 percent between FFY07 and FFY11 (federal fiscal years), but increased to 17 percent as of FFY16.

VDSS has no process for systematically reviewing cases of children placed in congregate care settings

Like Virginia, many states have historically struggled to place children in foster care in family-based settings, but some states have been more successful at both identifying the appropriate placement to meet children's needs and actually making those placements. For example, local department staff in Virginia tend to view the CANS assessment as a mechanism to obtain funding, rather than as a tool to inform case planning, including foster care placement selection. In contrast, other states have successfully incorporated CANS as part of the decision-making process for foster care placements. (See Chapter 2 for a recommendation to remove impediments to the use of the CANS assessment in case management in Virginia.)

- In **Indiana**, caseworkers must obtain approval from the local department director if they plan to place a child in a placement type that differs from the CANS recommendation.
- In **Utah**, caseworkers must document decisions to place a child at a level of care that differs from the CANS recommendation.

Other states also require requests for residential placements to be reviewed by a clinician before they are approved.

- In **Tennessee**, caseworkers must receive permission from the regional psychologist before placing a child in a residential facility.
- In **Indiana**, residential placements cannot be approved until a clinical specialist employed by the department has been consulted.
- In **Utah**, children entering residential care must be screened by the regional screening committee for residential care, which includes a clinical consultant.

Virginia has instituted processes to review congregate care placements, but those processes are not implemented consistently. Further, existing review processes occur locally and outside of VDSS, which is the statutorily designated supervisor of the foster care system and the entity responsible for ensuring state regulations are followed. Local teams, organized by Magellan, Virginia's Medicaid behavioral services health adminis-

trator, assess the needs of each Medicaid-enrolled child seeking admission to residential treatment, including children in foster care. Cases for children placed in residential treatment centers should be reviewed every 30 days, and cases for children placed in therapeutic group homes should be reviewed every 60 days, according to the residential treatment services provider manual for the Department of Medicaid Assistance Services (DMAS). However, DMAS staff noted that this process does not always occur as soon as children need it.

ICC—Intensive Care Coordination—also called “high fidelity wraparound,” provides intensive case management to children in, or at risk for entering, residential care. ICC aims to prevent the need for residential placement, shorten stays in residential placement, strengthen discharge planning, and improve outcomes for high-risk children.

Similarly, local CSA programs are expected by law to be working to manage the use of residential services. The Office of Children’s Services has made it a goal to increase the number of children served in community, rather than congregate, settings through ICC services (sidebar). In 2014, the State Executive Council for the Children’s Services Act program set a goal that 75 percent of children at risk of entering or in residential care would receive ICC services. However, in 2017, only 35 percent of children in residential care received ICC services.

Considering that current review processes are not effectively preventing children who do not need congregate care from being placed in congregate care settings, and because local departments are ultimately responsible for the care of children in foster care, VDSS should follow the approach of other states and implement its own state-level review process to monitor and address the overuse of congregate care.

First, in the short term, knowing that many children in foster care are living in congregate care settings without a need for enhanced services and supervision, VDSS should undertake an immediate and systematic review of the circumstances of every child in foster care currently in congregate care. VDSS should begin by reviewing children whose CANS scores indicated that they did not need congregate care and work with localities and providers to find or create a more appropriate foster care setting. To do so, localities would need to actively recruit foster families who are willing to foster children transitioning from congregate care. VDSS reviews should be conducted with the assistance of a clinical specialist contracted with or employed by the state. Localities that do not comply would pay for the state share of all costs associated with the placement until VDSS determines that the local department has made satisfactory efforts to identify a more appropriate placement. Costs would include state matches for Medicaid and Title IV-E, as well as any CSA funding for services the child receives.

RECOMMENDATION 11

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to (i) conduct an immediate review of the circumstances of every child in foster care currently in congregate care, to identify children who do not have a clinical need to be in congregate care; (ii) communicate its findings to each local department of social services; (iii) direct the local departments to make concerted efforts to identify appropriate family-based placements for these children; and (iv) direct the local departments to move identified children to an appropriate family-based placement, if feasible.

After VDSS has reviewed the cases of all children currently in congregate care, it should institute a systematic and ongoing review process so that the cases of children in (or proposed to be placed in) congregate care in the future receive appropriate review. Virginia could follow other states' examples and have VDSS continue to work with a clinical specialist employed by (or contracted with) the state to continually and systematically review the cases of all children in Virginia placed in a congregate care setting, as appropriate. For example, the specialist could review each case every 60 days and assist VDSS in determining when it is appropriate for a child to re-enter a family-based placement. (See Chapter 2 for a recommendation that would establish a new statewide position responsible for reviewing children's need for congregate care.)

When it is determined that a child in the custody of a local department is living in a congregate care setting but does not have a clinical need to be there, and the local department has not taken *reasonable steps* to find an alternative placement, the locality could be required to bear the state share of the costs associated with its decision. As mentioned above, these costs would include state matches for Medicaid and Title IV-E, as well as any CSA funding for services the child receives. In some cases, the availability of appropriate foster care placements may not be within the control of the local department. As such, it is important that the state first determine whether reasonable steps have been taken to transition children into more appropriate placements before taking any action that would cause localities financial hardship. Otherwise, there may be unintended consequences for other children in or at risk of entering foster care. Action on this recommendation could also be delayed until VDSS has developed a strategic plan to recruit foster families, and local departments begin receiving support for local recruitment and retention efforts.

RECOMMENDATION 12

The General Assembly may wish to consider amending Title 63.2, Chapter 9 of the Code of Virginia to direct the Virginia Department of Social Services (VDSS) to review, at least annually, the circumstances of every child in foster care who is placed in a congregate care setting, and identify children for whom such a placement is not justified by their needs. When it is determined that a child's placement in a congregate care setting is not justified by their needs, and the local department of social services does not take reasonable steps to find an appropriate family-based placement, the local department should be required to pay all costs associated with the congregate care placement out of local funds until VDSS determines that the local department has made reasonable efforts to place the child in an appropriate family-based placement.

4 Reducing Long Stays in Foster Care

SUMMARY Lengthy stays in foster care can interfere with children’s healthy development, have been a common factor in lawsuits brought against many other states’ foster care programs, and can result in children “aging out” of the foster care system without a permanent family connection—a circumstance that can lead to undesirable outcomes as children reach adulthood. Many children in Virginia’s foster care system are staying longer than necessary, and the rate of children aging out of foster care is among the highest in the country—in part because many local departments of social services in Virginia are not doing the fundamental casework necessary to find a permanent home for children in a timely manner. The state can reduce the incidence of aging out of foster care by ensuring local departments are consistently working with birth parents to address the circumstances that caused children to be removed from their homes and engaging other individuals who could potentially serve as permanent families. The state could also take steps to ensure the long-term plan for the child is reconsidered regularly, address certain financial and court-related barriers to children leaving the foster care system in a timely manner, and ensure children who age out or are likely to do so are being adequately prepared to succeed in adulthood.

State and federal laws require local departments of social services to work diligently to minimize the time children spend in foster care. In most circumstances, local departments are directed to initially work to reunify children with their birth parents. However, if reunification is not safe or appropriate for the child, local departments are directed to work diligently to find a relative or an adoptive family to permanently care for the child.

Research and child welfare best practices stress the importance of quickly finding permanent homes for children because of the negative impact that the foster care experience can have on children’s healthy development. Foster care commonly involves living in a stranger’s home and being removed from familiar people and circumstances, such as friends, relatives, and school. The separation is compounded by the inherent instability and uncertainty of foster care, which can be emotionally difficult for children.

“Research supports that a child’s development of trust and security can be severely damaged by prolonged uncertainty in not knowing or understanding if they will be removed from the home, or when and whether they will return home.” (National Council of Juvenile and Family Court Judges)

In other states, lengthy stays in foster care have prompted successful lawsuits against the state. The leader of one national group that has successfully sued multiple states’ foster care systems cited youth who age out as an ultimate indication of “the system’s failure” to fulfill its responsibility to find permanent homes for children.

More children in Virginia “age out” of foster care without a permanent family than in other states

Additional details on the methods used to calculate aging out and time in care rates in Virginia and other states can be found in Appendix B.

A higher proportion of children “age out” of Virginia’s foster care system without a permanent family, compared to other states, and this high rate of aging out is not new. Of all children exiting foster care in Virginia in FFY16, 19 percent aged out—more than double the national median (eight percent). Virginia has been among the three states with the highest rates of children aging out of foster care every year since at least 2007.

A common claim is that children in foster care in Virginia have characteristics that make it more challenging to find them permanent homes than children in other states, but this claim does not appear to primarily explain the state’s high rate of aging out. For example, one argument for this claim is that Virginia has a comparatively older population of children in foster care and that this makes it more likely that children will age out. However, when accounting for the age at which children enter foster care, Virginia’s rate of aging out is still comparatively high. For example,

- Of children who entered foster care when they were age 12 and older between 2007 and 2016, 54 percent aged out in Virginia—approximately double the 50-state average (25 percent) for this age group.
- At every age over nine, children who entered foster care in Virginia between 2007 and 2016 were about twice as likely to age out than children who entered foster care at the same age in other states. (For example, of children who entered foster care at age 15, 47 percent ultimately aged out in Virginia compared to the 50-state average of 22 percent.)

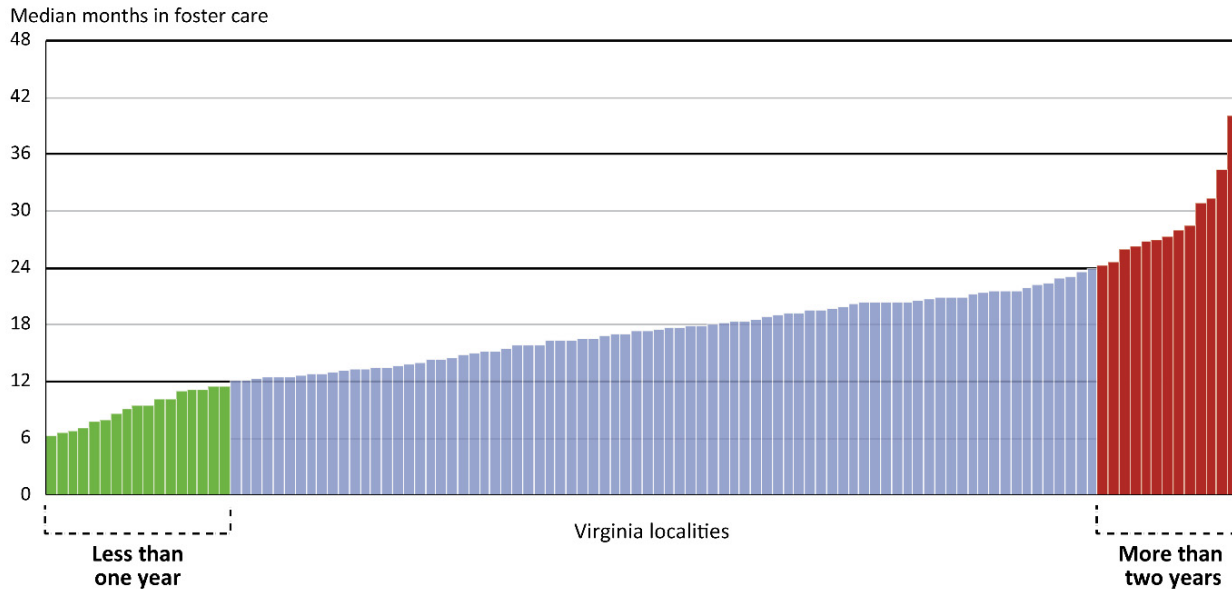
Another common assumption about Virginia’s comparatively high rate of aging out is that Virginia places fewer children into foster care than other states, and therefore the children who enter foster care have higher needs than those in other states. However, none of the factors that would make a child more likely to age out, such as behavior problems or disabilities, or any other factors available for analyses, such as the race, sex, or age of children in foster care more than *slightly* explain the high rate at which children age out in Virginia, according to JLARC analysis (sidebar). Instead, the more likely explanations for unnecessarily lengthy stays and high rates of aging out in Virginia’s foster care program are the combination of inadequate casework by local departments and certain impediments outside their control, such as the court system and service availability.

Children in Virginia’s foster care system do not remain in foster care much longer than children in other states, on average. The median length of stay among children entering foster care in Virginia between 2007 and 2016 was 19 months—slightly longer than the 17-month average of all states’ median lengths of stay during this same time period. However, the median stay for some Virginia localities was much

Regression analysis for this study was conducted with data from AFCARS, the Adoption and Foster Care Analysis and Reporting System, FFY07-FFY16. (See Appendix B for research methods used in this study.)

longer than others (Figure 4-1). Spending several years in foster care can adversely affect children’s healthy development and well-being even if they exit foster care to a permanent home.

FIGURE 4-1
The median length of stay in foster care varies substantially across Virginia



SOURCE: Chapin Hall at the University of Chicago’s Multistate Foster Care Data Archive.

NOTE: The graphic represents children who entered foster care between 2012 and 2016. It excludes 13 localities with fewer than 10 children in foster care during the entire time period. These localities account for one percent of all children in foster care, and were excluded because atypical experiences of just a few children in foster care could significantly impact these localities’ median time in care, positively or negatively.

Aging out and long stays are attributable in part to inadequate local efforts

While not all children entering Virginia’s foster care system will find a permanent home, the law requires diligent attempts to make this happen. Since 1997, federal law has required local departments to make “reasonable efforts” to reunify children with birth parents or to find other permanent homes as appropriate. Since at least 1994, local departments have had a statutory obligation to “achieve, as quickly as practicable, permanent placements” for children in foster care.

In Virginia, local departments of social services are not consistently doing the casework needed to find permanent homes for children in foster care. In many instances, strengthening caseworker practices could reduce the time children spend in foster care. For example, local departments demonstrated “concerted efforts” to find permanent homes in only 25 percent of cases sampled in a federal review—far below other states’

The 2017 federal review of Virginia’s foster care system, the Child and Family Services Review, included a review of a sample of 44 foster care cases across all five regions of Virginia.

45 percent (sidebar). Additionally, responding to a JLARC survey, 65 percent of foster care caseworkers reported that they found it difficult to make continual progress toward achieving the permanency goals of at least some of the children on their caseload.

In interviews, local department staff cited competing responsibilities, inadequate expertise, and the inherently difficult nature of casework as causes of delays in finding permanent homes for children. According to local department staff, when their workloads are high, caseworkers prioritize responsibilities that require immediate responses (e.g., finding new foster care placements, meeting the monthly child visit requirement) over the work of finding permanent homes, which is incremental, labor-intensive, and somewhat less urgent. As one caseworker noted in the survey, “It is impractical to think that permanency can be achieved for a child in 6-12 months when a worker has 20+ cases.”

JLARC’s 2018 survey was administered to staff at all local departments of social services. A total of 385 staff with responsibility and/or oversight of foster care or adoption services responded to the survey. Staff from 110 of the 120 local departments of social services responded. (See Appendix B.)

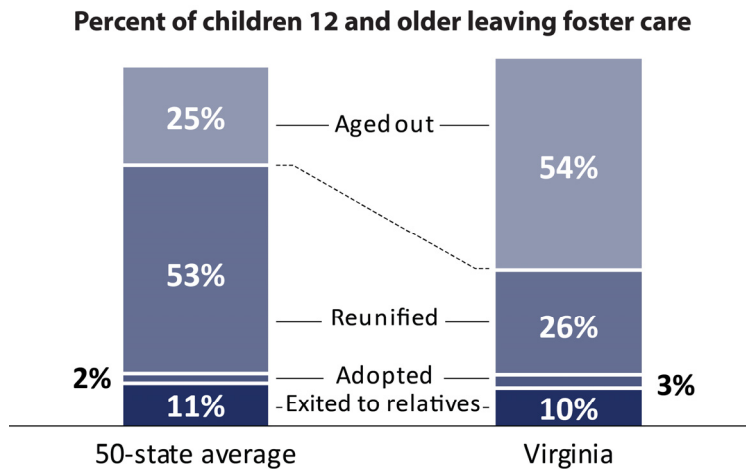
Local departments of social services are not adequately working to reunify children with birth parents

Reunification appears to be the type of exit with the most opportunity for improvement in Virginia’s foster care system. Children in Virginia’s foster care system are significantly less likely to be reunified with their birth parents than those in other states (Figure 4-2). Of children who entered Virginia’s foster care system at age of 12 or older between FFY07 and FFY16, 26 percent were ultimately reunified—less than half the nationwide rate of reunification.

State and federal law prioritize reunification and require casework to maximize its likelihood, but this casework has been inadequate in Virginia. Reunification is the foremost goal of foster care, with adoption or an alternative permanent home as the fallback if reunification is not feasible in a timely manner or appropriate for the child. State and federal laws require particular casework activities to support reunification, but case reviews reveal gaps in such casework (Table 4-1).

FIGURE 4-2

Virginia’s comparatively high rate of aging out among older children appears related to its low rate of reunifying children with birth parents



SOURCE: JLARC analysis of AFCARS data, FFY07-FFY16.

NOTE: Data is limited to children entering foster care age 12 and older between FFY07 and FFY16. Excludes children with missing information, children leaving foster care through transfer to another agency (e.g., juvenile justice), run-aways, and children who died in foster care. “Relatives” include those who take custody or become legal guardians, but relatives who adopt are counted in the “adopted” category. The 50-state average includes Virginia.

TABLE 4-1

In Virginia, necessary casework is not being done to support reunification

Casework required	Example evidence of insufficient casework in Virginia
Identify and address barriers to reunification and provide services to address barriers (federal and state laws)	Only 14% of sampled Virginia cases (versus 44% of other states’ cases) demonstrated this casework. ^a
Develop plan for reunification and discuss progress with birth parents (state law)	In only 40% of sampled Virginia cases, birth parents were included in the meeting to develop the foster care plan. ^b In only 17% of sampled Virginia cases, the “frequency and quality of visits between caseworkers” and birth parents was sufficient to ensure children’s safety, permanency, and well-being (versus 42% of other states’ cases). ^a In only 50% of sampled Virginia cases, the caseworkers conducted adequate visits with the birth parents to “ensure communication, connections, and timely permanency outcomes.” ^c
Ensure regular visits between birth parents and their children, when appropriate (state law)	Only 43% of sampled Virginia cases (versus 75% of other states) showed “concerted efforts” to “ensure that both the frequency and quality of visitation between the child” and the birth parent was “sufficient to maintain and promote the continuity of the relationship.” ^a

SOURCE: Code of Virginia, Virginia Administrative Code, United States Code, Code of Federal Regulation, Virginia’s Child and Family Services Review, federal summary of other states’ Child and Family Services Reviews, and JLARC analysis of Virginia regional staff case reviews.

^a 2017 federal review of 44 sampled foster care cases in Virginia and 1,295 sampled cases from other states reviewed 2015-2016 (Appendix B). ^b 369 foster care cases reviewed by VDSS regional staff in 2017 and in 2018. ^c 362 foster care cases reviewed by VDSS regional staff in 2017 and in 2018.

“*Because of high case-loads, I don't have time to do all the paperwork required on my cases, much less engage and support my families as much as they deserve.*”

— Caseworker
Local department of
social services

A basic component of reunification-related casework activities is regular communication and visits with birth parents. Routine communication can help ensure the caseworker is aware of the birth parents' progress in addressing the reasons for the removal of their child, such as parental substance abuse or inadequate housing, identifying and connecting birth parents to needed services, and clarifying legal requirements that must be followed in order to be reunited with their children.

Currently, VDSS guidance does not require caseworkers to meet with birth parents at specific intervals. Nor does VDSS systematically monitor the extent to which the visits occur. To begin to improve Virginia's engagement with birth parents, VDSS should require that foster care caseworkers visit with birth parents at least once every two months while reunification remains the goal.

RECOMMENDATION 13

The Virginia Department of Social Services should (i) modify its guidance to require caseworker visits with birth parents at least once every two months as long as reunification remains the foster care goal, and require caseworkers to document these visits in the electronic case management system; (ii) monitor the frequency of these visits on an ongoing basis; and (iii) notify the relevant directors and boards of local departments of social services when required visits with birth parents have not occurred over an extended duration, such as five months.

More broadly, VDSS data indicates that local departments of social services are not involving birth parents and other key individuals in critical decision points in the foster care process. Family involvement is a best practice and supported by national research as effectively promoting reunification among children in foster care. Family partnership meetings (FPMs), which are required by VDSS guidance at particular decision points, are important for supporting family involvement. These structured meetings are moderated by a trained, objective facilitator and bring together key players to make progress toward permanent exit from foster care. FPMs can involve specific plans for birth parents, such as logistical planning for substance abuse treatment. The use of similar structured meetings is a common requirement in other states.

In Virginia, local departments hold FPMs far less frequently than VDSS guidance requires. For example, according to a JLARC review of 12 months of recent VDSS data,

- only 16 percent of FPMs were held, as required, to discuss progress in meeting primary and back-up plans for getting children to a permanent home; and
- only 24 percent of FPMs were held, as required, before changing the child's long-term exit goal, such as from reunification to adoption.

The extent of caseworkers' engagement with families through less formal means, such as conversations without trained facilitators present, is not known. FPMs are the state's

only measurable requirement for family engagement, and FPMs should be held at critical decision points. Their infrequent occurrence is likely an indication that overall family engagement is inadequate.

The state can take steps to better support reunification by addressing certain barriers to holding FPMs. VDSS provides incentives for FPMs (sidebar), but this approach has not sufficiently increased their use. In interviews, local department staff generally affirmed the value of FPMs, indicating they would hold FPMs more often if barriers were addressed. Common barriers cited by local department staff included a general lack of time by caseworkers, scheduling logistics, and lack of the trained facilitators required to hold FPMs. Increasing local staff capacity would help to address time and logistical barriers. (See Chapter 5 for recommendations on improving local staff capacity.)

The state could further increase FPMs in two ways. In the near term, the General Assembly could amend statute to require that these structured, facilitated meetings occur at critical decision points while a child is in foster care, such as foster care dispositional hearings, foster care review hearings, and permanency planning hearings. FPMs are currently required only in VDSS guidance (sidebar). Creating a statutory obligation would better ensure that local departments consistently involve birth parents in important decisions that affect their children's future. A statutory obligation would also enable VDSS and local boards of social services to hold local departments accountable for taking necessary steps to encourage reunification. The statutory language could specify the types of individuals—birth parents, relatives, service providers, and the court-appointed special advocate—who should be invited to participate in FPMs to facilitate decision-making in the best interest of the child.

In the longer term, regional positions for FPM facilitators could support local capacity to hold FPMs. If Recommendation 14 is implemented, more FPMs will be held, and the need for trained FPM facilitators will likely be greater. If a lack of available facilitators becomes evident as an impediment to convening FPMs in some local departments, the state could consider funding regional FPM facilitators to be available to conduct FPMs when local department staff are not available. VDSS should consider the need for additional FPM facilitators in developing a plan for staffing its regional offices. (See Chapter 6 for information on VDSS regional staffing needs.)

RECOMMENDATION 14

The General Assembly may wish to consider amending § 63.2-900 of the Code of Virginia to require local departments of social services to hold structured meetings, facilitated by a trained, neutral moderator, with birth parents, relatives, and other relevant stakeholders, to make decisions that are in the best interest of the child in foster care, prior to all critical decisions points during a child's stay in foster care.

In 2016, VDSS reinstated **financial incentives** for local departments to hold FPMs.

The initial foster care plan is determined at the **dispositional hearing**; review of the child's safety, well-being and progress towards a permanent home occurs at the **review hearings**; and approving a particular permanent home for a child or change to their long-term goal occurs during **permanency planning hearings**.

The three options for permanent homes for children are legally distinguished by the parental rights/responsibilities held by the new caretaker versus the birth parent. In order of most to least rights/responsibilities of the new caretaker, they are: **adoption, guardianship, and legal custody**. Children are eligible for services and financial supports from the foster care program only under adoption or guardianship.

Virginia's KinGAP requirements include eligibility criteria for children (reunification and adoption must be ruled out as appropriate, "strong attachment" with the potential guardian), guardians (connected to the child through blood, marriage, or adoption; a strong commitment to caring permanently for the child), and the process (e.g., negotiation of the monthly payments, a written agreement between the local department and the guardian).

Financial barriers inhibit some relatives from providing permanent homes for children in foster care

When reunification is not possible or appropriate, some children exit foster care to permanent homes with relatives (sidebar). According to interviews and a survey of local department staff, inadequate financial resources prevent some relatives from providing permanent homes for children in foster care. Local department staff cited instances of relatives who wished to care for a child but were financially unable to do so.

To help reduce the financial barriers that may be preventing children from exiting foster care to relatives, the 2018 General Assembly created the Kinship Guardianship Assistance program (KinGAP), which provides monthly payments and access to foster care services to relatives who become legal guardians of children in foster care. The creation of KinGAP aligns with nationwide efforts to improve the rate at which children are able to exit foster care to relatives. As of FFY16, 30 states had programs similar to KinGAP.

KinGAP is widely viewed by stakeholders involved in Virginia's foster care system as a positive change, but the program's eligibility requirements are likely to limit its long-term effects. Overall, nine percent of children exiting foster care in other states exited to relative guardianship in FFY16. In contrast, if current projections about KinGAP's impact hold, participation is estimated to be less than one percent of all children who exit foster care each year in Virginia. A limiting factor to greater participation in Virginia's KinGAP appears to be the federal requirement for the potential guardian to be a *licensed* foster parent for the child for six consecutive months, a requirement that other states have eliminated. Of the eight other states known to use state funds for some guardianship cases, five have eliminated or minimized the six-month foster parent requirement for guardians.

The General Assembly could create a distinct state-funded category of children whose relatives may receive KinGAP payments, while preserving federal support for other children eligible for KinGAP. Because all federally required conditions, including the six-month requirement, must be met for relatives to receive federally supported KinGAP payments, the state would need to cover the full costs of KinGAP payments for those children whose relatives are not required to meet the six-month requirement. The General Assembly could, like other states, prioritize state funding for those children least likely to be placed in a permanent home. For example, Alaska prioritizes funding for children who are "hard-to-place," with "special needs"; West Virginia prioritizes funding for children who are disabled, emotionally disturbed, older, part of a sibling group, or a member of a racial or ethnic minority.

To ensure children eligible for state-funded KinGAP payments are exiting foster care to a safe setting, VDSS should require that potential guardians still meet the minimum safety standards currently required to become foster parents, including successful completion of a home study and background checks.

RECOMMENDATION 15

The General Assembly may wish to consider amending § 63.2-1305 of the Code of Virginia to create a state-funded Kinship Guardianship Assistance program that waives the requirement for potential guardians to serve as a licensed foster parents for six consecutive months and limit eligibility for this program to children who are least likely to be placed in a permanent home or who have been in foster care for an extended period of time.

Adoptions are taking longer than necessary due to a lack of effort by local departments and a lengthy appeals process

Children who are not reunified with their parents or who do not exit to the legal custody or guardianship of relatives can instead exit foster care through an adoption. The percentage of children who are adopted out of foster care in Virginia, and the time it takes for children to be adopted, is similar to other states, but some children have especially long stays in foster care. Twenty-six percent of children exiting Virginia’s foster care system to adoption between 2007 and 2016 waited more than three years to be adopted, while nine percent waited more than four years.

Inadequate local and state efforts to achieve adoptions

One reason why at least some children are not exiting foster care to adoption in a timely manner is the shortage of foster families, who are most likely to become the permanent adoptive families of children in foster care. All states appear to struggle to recruit foster parents, but the lack of meaningful state-level efforts in Virginia to recruit and retain foster families is the greatest barrier to increasing the adoption of children who enter foster care in Virginia. (See Chapter 3 for recommendations to improve state and local efforts to increase the availability of foster families.)

Another cause of at least some adoptions being delayed longer than necessary is inadequate casework at local departments of social services to ensure timely adoptions. In recent case file reviews, VDSS regional staff found that the local departments did not make “continual recruitment efforts” in 25 percent of sampled cases with the goal of adoption (sidebar). Similarly, as of September 2018, 29 percent of children with the goal of adoption did not have profiles posted on the state’s registry of children awaiting adoption—preventing them from being found by potential adoptive parents. In interviews, foster care caseworkers and other stakeholders indicated that high case-loads and inexperience were also preventing timely adoptions. (See Chapter 5 for more information on caseworker capacity and training.)

The VDSS regional staff reviews of local departments occurred 2017-2018. The 25 percent of cases reflects 191 adoption cases sampled by VDSS consultants and synthesized by JLARC staff. (See Appendix B.)

“*This kid could be adopted in a month, but I haven’t had a chance to work on it.*”

— Caseworker
Local department of social services

Delays in filing for the termination of parental rights

Another reason why adoptions may be delayed longer than necessary is that local departments are not filing for termination of parental rights (TPR) in the juvenile and domestic relations court (J&DR) in a timely manner. TPR, which permanently eliminates all legal rights and responsibilities of birth parents, is legally required before a

Federal and state law allow local departments to not file for TPR under one of three specified circumstances: (1) relatives are caring for the child, (2) the birth parents have not been provided with reunification services, or (3) TPR is against the child's best interests.

child can be adopted. Under state and federal law, the petition for TPR must be filed within 15 of the most recent 22 months a child is in foster care, with some exceptions (sidebar). According to federal law, the reason for the 15-month time frame is to “avoid unnecessary and lengthy stays in the foster care system.”

In practice, local departments are not consistently following the timelines for TPR and are not documenting acceptable reasons for not filing—ultimately extending children's stay in foster care without a clear justification. For example, the 2017 federal Child and Family Services Review found that in one-fourth of selected cases in Virginia, local departments neither requested TPR at 15 months nor documented a compelling reason for not doing so.

Local departments are not required to document a clear reason why they are not filing after the 15-month time frame. While the lack of documentation does not directly cause delays, it makes it much more difficult for VDSS and other relevant stakeholders, including J&DR judges, to hold local departments accountable for continually working to make progress on each child's case and filing for TPR when it becomes appropriate.

Several other states more systematically monitor reasons for TPR filing delays than Virginia does. For example,

- New York developed a list of 11 specific circumstances in which TPR can be considered to be against the child's best interests, and requires citation of one of these reasons when decisions are made not to file for TPR.
- Tennessee requires twice-yearly updates to the selected reason for a TPR delay in the electronic case file, to ensure regular and systematic review of these decisions. Tennessee tracks monthly data on (1) the percentage of children in foster care for over 15 months with a TPR, and (2) the percentage of children without a TPR for which a compelling reason has been documented.

The 2017 federal review of Virginia's child welfare system noted that clarifying requirements for filing for TPR and addressing any reluctance among local departments to initiate TPR would improve Virginia's ability to reduce unnecessarily long stays in foster care.

To better enable the state to hold local departments accountable for filing for TPR within the 15-month time frame, VDSS should require local departments to document the specific reasons in the state's electronic case management system when they do not file for TPR within the required time frame. To implement this kind of system-wide documentation, VDSS would need to develop a list, similar to New York's, of specific reasons for not filing for TPR, and include court-related reasons, such as judicial opposition to TPR. Local departments would use the list in documenting their reasons, prior to all permanency planning hearings, when they decide to delay filing for TPR after the 15-month time frame.

To create additional accountability for filing for TPR in a timely manner, the General Assembly could require J&DR judges to regularly review these reasons during permanency planning hearings held after the 15-month time frame. In interviews for this review, J&DR judges expressed support for the concept of formally documenting reasons for delay.

RECOMMENDATION 16

The Virginia Department of Social Services should (i) develop in guidance a list of acceptable reasons for not filing for termination of parental rights after 15 months in foster care and (ii) require local departments to document at least one of these reasons in the state's electronic case management system whenever a decision is made to delay filing for termination of parental rights.

RECOMMENDATION 17

The General Assembly may wish to consider amending § 16.1-282.1 of the Code of Virginia to require, for all permanency planning hearings after 15 months in foster care in which termination of parental rights (TPR) has not occurred, that the local departments of social services include the reason for not initiating TPR in the petition for the hearing.

Delays in the termination of parental rights appeals process

In Virginia, after a J&DR judge decides to terminate parental rights, birth parents may appeal to several levels of courts to seek to reverse this decision. An appeals process is essential for affording birth parents due process, given the serious implications of the decision. However, appeals can also delay the time until a permanent home is found for a child and reduce the likelihood of it happening at all.

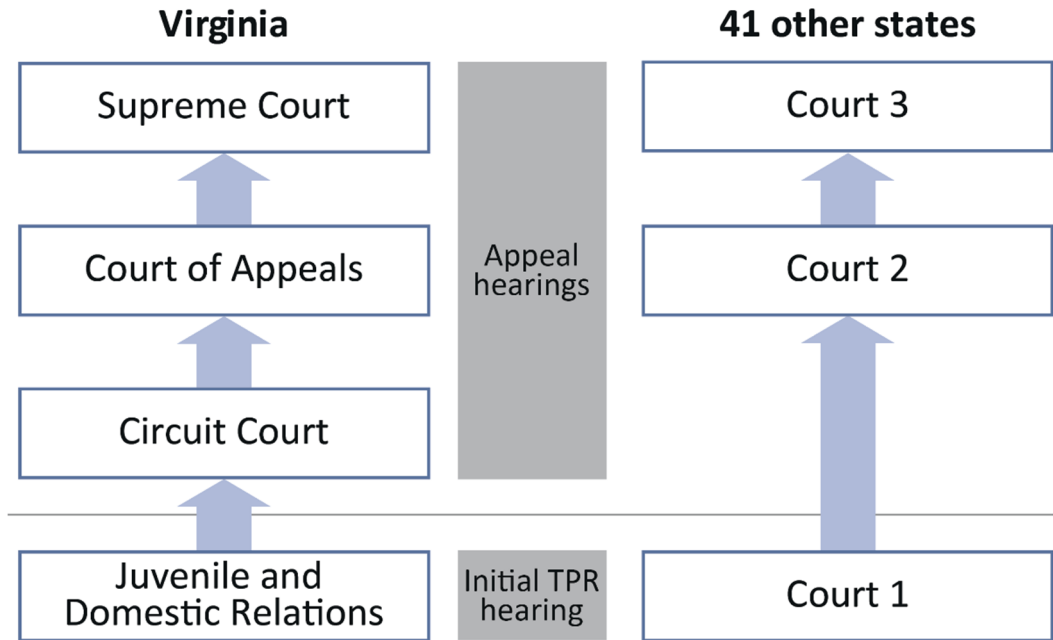
According to JLARC analyses of VDSS data, TPR appeals are rarely successful in Virginia—typically resulting in longer stays in foster care without a change to the ultimate outcome. Of children entering foster care between FY12 and FY16 for whom TPR was filed (1,815 children), 42 percent of TPR decisions were appealed. Only an estimated five percent of appeals resulted in TPR decisions being overturned. Appealed TPR cases took a median of five months longer to conclude than TPR cases that were *not* appealed, and were six times as likely to take a year or longer to conclude.

Virginia's TPR appeals process was commonly cited in interviews as an impediment to finding permanent homes for children in foster care. Stakeholders from a variety of perspectives, including staff of local department of social services, judges, and representatives of foster parents, identified Virginia's TPR appeals process as a key reason why adoptions are often delayed longer than necessary. This problem was also identified in a 2017 report by the Virginia Commission on Youth.

Appeals are lengthy in Virginia primarily because of the state's appeals process for TPR cases. In Virginia, the first level of appeal (in circuit court) involves an entire rehearing of the facts of the case, and this is followed by two additional levels of appeals. Most other states have a more streamlined appeals process (Figure 4-3). At least 41 other states (1) establish a formal record of the initial TPR hearing in the initial court, rather than establishing this record only when the facts of the case are heard a second time (during the first appeal hearing), as in Virginia; and (2) have only one or two levels of appeal, compared to Virginia's three levels.

Reducing avoidable delays caused by Virginia’s appeals process would require a substantial change to current long-standing practices. However, numerous stakeholders, including J&DR judges and circuit court judges, indicated that legislative changes that could address these delays are worth strong consideration, given the extent to which the process prolongs children’s time in foster care.

FIGURE 4-3
TPR appeals process has more steps in Virginia than in most other states



NOTES: Arrows indicate the direction of the appeal. Some states only have one level of appeal. The nine states excluded here either have similar appeals processes to Virginia’s or did not have readily-available information about their appeals process.

SOURCE: National Center of State Courts documents and interviews, JLARC review of other states’ statutes and other publications, and JLARC interviews with other states.

Two options could potentially expedite how TPR cases are resolved in Virginia’s courts without making excessive changes to Virginia’s court system, according to interviews with J&DR judges, circuit court judges, and attorneys:

- (1) Make an exception to TPR cases and require that they be heard “on the record” at the J&DR court level, and have the first level of appeal be the Court of Appeals (bypass the circuit court level).
- (2) Originate TPR cases at the circuit court level (eliminate these hearings at the J&DR court level).

Both of these options warrant careful consideration before implementation. More information is needed on the impacts of these changes on court caseloads, birth parents’ rights, and the resources available at all levels to implement the changes. Additionally, concerns were raised about the need for more training of current circuit court judges

if TPR cases originated in circuit court because some circuit court judges do not hear many TPR cases. However, most judges and attorneys interviewed for this review indicated both options were possible, worth considering, and would reduce the time children in foster care wait for their cases to be appealed.

Other, smaller changes could be made to the TPR appeals process to reduce the time children wait to find a permanent family. For example,

- The current statutory deadline for circuit courts to hear the TPR appeal could be reduced from 90 to 60 days.
- The 90-day deadline could be required of the court of appeals, which is already required to prioritize TPR cases.

The General Assembly could direct the Supreme Court of Virginia to evaluate the feasibility, costs, and implications of making J&DR courts a court of record for TPR cases, originating TPR cases in circuit court, and other options that would expedite the TPR appeals process while protecting the rights of birth parents. The evaluation should assess each option for cost, potential to reduce delay, impact on judicial workload, impact on due process rights of birth parents, and other important factors. The evaluation should incorporate the perspectives of judges, attorneys, organizations representing birth parents and children in foster care, and other states.

RECOMMENDATION 18

The General Assembly may wish to consider including language in the Appropriation Act directing the Supreme Court of Virginia to evaluate the feasibility, costs, and effectiveness of the following options to expedite the appeals process for termination of parental rights (TPR) cases: (i) designate juvenile and domestic relations courts as courts of record for TPR hearings and send appeals directly to the court of appeals; (ii) originate TPR hearings in circuit courts; (iii) shorten the 90-day deadline for circuit courts to hold TPR hearings; (iv) establish a deadline for the court of appeals to hold TPR hearings; and (v) any other options that could expedite the appeals process for TPR cases. The executive secretary of the Supreme Court of Virginia should submit the results of this evaluation to the House and Senate Courts of Justice Committees; the House Health, Welfare and Institutions Committee; and the Senate Rehabilitation and Social Services Committee by November 1, 2020.

Underutilization of permanent entrustments

The appeals process can be avoided, and the time it takes for children to be available for adoption can be reduced, when birth parents voluntarily consent to the termination of parental rights (also known as permanent entrustments). J&DR judges, circuit court judges, and staff of local departments of social services mentioned in interviews that lawyers representing birth parents commonly encourage birth parents to appeal a TPR decision to circuit court because the cases are entirely reheard in the circuit court, giving parents a “nothing to lose” opportunity to argue for retaining their parental rights. It is

possible that greater use of permanent entrustments would eliminate at least some appeals because their voluntary nature eliminates the need for birth parents to consider whether or not to appeal a decision made by the J&DR court.

VDSS's 2018 survey was administered to 2,717 local department of social services staff. The response rate was 52 percent.

Currently, there is a high degree of variation in the extent to which local departments and birth parents use permanent entrustments in Virginia, and the reasons for this variation is unknown. Only four percent of local department staff indicated that permanent entrustments are *always* used for adoption, while 54 percent indicated they are *sometimes* used, and 42 percent indicated they are *never* or *rarely* used, according to a 2018 VDSS survey (sidebar). Reasons for such variation could include inadequate caseworker communication with and support for birth parents, or a lack of awareness among caseworkers or birth parents that permanent entrustments are available as an option.

Recommendations 13, 14, and 15 address inadequate communication with and support for birth parents, but VDSS could take steps to ensure that local departments inform birth parents of the permanent entrustment option. Specifically, VDSS could develop a clear guidance document describing the federal and state requirements for TPR and contrasting the processes and advantages of voluntary and involuntary TPR and require local departments to provide this document to birth parents.

RECOMMENDATION 19

The Virginia Department of Social Services should develop a clear guidance document to educate birth parents about their option to voluntarily terminate parental rights and require local departments of social services to provide this document to all birth parents no later than at the first foster care review hearing.

More state attention needs to be placed on children who are staying a long time in foster care and who are at high risk of aging out

The state should regularly identify and closely monitor all children with unusually long stays in foster care. VDSS currently collects data on each child's length of stay in foster care but does not use this data to systematically identify children with unusually long stays or to inform local boards of social services about the status of children in the custody of the local department of social services. By focusing greater attention on the children who are staying a long time in foster care and who are at high risk of aging out, VDSS could better understand whether local departments' efforts to find a permanent home for each child in their custody are reasonable. (For example, delay would be reasonable if the child is receiving psychiatric treatment needed before a placement change would be safe, but delay would not be reasonable if the child could be adopted within a month but the local department does not have time to process the necessary documentation).

Other states systematically identify and closely monitor children with unusually long stays in foster care. For example, Tennessee identifies children in care over 15 months

without TPR initiated, and their cases are reviewed by state staff. Utah follows a similar process (Case Study 4-1).

CASE STUDY 4-1

Utah reviews the cases of children with lengthy stays in foster care

Every quarter, Utah state staff identify children who have been in foster care for more than 18 months. Staff review each case and discuss the details with the caseworker. Responses are dependent on the circumstances. In some cases, state staff determine that no further action is needed (e.g., the child lives with a foster family that has formally stated an intent to adopt). In other cases, state staff provide technical assistance to caseworkers (e.g., discuss the possibility of guardianships, correct misperceptions about eligibility for disability services) or make referrals to organizations that specialize in finding permanent homes for children in foster care.

VDSS should develop a system to regularly review the cases of children with long stays in foster care. VDSS should send quarterly lists of children in care over three years to regional staff. Regional staff would review these cases and (1) determine whether additional action is needed, (2) provide direct technical assistance to the local department staff, or (3) refer the case to organizations with whom VDSS has existing contracts for assisting local departments in finding relative or adoptive homes for children. After the cases involving the longest stays in care have been addressed, and if capacity exists, the state could follow Utah's approach and incrementally expand the proportion of cases reviewed.

It is important to ensure that local boards of social services and judges are also informed about children with long stays in foster care. The time a child spends in foster care reflects judicial decisions in addition to local department casework. As the entities who are responsible for monitoring and supervising local departments, boards of social services should also be regularly informed about children with lengthy stays in foster care. Data comparing the lengths of stays of children in their jurisdiction to children in other jurisdictions is important context for boards and judges, and can promote accountability.

RECOMMENDATION 20

The Virginia Department of Social Services (VDSS) should develop a list of children who have been in foster care for more than 36 months, to be updated quarterly. Each quarter, VDSS should require regional staff to review each case and authorize them to respond with direct technical assistance or referrals to relevant VDSS contractors, as necessary and appropriate, to minimize unnecessarily lengthy stays in foster care.

RECOMMENDATION 21

The Virginia Department of Social Services should prepare reports each quarter on (i) the percentage of children in each locality in foster care for over 12 months, 24 months, and 36 months, and (ii) the regional and state average lengths of stay in foster care. The reports should be sent at least quarterly to relevant local directors and boards of social services and juvenile and domestic relations courts.

Youth leaving foster care without a permanent family are not being prepared for self-sufficiency

National research and data show that youth who age out of foster care are likely to struggle as young adults. Surveys of these young adults in Virginia reveal high incidence of adverse events and difficulties succeeding. For example, 33 percent of 21-year-olds who aged out of foster care in Virginia were neither employed nor enrolled in an educational program; 27 percent had been homeless in the past two years; and 25 percent had been incarcerated in the past two years (FFY15).

Youth who age out are more likely to lack a family to provide valuable emotional and financial support during the challenges of young adulthood. In acknowledgement of these challenges, federal and state laws require certain independent living services and case management for older children in foster care, who have the highest risk of aging out. To further support youth who have aged out towards a successful transition to adulthood, federal law allows states to receive federal reimbursement for “extended foster care” programs, and Virginia recently implemented this option.

Services and case management to prepare youth for adulthood are not being provided

Local departments are required to take certain basic steps to prepare youth for adulthood. Specifically, Virginia regulations require local departments of social services to “assess the youth’s independent living skills and needs and incorporate the assessment results into the youth’s service plan.” These requirements align with the federal requirement that each youth’s case plan include a description of the services and supports needed to transition to adulthood. The purposes of these case management activities are to comprehensively identify the youth’s needs to be prepared for life after foster care, determine which individualized services and supports would address these needs, and plan for the future.

However, the case management activities intended to prepare youth for adulthood are not consistently occurring for children in foster care in Virginia. For example, for the 12 months prior to March 2018, one-third of youth in foster care ages 14 and older had not received their needs assessments within the time frames recommended by VDSS, and two-thirds did not have their transition plans developed within the time frames required by VDSS guidance (sidebar).

VDSS guidance recommends initial **needs assessments** be conducted for youth 14 and older, and that it be updated at least annually. VDSS guidance also requires a **transition plan** be developed for youth 14 and older, and that it be updated at least annually.

Many youth ages 14 and older in foster care are also not being connected to independent living services, as required by state law. Intended to meet the individualized needs of each child, independent living services may be informal (e.g., foster parent drives the youth to visit community colleges; caseworker opens a savings account for the youth) or formal (e.g., driver's education classes). However, 76 percent of children in foster care age 14 and over had not received *any* independent living services in six months prior to March 2018.

The state could strengthen requirements for case management activities intended to support each youth's transition to adulthood. State regulations require assessments and transition plans but do not specify a time period when they must occur. Annual updates to assessments and plans are important as youth mature and their own needs, interests, and plans for the future change. Because of their importance, the requirements for regular needs assessments and transition plans should be set forth in state regulations.

RECOMMENDATION 22

The State Board of Social Services should promulgate regulations to (i) require that independent living needs assessments and transition plans be conducted within 30 days of a child turning 14 in foster care or entering foster care at age 14 or older; and (ii) require that the needs assessments and transition plans be updated annually.

More accountability is needed for Fostering Futures, program intended to support children who aged out of foster care

Beginning in FY17, Virginia extended foster care until age 21 through the Fostering Futures program. Like traditional foster care, Fostering Futures makes an array of services available to youth and funds a monthly maintenance payment. Unlike in traditional foster care, youth can live independently and receive the monthly payments themselves in certain situations.

Local departments of social services and several other Virginia entities expressed concerns about Fostering Futures not setting participants up for long-term success. A common theme was lack of accountability for youth, resulting in financial dependency on the program and failure to strengthen their ability to be self-sufficient. Local department staff expressed their concerns that some participants use the maintenance payments inappropriately, choose detrimental living situations, and frequently cycle in and out of the program. The only recourse available to local departments is disenrollment, which is difficult given the breadth of eligibility criteria (sidebar), and VDSS's emphasis on keeping youth enrolled. The eligibility criteria are not sufficient on their own to guarantee that youth are engaging in activities and using resources in ways that meet the program's intent.

Like nearly all other states extending federally-reimbursable foster care, Virginia allows youth to be eligible for Fostering Futures if they meet any of the five **federally established eligibility criteria**: (1) enrolled in secondary education, (2) enrolled in post-secondary education, (3) "participating in a program or activity designed to promote, or remove barriers to, employment," (4) employed at least part-time, or (5) medically incapable of the other criteria.

Virginia could better ensure that Fostering Futures promotes independence in youth by adding accountability to the participation criteria. Like 27 other states, Virginia requires an individualized written agreement between the youth and the local departments of social services in order to participate in Fostering Futures. This agreement “specifies the services and resources that will be provided to the youth and the responsibilities of the youth regarding the services.” The template developed by VDSS includes the youth’s agreement to participate in services and support, as listed in the formal foster care plan; to be supervised by the local department of social services; and to comply with program requirements. However, local departments can only disenroll youth for failing to meet the eligibility criteria, and not for violating the written agreement.

To ensure participants are making good-faith efforts to achieve the goals of Fostering Futures, VDSS could explicitly allow local departments to disenroll participants who do not comply with the terms of their Fostering Futures written agreement, preferably after a probationary period, and explicitly list the various conditions under which disenrollment is allowed. This policy would add accountability to the program, while allowing the agreement to reflect the circumstances of individual youth. For example, along with other basic requirements required of all youth, the agreement might include drug testing or treatment for youth with a history of substance abuse. It could include sending a portion of the monthly maintenance payment directly to the youth’s landlord, for youth who lack basic budgeting skills. The written agreements should specify expectations for the local department, such as the particular services to be provided to the youth entering Fostering Futures.

When a youth has been found to be in violation of the written agreement, the local department should formally notify the youth of the repercussions of Fostering Futures disenrollment and support the youth’s efforts to address any barriers to compliance. If the youth remains substantially in violation of the agreement 30 days after the notification, then the local department should follow the existing process for disenrolling youth who fail to meet the continuing eligibility criteria.

RECOMMENDATION 23

The Virginia Department of Social Services should update its guidance on the Fostering Futures program to allow local departments of social services to disenroll youth for substantial violation of the written agreement. This guidance should include information on the types of requirements that the agreements may and may not include.

5 Staffing Capacity for the Delivery of Foster Care Services

SUMMARY Foster care systems must have the capacity to provide effective services to children and families, particularly through a capable workforce. Specifically, foster care systems require sufficient numbers of qualified caseworkers and supervisors to ensure children’s safety and well-being; identify the most appropriate placement for each child; facilitate successful reunification, guardianship, or adoption; and prepare young people for a successful transition to adulthood. Some local departments of social services in Virginia lack sufficient numbers of caseworkers to effectively manage their foster care cases, fulfill their foster care responsibilities, and provide quality services to children and families. As a result, foster care caseloads in some local departments in Virginia exceed what other states consider to be manageable. High rates of vacancies and turnover among caseworkers contribute to high foster care caseloads and limit local departments’ capacity to provide quality services. There are a number of strategies the state could use to address challenges with its foster care workforce, though improving the quality of supervision for caseworkers represents an especially efficient and effective mechanism for doing so.

To help ensure children in foster care are safe, support children’s well-being, identify and place children in the most appropriate foster care placement for their needs, and facilitate the most appropriate path to a permanent home or successful transition to adulthood, foster care systems need sufficient numbers of qualified caseworkers and supervisors who are capable of managing the complex needs of children, birth families, and foster families.

Many of the states whose foster care systems have faced successful class-action litigation have been found to lack—and court ordered to address identified gaps in—staffing capacity to effectively manage foster care cases. Some local departments within Virginia’s foster care system lack the staffing capacity needed to fulfill even basic foster care responsibilities (such as visiting children in care), though the severity of capacity challenges varies throughout the state.

Gaps in community-based services, such as mental and behavioral health services, also limit local departments’ ability to serve children in foster care. (See Appendix D on strategies to address gaps in services.)

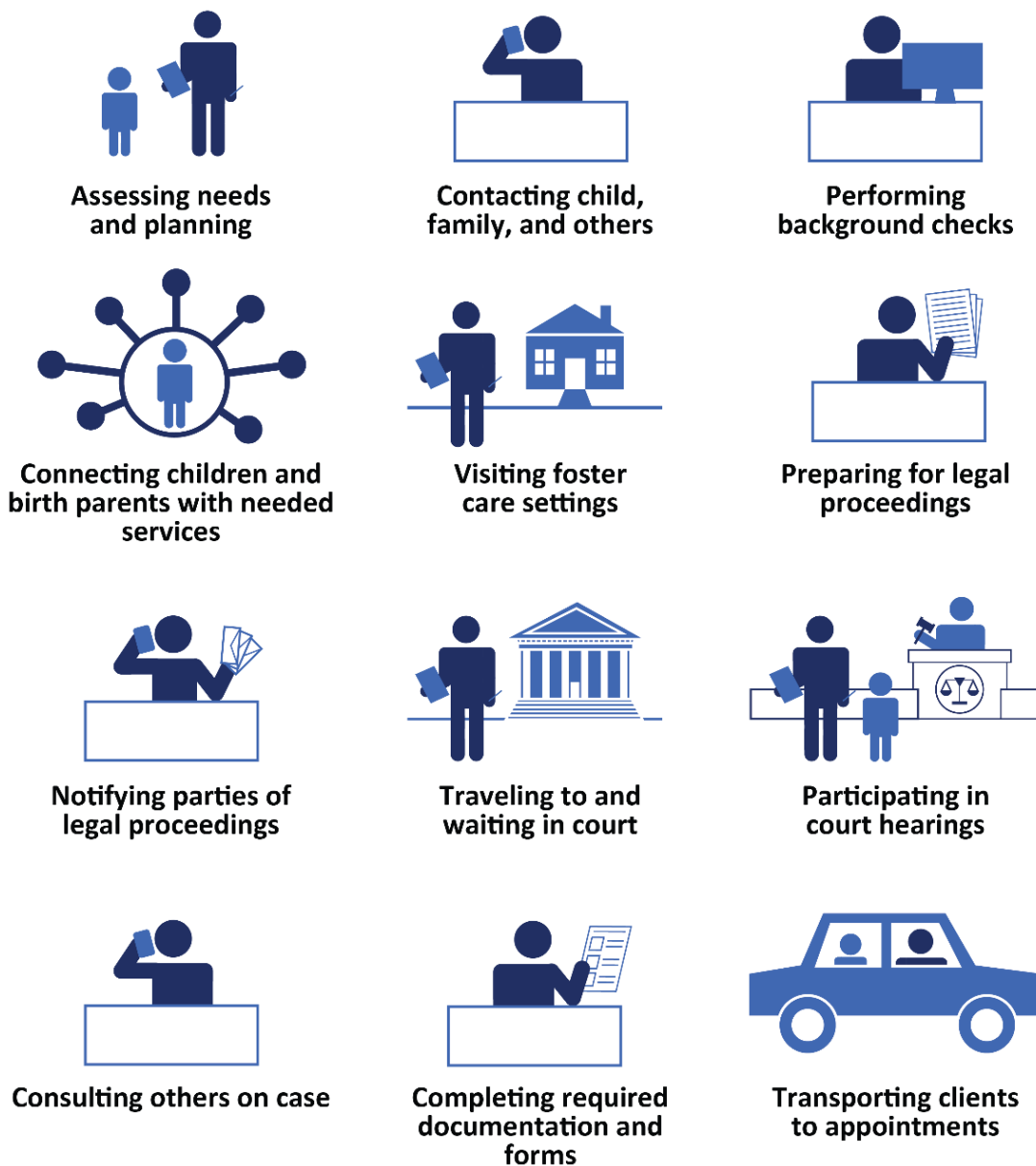
A portion of foster care caseworkers carry very high caseloads, impacting many children

Managing a foster care case well is time-consuming, and the number of cases that any one caseworker can successfully manage is limited. The front-line caseworker is responsible for managing a variety of aspects of each case. This includes visiting each child at least once monthly, communicating regularly with birth parents, foster parents, service providers, and other relevant stakeholders about the child’s case, preparing for

For the purposes of this chapter, “**case**” refers to an **individual child in foster care**.

and attending court hearings, transporting children to their doctor's appointments when foster parents cannot, and documenting extensive notes into Virginia's child welfare system of record (OASIS) about the child's case (Figure 5-1). Positive and timely foster care outcomes largely depend upon caseworkers' ability to do these activities efficiently and effectively.

FIGURE 5-1
There are many activities involved in managing each foster care case



SOURCE: Adapted from a workload measures report prepared for VDSS by Hornby Zeller Associates (2008).

Due to the demands associated with a single case, there are limits to the number of cases an individual caseworker can effectively manage. According to a 2008 analysis of foster care casework in Virginia (sidebar), a full-time foster care caseworker has only enough time to manage the cases of 10 to 13 children at any one time. These findings predate the addition of new time-consuming case management requirements, such as the oversight of psychotropic medications.

High caseloads affect about one-third of children in foster care

In interviews, caseworkers across the state reported that providing quality case management for children in foster care becomes increasingly difficult to accomplish with more than 12 children on their caseload. Virginia caseworkers' perspectives align with the recommended maximum foster care caseload—no more than 12 to 15 children in foster care per worker—established by the national professional organization for child welfare. While 15 percent of Virginia's foster care caseworkers were carrying a caseload that exceeded 15 children per worker in July 2018, the proportion of caseworkers with high caseloads increased between 2016 and 2018 (sidebar).

The number of foster care caseworkers with high caseloads affects a relatively large number of children in foster care (Figure 5-2). Eighty-seven foster care caseworkers were carrying caseloads that exceeded 15 children in July 2018, and these caseworkers were collectively responsible for managing the cases of 1,657 children—31 percent of all children in foster care. A total of 701 children in foster care were sharing a caseworker with at least 19 other children.

Caseworkers with high foster care caseloads in July 2018 were geographically distributed across all five regions of the state and were working for 32 local departments of social services (27 percent) that serve both rural and urban localities. Only five local departments had five or more foster care caseworkers with foster care caseloads that exceeded 15 children. One local department (Richmond City) had nine foster care caseworkers with more than 15 children on each of their caseloads, according to VDSS data.

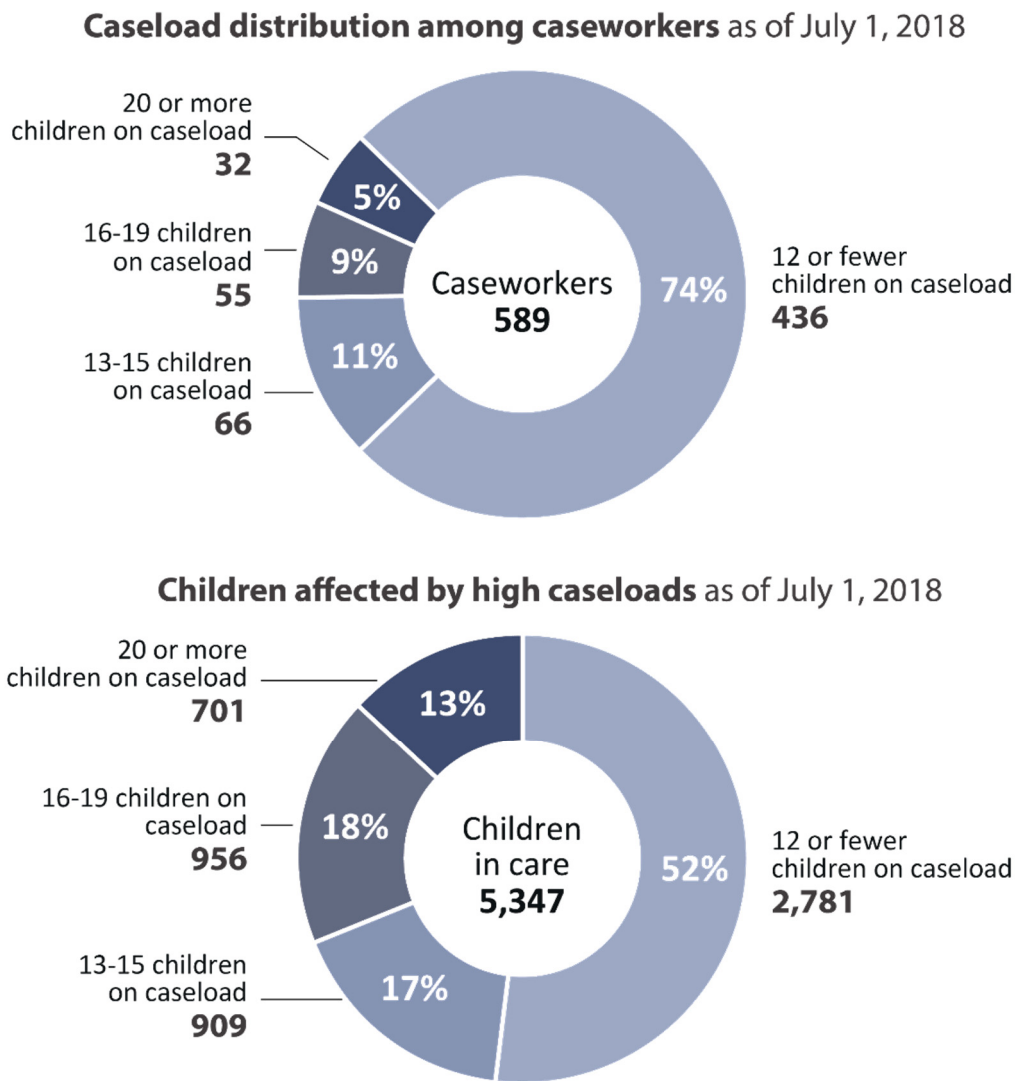
There are several indications that high foster care caseloads are associated with negative experiences and even outcomes for children and caseworkers in Virginia. For example, higher foster care caseloads are associated with lower rates of physical and dental exams, fewer in-home visits by caseworkers, and fewer contacts between children and their birth families each month, according to JLARC analysis of VDSS data.

According to Hornby Zeller (2008), each child and family services worker could spend up to 106.6 hours on case-specific work per month, and each individual foster care case would require between 7.8 and 10.2 hours per month, depending on factors such as permanency goal and case stage. Dividing 106.6 by both numbers yields an upper (13 cases) and lower bound (10 cases) for the estimated number of cases that can be managed within the available time each month.

The share of all caseworkers in Virginia with foster care caseloads exceeding 15 children more than doubled between 2016 and 2018:

July 2016 – 6%
July 2018 – 15%

FIGURE 5-2
Fifteen percent of foster care caseworkers have caseloads exceeding 15 children, and high caseloads affect about one-third of children in foster care



SOURCE: JLARC analysis of July 1, 2018 data from OASIS, Virginia’s foster care system of record.

NOTE: Data represents the number of children assigned to each “primary worker.” Some primary workers are supervisors. Total proportion of caseworkers with more than 15 children on their caseload is 14.8% (5.4% of caseworkers with 20 or more children on their caseload and 9.4% of caseworkers with 16-19 children on their caseload), and top figure does not sum to 100 percent due to rounding.

Caseworker responses to the JLARC survey, as well as interviews with foster care caseworkers, support these findings. Overall, only 32 percent of caseworkers responding to the survey indicated that they felt they have been able to fulfill their case management responsibilities for all or most of the children on their caseload (sidebar). However, respondents with lower caseloads were more likely to indicate they have been able to fulfill their case management responsibilities for “all” or “most” children than respondents with higher caseloads. In interviews, caseworkers consistently reported that they are not able to spend as much time with the children and families on their caseload as they feel they should, particularly at local departments with relatively high average caseloads.

The number of children in foster care assigned to each caseworker is not a complete reflection of their workload. Along with foster care cases, some caseworkers in Virginia also carry other types of cases (such as child protective services investigations and adult protective services) and responsibilities (such as recruitment and training of foster families). The precise extent to which this occurs, and number of children impacted, is unknown.

Virginia does not have a formal standard by which to measure the prevalence of high caseloads

Other states have acknowledged the limits of caseworkers’ ability to manage foster care cases effectively and have established limits—some in statute—on foster care caseloads. For example:

- **Michigan, New Jersey, Utah, Arizona, and Tennessee** have established maximum foster care caseloads as a condition of exiting a consent decree resulting from class-action litigation against their foster care systems. Foster care caseloads are generally not to exceed 15 children per full-time equivalent caseworker in these states, with some exceptions depending on factors such as the caseworker’s level of experience (sidebar).
- **Texas** state legislators granted a \$150 million emergency appropriation in 2016 to support hiring more than 800 additional child protective services staff and foster care caseworkers in order to reduce caseloads. Texas currently faces multiple class-action lawsuits against its child welfare system, with high caseloads (average of 32 children per foster care worker) cited as evidence of systemic harm to children.

Virginia currently lacks a maximum allowable foster care caseload, but establishing a maximum, as other states have done, could have some unintended consequences. For example, if a local department has already reached its maximum allowable foster care caseload for all available foster care workers, it may be less likely to decide to remove children from dangerous situations in their home—because doing so would put the local department out of compliance with the maximum. Additionally, local departments may be more likely to return children to their birth parents before the underlying

The 2018 JLARC survey was administered to staff at all local departments of social services in Virginia. A total of 385 staff with responsibility or oversight of foster care or adoption services responded to the survey. Staff from 110 of the 120 local departments of social services responded. (See Appendix B.)

Caseloads for new foster care caseworkers in Michigan are limited to five children for the first nine weeks of their training and cannot exceed 15 children at any point. New Jersey caseworkers can be responsible for the cases of no more than 10 children in foster care.

“*In one particular case I felt since they were understaffed the department placed the children back with the parent who was not mentally able or ready to have her children and now they are back in care because it was too much for her.... Getting children off a case load isn’t always the best decision.*”

— Foster parent

problems that brought them into foster care are addressed. The challenges recruiting and retaining caseworkers would also make compliance with the maximum extremely difficult in some localities at this time.

OASIS, the foster care system of record in Virginia, uses software from the 1990s and was widely described by staff and supervisors as inefficient and cumbersome. VDSS is in the process of replacing OASIS with a more efficient and user-friendly case management system.

Including a requirement for a caseload *standard* in statute, rather than a maximum, would communicate to local departments the importance of maintaining manageable caseloads and would establish parameters around which the state could assess local departments' performance with respect to their staffing needs, resources, and practices. The standard could be used to provide transparency to local boards of social services and to the state about the status of foster care caseloads and the number of children affected. The standard should be reviewed periodically by VDSS and adjusted as necessary in response to changes in caseworker responsibilities or technological advances, such as the implementation of a more efficient case management system (sidebar).

RECOMMENDATION 24

The General Assembly may wish to consider amending § 63.2-905 of the Code of Virginia to require the Virginia Department of Social Services to (i) establish a caseload standard for foster care caseworkers; (ii) notify relevant local boards of social services when foster care caseworkers carry caseloads that exceed this standard for an extended period of time; and (iii) periodically review and update the caseload standard, as appropriate, to account for changes in the time and work required to effectively manage each foster care case.

Given caseworker responsibilities at this time and standards set in other states, it appears reasonable for the state to set the initial standard at no more than 15 children per worker. Meeting this standard is achievable and would require the hiring of an estimated 87 additional caseworkers across those 32 local departments referenced above. (These departments have at least one caseworker with a caseload exceeding 15.) A standard of no more than 12 children per worker would require an estimated 157 additional caseworkers.

Based on VDSS data, it appears that most local departments that would need additional workers to meet the 15 children per worker standard have a sufficient number of positions eligible for state reimbursement, but that these positions are vacant. Therefore, rather than creating new positions at local departments, the state should emphasize recruiting qualified candidates and retaining them in those positions.

Steps should be taken sooner to provide technical assistance to those local departments that have caseworkers with foster care caseloads exceeding 15 children. Staff at the VDSS central office, along with regional office staff, should communicate with the directors of those local departments to identify the reasons why caseworkers in their departments have such high caseloads and develop a plan of action to ensure that those cases are staffed effectively, receive adequate levels of attention, and are sufficiently managed going forward. This may include relying on VDSS staff or regional

staff to manage some cases temporarily, working with state contractors to more diligently find permanent homes for children in foster care, and evaluating and revising the responsibilities of the caseworkers in those local offices to ensure that cases are effectively staffed and managed. These plans should be communicated to the relevant local boards of social services. VDSS should continually review progress toward the goals of each plan and make continued efforts to assist the local departments with achieving these goals.

RECOMMENDATION 25

The Virginia Department of Social Services (VDSS) should develop plans of action for ensuring that local departments of social services that have foster care caseworkers carrying caseloads in excess of 15 children are able to reduce those caseloads to 15 or fewer without compromising the safety or well-being of children. VDSS should assist local departments, as necessary, in implementing these plans. These plans of action should be developed in collaboration with regional office staff and local department directors and sent to the relevant local boards of social services by June 30, 2019.

Caseworker recruitment and retention challenges are a root cause of high caseloads in Virginia

An inability to recruit and retain sufficient numbers of foster care caseworkers is a common challenge facing child welfare systems nationwide. As is the case with high, difficult-to-manage caseloads, high rates of caseworker vacancies and turnover can have negative consequences for all foster care services and goals, particularly due to the resulting instability and lack of continuity in case management. Local departments in all five regions of the state are facing challenges recruiting and retaining foster care caseworkers, though the severity varies by department.

Some local departments are experiencing substantial difficulties in recruiting and retaining foster care caseworkers

One indication of the difficulties in *recruiting* sufficient numbers of foster care caseworkers (known as family services specialists) is the vacancy rate of these positions. As of June 30, 2018, 18 percent of all non-supervisory family services specialist positions were vacant—a vacancy rate that is consistent with those in preceding years. This is similar to the FY17 vacancy rate for state employees in comparable health and human services occupations (19 percent). However, both rates are higher than the average vacancy rate for all state jobs in FY15-FY17 (13 percent).

The vacancy rate among front-line family services specialists is considerably higher in some local departments than the statewide rate. For example, the vacancy rate among family services specialists at 15 local departments was 35 percent or higher—at least double the statewide rate—as of June 30, 2018, according to an analysis of VDSS data.

Family services specialists include, but are not limited to, foster care caseworkers. (See Appendix B for information about JLARC analysis of local department workforce data.)

The FY17 vacancy rate for non-supervisory employees with bachelor's degrees in certain non-medical human services career groups was calculated using data from the 2017 JLARC report on state employee compensation. (See Appendix B for more information.)

When caseworkers leave their jobs, most appear to leave the family services field entirely. Only 7% of all family services specialists who left their local departments between 2014 and 2018 transferred to another department.

In interviews, many directors and supervisors of local departments of social services described challenges they were experiencing in recruiting qualified foster care caseworkers. For example, of the 155 local department supervisors and directors who responded to the JLARC survey, 36 percent indicated their department has had *substantial difficulty* and 35 percent indicated their department has had *moderate difficulty* recruiting foster care caseworkers over the past 12 months. The most common reasons for recruitment difficulties identified in both interviews and survey results are a lack of qualified candidates and inadequate compensation.

Similarly, local departments reported challenges with their ability to *retain* qualified foster care caseworkers compared to other types of local social services staff, and retention challenges appear particularly pronounced among entry-level foster care staff. For example, while average annual turnover from 2014 to 2018 among *all* non-supervisory local department of social services staff was 17 percent, turnover among *entry-level family services specialists* during this period was 29 percent.

Of respondents to JLARC's survey of local department staff who carry foster care caseloads, 21 percent said that they were considering leaving their jobs in the next 12 months. Seventy-six percent of those planning to leave their jobs planned to do so to take another job. Fifty-eight percent said that they were *very strongly* considering leaving. The most common factors contributing to caseworker retention challenges, according to interviews with local department of social services staff and survey responses, are inadequate compensation, the challenging nature of the work, and high workloads.

“ [Caseworker] turnover is horrendously high. There are people coming into cases who don't give you the information because they don't know it. ”

— Judge
Juvenile and domestic
relations court

According to stakeholders in Virginia who work frequently with local departments of social services, high caseloads, caseworker vacancies, and caseworker turnover are having noticeable and substantial adverse impacts on the quality of case management and services that children in foster care and their families are receiving. Stakeholders from around the state—including juvenile and domestic relations court judges, court-appointed special advocates, and former foster youth—consistently voiced this concern. Several named the front-line foster care workforce as the single most important area of focus for improving Virginia's foster care system.

State could take immediate and longer-term steps to assist with recruitment and retention of foster care caseworkers

It is unlikely that Virginia can substantially improve the case management provided to children in foster care without addressing caseworker recruitment and retention challenges. The state can take immediate steps to begin to address recruitment and retention challenges while also working toward longer-term solutions. These steps are likely to require additional state and local resources, especially given the role of compensation in recruitment and retention challenges.

Fund financial incentives for caseworker recruitment and retention

Several near-term options exist to improve recruitment and retention of foster care caseworkers in Virginia. For example, the General Assembly could appropriate dedicated funds that local departments could use exclusively to hire and retain foster care caseworkers, such as for hiring or retention bonuses in especially difficult-to-staff departments. The state could also pay a higher proportion of the staffing costs for any departments that can demonstrate that the costs associated with their local share of funding positions prevent them from hiring new caseworkers.

Another near-term step the state could take to improve the recruitment and retention of foster care caseworkers is to increase the number of students pursuing degrees in social work who can participate in Virginia's child welfare stipend program. The program, which is designed to increase the number of foster care and adoption caseworkers at local departments of social services, covers up to \$10,000 per academic year. In exchange for receiving the stipend, students work for a local department of social services for one full calendar year for each academic year that they received the stipend.

Over the long term, the state could also consider expanding recruitment- and retention-focused programs and policies it has established for state employees, such as student loan forgiveness, to the foster care workforce. The state could plan for and fund regular raises for foster care caseworkers to improve retention. JLARC's 2017 study of total compensation for state employees found that employees who received regular raises, regardless of amount, were significantly less likely to leave their jobs than employees who did not. Any of these approaches should be targeted to local departments with the greatest needs.

The General Assembly could direct the Virginia Department of Social Services to identify those departments with the greatest need for assistance with recruiting and retaining qualified foster care caseworkers and to recommend solutions, such as those identified above, for addressing barriers to recruitment and retention in these departments. VDSS could also be directed to identify the funding necessary to implement each recommended solution and any federal funding, such as Title IV-E funding, that could be leveraged if the General Assembly chose to implement one or more of the recommended solutions.

RECOMMENDATION 26

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services (VDSS) to (i) identify local departments of social services in greatest need of assistance with recruiting and retaining foster care caseworkers; (ii) recommend solutions for the specific barriers to caseworker recruitment and retention; and (iii) identify additional funding needs, and federal funding that could be leveraged, to implement the recommendations. VDSS should report its findings and recommendations to the House Appropriations and Senate Finance Committees no later than November 1, 2019.

Local positions are currently funded using a combination of federal, state, and local dollars. In general, localities are responsible for a flat 15% of their administrative costs, including staff salaries, for direct service areas such as foster care.

Improve supervision for foster care caseworkers

Improving the quality of supervision for foster care caseworkers represents another key strategy for addressing workforce problems that can be implemented both immediately and in the longer term. Supervisors are directly responsible for ensuring that foster care caseworkers fulfill their responsibilities and provide effective case management services to children and families. In addition, supervisors can help caseworkers grow in their knowledge and skills and provide continuity to children and families when caseworker turnover occurs. Effective supervision is especially important for new workers and is among the most important factors for the retention of foster care caseworkers, according to national research and subject-matter experts.

“ I have no time to read case records, unless we have a problem and feel there are too many cases to handle per worker. I feel that my time is being stretched too much; too much multi-tasking is not turning out quality work for anyone. ”

— Supervisor
Local department of
social services

Effective supervision of foster care workers requires several components. According to the Children’s Bureau, foster care supervisors must have the time and skills to oversee caseworkers’ provision of services to children and families; develop the knowledge and skills of the caseworkers who report to them; and maintain connections with service providers and other key community partners. Specific to overseeing caseworkers’ provision of services and helping them improve their skills, supervisors must be able to have regular, structured supervision with each of their direct reports.

There are limits to the number of direct reports each supervisor can effectively support and supervise, and supervisors within Virginia’s foster care system are reporting problems with their capacity to carry out their supervisory responsibilities. Of the foster care supervisors who responded to the JLARC survey, 47 percent *disagreed* that they have sufficient time to provide effective guidance and support to their foster care staff, and 40 percent *disagreed* that they have sufficient time to effectively supervise each of the foster care staff that reports to them.

Similarly, foster care caseworkers in Virginia are reporting concerns with the supervision they are receiving at their local department of social services. In a 2018 survey of local staff conducted by VDSS, fewer than half of foster care caseworkers in Virginia (44 percent) reported receiving planned, one-on-one supervision (such as meetings) with their direct supervisor *at least twice per month*, despite the importance of frequent, structured supervision for monitoring case progress and ensuring quality services. Further, 16 percent of caseworkers reported being supervised in this way *less than once per month*.

A likely underlying cause of supervisors’ lack of time to fulfill their jobs effectively, according to survey responses and reports from agency case reviews conducted by VDSS regional staff, is that many supervisors in Virginia’s social services system have workloads that exceed manageable levels, whether because they oversee multiple service areas, carry their own foster care caseloads, or have high numbers of direct reports.

A number of other states, including those whose child welfare systems have been subject to class-action litigation, have formally adopted maximum supervisory spans of

control within their foster care systems to improve the likelihood that foster care caseworkers receive sufficient supervision (sidebar). According to the JLARC survey, staff of 58 local departments reported average spans of control above five direct reports per supervisor. Staff of 12 local departments reported spans of control higher than 12. Because Virginia does not have a standard for supervisory spans of control, and given the importance of effective supervision to quality case management and caseworker retention, the General Assembly could direct VDSS to study the feasibility and costs of establishing such a standard in Virginia.

RECOMMENDATION 27

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services (VDSS) to review the feasibility and costs of establishing a standard for supervisory spans of control within Virginia's foster care system. VDSS should report its findings to the House Appropriations and Senate Finance Committees no later than November 1, 2020.

Improve caseworker training

Improving initial and ongoing training for foster care caseworkers is another mechanism to address problems with staffing capacity in Virginia's foster care system in the longer term. Effective caseworker onboarding, training, and skill development can improve the retention of foster care workers, according to Casey Family Programs. Numerous Virginia stakeholders observed that placing insufficiently trained new hires in a role that is as inherently challenging as foster care casework contributes to high turnover. Other states such as Utah, Michigan, New Jersey, and Tennessee have been required to improve the quality of training for their foster care workforce as a condition of exiting class-action litigation against their foster care systems.

Problems with training for foster care caseworkers in Virginia have been identified by multiple sources since at least 2004. Each of the three federal reviews of Virginia's foster care system conducted by the Children's Bureau (in 2004, 2009, and 2017) found deficiencies with caseworker training in Virginia; federal reviewers noted in the most recent review that "new staff do not routinely participate" in required initial trainings. A recent external evaluation of family services staff training at local departments also found problems with VDSS's current training, including the need for more effective on-the-job training for new workers.

In interviews, foster care staff and supervisors consistently indicated that mandatory trainings provided by VDSS are difficult to access or lacking the "hands-on," practical applications for new caseworkers. In response to the JLARC survey, 25 percent of caseworkers indicated that they do *not* feel they have received sufficient guidance and training. Twenty-three percent of responding supervisors *disagreed* with the statement that most of the caseworkers under their supervision have the knowledge and skills necessary to effectively manage their cases.

States that have adopted **maximum supervisory spans of control** within their foster care systems include **Tennessee, New Jersey, and Delaware**. The national professional organization for child welfare recommends that each supervisor of foster care services directly oversee no more than five caseworkers. State maximums, when they are in place, generally align with this guidance.

“The training is dismal.”

— Director
Local department of
social services

In-depth evaluation of VDSS’s training model for local family services staff was conducted by the Butler Institute for Families at the University of Denver in 2017. The resulting report included recommendations for improvements to training.

VDSS is currently taking steps to determine how to implement recommendations from a recent in-depth evaluation and report on VDSS’s training model (sidebar). These recommendations align with national research on effective training for foster care caseworkers and approaches used in other states:

- Use trainers with recent or current field or subject-matter experience;
- Use an intensive “academy” approach to training, such as providing all training within a six-week period;
- Use hybrid learning strategies that include both in-person and web-based training;
- Increase the frequency and depth of ongoing training; and
- Implement training strategies that include practical feedback and coaching rather than lecture-based classroom learning.

If implemented, these recommendations would represent a substantial shift from VDSS’s current training model, for which caseworkers are expected to participate in class-based, mostly in-person training over a two-year period.

Monitor staffing capacity on an ongoing basis

In the longer term, Virginia could follow other states’ approaches to evaluating and improving the capacity of foster care caseworkers and supervisors to fulfill their responsibilities to children and families. Specifically, the General Assembly could require VDSS to monitor and address problems with caseworker and supervisor capacity on an ongoing basis. Staff of VDSS’s Research and Planning Division could assist with the data analyses needed to monitor caseworker and supervisor capacity and to inform targeted interventions by VDSS. Through the monitoring process, VDSS could also identify ways that caseworkers’ and supervisors’ time could be used more efficiently and effectively.

RECOMMENDATION 28

The Virginia Department of Social Services should monitor foster care staffing problems on an ongoing basis and assist local departments in addressing these problems, as necessary. For the purposes of targeted interventions and support, the following should be monitored, at a minimum: (i) competencies and compensation of caseworkers and supervisors; (ii) vacancy and turnover rates among caseworkers and supervisors; (iii) foster care caseloads; (iv) supervisory spans of control; and (v) specific opportunities to use caseworkers’ and supervisors’ time more efficiently and effectively.

6 State Supervision of Virginia’s Foster Care System

SUMMARY The long-standing deficiencies in Virginia’s foster care system will persist without a more engaged Virginia Department of Social Services (VDSS)—the statutorily assigned supervisor of the foster care system. Although the Code of Virginia requires the commissioner of social services and VDSS to ensure all laws and regulations pertaining to foster care are followed, evidence indicates that VDSS has not held local departments to account, with potentially detrimental impacts to children and their families. To begin to address long-standing problems and ensure children in foster care receive the safeguards and services they are entitled to by law, VDSS would need more effective and systematic strategies to identify problems, along with the responsibility and authority to address problems directly when local departments are unwilling or unable to address them. Increased engagement by VDSS in identifying and resolving problems in Virginia’s foster care system would be a substantial shift, and clarity on VDSS’s responsibilities and authority is needed to ensure that it can be as engaged and proactive in its supervision as necessary.

The long-standing nature of some of the problems in Virginia’s foster care system points to the need for changes in how systemic or serious problems are identified and resolved. The state’s ability to make significant improvements to the quality of services for children in foster care will be limited until meaningful and lasting improvements are made to the role of the Virginia Department of Social Services (VDSS)—the statutorily assigned supervisory agency of Virginia’s foster care system. Specifically, VDSS needs to be responsible for and capable of (1) identifying problems within the foster care system, and their root causes, effectively and in a targeted and timely manner, and (2) intervening and resolving identified problems on behalf of children in foster care when local departments are unable or unwilling to address them.

VDSS lacks a reliable and comprehensive way to identify problems in Virginia’s foster care system

VDSS’s current processes for identifying problems in Virginia’s foster care system are not as structured, reliable, or comprehensive as they need to be to assess the quality of services provided to children in foster care and their families by local departments of social services. Without increased visibility into the consistency, quality, and effectiveness of local departments’ practices, VDSS’s effectiveness as a supervisory agency will continue to be lacking.

Two mechanisms used by other states—periodic, comprehensive reviews of individual foster care cases and a child welfare ombudsman—could help VDSS systematically

and comprehensively identify the extent, causes, and locations of specific and serious problems in Virginia's foster care system. These mechanisms enable states to use strategic, targeted interventions when a local office is unable or unwilling to address identified problems.

Virginia, like other states, has also been subject to periodic federal Child and Family Services Reviews (CFSRs). These reviews have been conducted in Virginia in 2004, 2009, and 2017, and are intended to ensure the state's practices are in conformity with Social Security Act requirements. In 2017, 44 foster care cases were reviewed in Virginia. The 2017 review found that Virginia was not in substantial conformity with any of the seven outcome measures related to safety, permanency, or well-being.

VDSS lacks an effective process to identify problems with the quality of services for children in foster care

In 2017, VDSS increased its focus on identifying problems with the delivery of foster care services, through two sets of case reviews—one focused on whether certain child welfare practices, such as caseworker monthly visits, are occurring (agency case reviews) and the other focused on compliance with certain federal requirements and use of Title IV-E funds (compliance reviews).

These efforts by VDSS represent progress in understanding the problems in Virginia's foster care system, but they are not as structured, comprehensive, or reliable as they need to be, and there is inadequate follow-through from VDSS staff on these efforts. For example, although the current agency case review process has yielded important information on the foster care practices of some local departments, there are some notable shortcomings in how VDSS uses the information that is collected. For example,

- Beyond communicating the results of the reviews to local departments, there is no standard protocol for how VDSS staff should respond, such as by notifying the director of child and family services or the VDSS commissioner, when serious problems are identified;
- there are no criteria for when a corrective action plan should be developed to ensure the local departments correct identified problems or whether additional follow-up should occur by regional consultants to ensure problems are resolved; and
- VDSS staff at the central office in Richmond have not conducted a meaningful review of the results of the agency case reviews to identify serious or system-wide problems, even though the information is readily available to central office staff.

“*The lack of a fully implemented quality assurance system prevents [VDSS] from monitoring and ensuring consistency in practice across local departments of social services.*”

— **Federal Child and Family Services Review (2009)**

Virginia's current agency case reviews are less comprehensive than those used in other states. Other states have established, and in some cases codified, more structured and comprehensive reviews of the conditions of children in their foster care system, the quality of services, and the root causes of any identified problems. These reviews, often called qualitative service reviews, involve not only a review of case documentation (as is the case with VDSS's current ongoing reviews), but also interviews with key stakeholders in each case, including the child, family members, non-family caregivers, and others, such as teachers. Local offices, counties, or regions that underperform on these reviews are typically required to develop and implement improvement plans.

Other states use systematic qualitative service reviews to identify specific problems with local practices. Qualitative service reviews allow for a comprehensive understanding of the actual quality of services provided, and the process allows caseworkers, supervisors, and local offices to receive relevant and meaningful feedback and technical assistance to inform their practices and supervision. States that have institutionalized these review and feedback processes have been able to improve the functioning of their foster care systems (Case Study 5-1).

CASE STUDY 5-1

Utah's use of qualitative service reviews

Utah has been conducting qualitative service reviews for about 20 years, after a class-action lawsuit was brought against the state because of problems in its child welfare system. The state uses the information gathered through these reviews to systematically identify and address problematic practices across the state or, where necessary, at particular local offices. Utah was able to exit court oversight in 2008 because of its demonstrated improvements to its child welfare system. Utah has continued its qualitative service reviews because of their usefulness in understanding and improving local practices.

Demonstrated improvements: Through its qualitative service review and feedback process, Utah has been able to demonstrate improvements to the performance of its child welfare system and child outcomes. For example, between 2000 and 2016, the proportion of cases that used desired child welfare practices increased from 40 percent of cases reviewed to 85 percent. Similarly, favorable Child Status scores, which include measures of children's safety, stability, well-being, family connections, satisfaction, and prospects for permanency, increased from about 78 percent of cases with an acceptable rating to 87 percent of cases.

Local, regional, and state-level involvement: As part of the qualitative service review process, Utah staff assess not only whether problems exist, but also their root causes—such as high caseloads, inadequate training, or barriers outside of the control of the local social services office. When problems can be addressed by the local or regional social services office, an action plan is created and implemented to correct them. When problems cannot be addressed by the regional or local office, Utah's state Office of Quality and Design elevates the issue to the appropriate division within the Department of Human Services or to another entity.

Innovative staffing strategy: Utah reviewers complete about 150 in-depth case reviews per year, including about 1,500 interviews. Utah is able to accomplish its qualitative service reviews with five full-time state-level staff and a pool of about 50 certified reviewers, who are often from child welfare offices in different regions and who receive \$100 stipends for each qualitative service review they complete. According to state staff, Utah has had no difficulty recruiting and retaining certified reviewers and has a waiting list of individuals who would like become certified.

Model for other states: Utah has been identified by subject-matter experts as a leader in its efforts to review the quality of services provided to children and families. According to Utah staff, officials from other states, including California, Pennsylvania, Florida, Tennessee, Colorado, and South Dakota, have visited Utah to learn from its approach to qualitative service reviews.

“*There needs to be better oversight, but more supportive and collaborative, with a mindset of ‘let us help you’ rather than the current punitive way. We are supervised from a place of reactivity now.*”

— Director

Local department of
social services

States have developed efficient ways to build the capacity to conduct qualitative service reviews without hiring many staff. Like Utah, New Jersey and Pennsylvania use pools of certified reviewers who are available to review cases as needed.

Virginia could build upon its existing agency case review process to develop and implement a more structured, comprehensive quality assurance review process to monitor and improve the quality of services provided to children in the foster care system. Doing so would require planning, including the development of a quality assurance review protocol, a pool of certified reviewers, and a sustained commitment to its full and continual implementation, according to staff from Utah and subject-matter experts.

VDSS could establish a unit to coordinate and conduct these ongoing reviews for each local department at least once every two years, and implement a statewide quality assurance review process in phases. A phased-in quality assurance review process could focus first on implementing reviews at those departments that are at the greatest risk of providing inadequate services to children in foster care, such as those with the highest caseloads, greatest proportions of children in congregate care, or those with the largest proportions of children who have been in foster care for more than 36 months. VDSS could eliminate the duplication between the two reviews they currently conduct in order to make some existing staff resources available for conducting the more comprehensive quality assurance reviews.

In the near term, VDSS and its regional offices should thoroughly examine the results of the local agency case reviews that have been conducted to date and communicate any serious problems, particularly those related to the safety of children in foster care, to relevant directors and boards of social services. (See Chapter 2 for this recommendation.) VDSS should continue to conduct agency case reviews, communicate their

results to the local departments and boards, and work to resolve any identified problems, until a more comprehensive statewide quality assurance review process can be phased in.

RECOMMENDATION 29

The General Assembly may wish to consider amending § 63.2-900 of the Code of Virginia to authorize and direct the Virginia Department of Social Services to (i) annually conduct structured reviews of a representative sample of foster care cases to ensure that local departments of social services are complying with state and federal laws and policies, and are implementing effective practices; (ii) communicate to the relevant local departments and boards of social services problems and areas for improvement that are identified through these reviews; (iii) work with local departments to develop strategies to resolve all identified problems; (iv) monitor the performance of these departments to ensure problems are satisfactorily resolved; and (v) report annually on the results of the reviews to the Virginia Board for Social Services.

RECOMMENDATION 30

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services (VDSS) to develop a plan to phase in structured, comprehensive annual quality assurance reviews for a representative sample of foster care cases and report findings to the Virginia Board for Social Services. The plan should describe (i) the design of a comprehensive quality assurance review process; (ii) strategies for recruiting and training qualified reviewers; (iii) the role of VDSS central office staff in reviewing and acting on the findings of quality assurance reviews; and (iv) criteria for phasing in quality assurance reviews, prioritizing those departments that are, according to evidence, at the highest risk for providing inadequate services. The plan should be submitted to the House Appropriations and Senate Finance Committees by June 30, 2020.

RECOMMENDATION 31

The General Assembly may wish to consider including language in the Appropriation Act directing the Virginia Department of Social Services to (i) continue conducting agency case reviews at all local departments of social services as a more structured, comprehensive quality assurance review process is phased in; (ii) require central office staff to examine the results of agency case reviews and continue to communicate all identified problems to the relevant local departments; (iii) communicate such concerns to the relevant boards of social services; (iv) work with local departments to develop strategies to resolve all identified problems; and (v) monitor local departments' efforts to resolve all identified problems.

A confidential reporting mechanism would help VDSS identify problems in the foster care system

Not all problems can be identified through an improved process for systematically reviewing the quality of services provided to children and families. The state could supplement these reviews with a mechanism for receiving reports from the public about potential problems. Other states have instituted confidential reporting mechanisms to allow the public to report specific concerns with respect to the operation of child welfare programs, but no such reporting mechanism exists in Virginia.

During JLARC's study, foster parents and foster care service providers and other important stakeholders in Virginia's foster care system expressed a reluctance to submit complaints or to report problems because they feared retribution by local departments of social services or the Virginia Department of Social Services. The following statements made by three foster parents working with three different department of social services demonstrate such perceptions:

“Get officials into [the local department] to investigate their practices and cases. We are not the only family—by far—with major issues with the way they treat the children. I cannot provide my contact information as much as I'd like to—I love my foster child way too much and cannot take the risk. They will remove and threaten to remove the child just because they can—it's about control and foster parents are treated like the enemy instead of collaborators. I will voice my concerns once the child is safe away from [the local department] and has reached permanency.”

“Frequently foster parents are given no voice and their opinions are not heard. If they disagree with [the local department], they can have their children taken from them like we did. There needs to be a safe way for foster parents to share their opinions and let their voice be heard without fear of losing their children.”

“If you share my story my agency will know who I am. Please do not share my information with my agency. I just want our foster care world to be a better place for the children it serves.”

At least 14 states have established child welfare ombudsman offices to receive and investigate confidential complaints regarding action, inaction, or decisions by public agencies that may adversely affect the safety and well-being of children in the child welfare system. In some states, these offices are tasked with providing annual reports and recommendations to the legislature or staff in the executive branch for changes needed to improve services and outcomes for children and their families.

Of the 14 states with child welfare ombudsman offices, 11 have independent agencies and three have entities operating within the agency responsible for child welfare but not within the division providing child welfare services.

To create a mechanism for reporting concerns about treatment of children within Virginia's foster care system that the state may otherwise not be aware of, the General Assembly could establish an independent child welfare ombudsman office under the

Secretary of Health and Human Resources. This office could be responsible for receiving and responding to complaints regarding the services provided to children in foster care, reporting annually on its responses to complaints and trends in complaints, and providing recommendations to the governor and General Assembly to address recurring or systemic problems. In investigating complaints, the child welfare ombudsman office should solicit the perspectives, as appropriate, of directors of local court-appointed special advocate programs and staff of the state's Court Appointed Special Advocate program.

RECOMMENDATION 32

The General Assembly may wish to consider amending Chapter 2 of Title 63.2 of the Code of Virginia to create an independent office of child welfare ombudsman, which would report directly to the Secretary of Health and Human Resource and be responsible for (i) receiving and responding to complaints related to the safety and well-being of children in foster care; (ii) reporting annually to the governor, the General Assembly, and the Court Appointed Special Advocate program at the Department of Criminal Justice Services on the complaints received and actions taken; and (iii) making recommendations to improve services and outcomes for children in foster care and their families.

“ Without specific statutory direction about what supervision should entail, VDSS’s interpretation of its responsibilities has become more narrow over time. ”

— Operation and Performance of Virginia’s Social Services System (JLARC, 2005)

VDSS has not proactively exercised its statutory authority to resolve problems in foster care system

Throughout this review, staff from all levels of the foster care system (local, regional, and state), as well as key stakeholders (e.g., foster parents, providers, court appointed special advocates, and judges) expressed concerns about the lack of accountability in Virginia's foster care system and the impact this has on children and families who are served by the system. The absence of effective supervision and accountability is evident in the repeated concerns identified in state and federal reviews of Virginia's foster care system since 2004 that remain unaddressed.

VDSS has historically narrowly interpreted its supervisory responsibilities for the foster care system and needs more legislative direction

Although VDSS is responsible for supervising the state's foster care system and has legal authority to intervene when necessary and appropriate, VDSS staff and leadership have historically perceived that their authority is limited to simply *asking* local departments of social services to address identified problems, with no recourse if local department leadership ignores their request. The current commissioner of VDSS has indicated a willingness and desire to become more involved in addressing local problems, but VDSS's responsibilities and authorities need to be more clearly established

The commissioner of VDSS has the authority to (i) remove any staff employed by a local department, including a director, (ii) direct local boards of social services to remove children from unsafe foster care placements, and (iii) intervene when local departments fail to provide foster care services. However, VDSS staff could not recall an instance where any of these authorities had ever been exercised.

in state law. This would enable the General Assembly to hold VDSS and its commissioners accountable for fulfilling their supervisory responsibilities and ensuring the system functions well for children and their families.

The problem—the narrow interpretation of the role of VDSS—is not new, and, as stated in a 2005 JLARC report, does not support a functional state-supervised, locally administered system:

Numerous State DSS division directors and staff routinely noted in interviews that the locally-administered nature of the system gives the State DSS limited authority or control over a local department. Such a narrow interpretation of supervisory responsibilities and support of local departments is not necessarily in the collective interest of the system, and in the long-term places the State in a passive, reactive position. (*Operation and Performance of Virginia's Social Services System*, JLARC, 2005)

The 2005 report included a recommendation that more specific supervisory responsibilities be added to statute, but the recommendation was not implemented.

This narrow interpretation has led to a hands-off approach to supervision over the foster care system by VDSS, and one stark example of this hands-off approach is a lack of awareness among staff at VDSS of the circumstances surrounding the deaths of children in foster care. Although VDSS policy requires local departments to submit detailed reports on the circumstances of such deaths when they occur (whether from natural or unnatural causes), VDSS has not actively enforced this policy. For example, of the 12 deaths that VDSS data indicates occurred while a child was in foster care between FY16 and FY18, VDSS staff could only produce one (partially completed) report in response to a JLARC request. (See Chapter 2, Recommendation 3, to create a statewide position to monitor the well-being and safety of children in foster care; this recommendation would also ensure greater attention to the circumstances of children's deaths in foster care.)

In April 2018, the commissioner of VDSS and the State Board of Social Services signaled their intention to increase their involvement in addressing problems among local departments of social services by proposing an emergency regulation. The emergency regulation would authorize the commissioner to temporarily direct and oversee the services in a county or city that fails, refuses, or is unable to provide social services in accordance with state law. As of November 2018, the proposed regulation was under review by the governor's office.

While supervision and accountability are inherently more challenging in a state-supervised, locally administered social services system, North Carolina—another state with a state-supervised, locally administered social services system—has recently added clarity to the circumstances under which state intervention in the child welfare system at the local level will occur to better ensure state-level accountability (Case Study 5-2).

CASE STUDY 5-2

North Carolina's 2017 social services reforms

In 2017, after reports were released that showed that children were not being served well by North Carolina's child welfare system, and highlighted other problems with other social services functions in the state, North Carolina enacted legislation that explicitly defined the process by which the state holds local agencies accountable for providing effective services to clients. The legislation includes provisions for ensuring that the state has the capacity to implement these changes.

Escalating interventions: The new process includes the use of performance agreements, technical assistance and direct staff support provided by the state, and corrective action plans if performance is not being met. When performance continues to be poor, the state is authorized to assume control of the service (or the entire department) and provide (or contract with private providers to provide) the services to children and families in the locality.

Financial disincentives: Counties are required to continue paying for services, and services are returned to local control only after the state determines that problems have been addressed.

Like North Carolina, Virginia state law could more clearly define the types and levels of failure that warrant VDSS intervention. For example, although the commissioner of VDSS has the statutory authority and responsibility to intervene when local departments of social services fail to provide services to those who need their assistance, current state law is not clear about the *circumstances* under which VDSS should intervene. While the board and commissioner are required to intervene when a locality "fails or refuses to provide" social services, including foster care services, to local residents (§ 63.2-408), a *complete* failure to provide services is less likely than a failure to provide *certain* services or a failure to provide services to *some children*.

In addition to assigning VDSS specific responsibilities for supervising Virginia's foster care system, the General Assembly could specify in statute the circumstances under which VDSS is expected to intervene at the local department level to resolve shortcomings in the provision of services identified in the foster care system. Similar to North Carolina, VDSS could be required to establish annual performance agreements with each local department of social services and monitor local departments' performance on a continuing basis in order to identify departments that may require greater state assistance or temporary intervention. In circumstances in which local departments are not meeting agreed-upon performance expectations, VDSS could require local departments to develop corrective action plans.

If shortcomings with the delivery of foster care services continue to persist, the Commissioner of Social Services could be authorized and required to assume control over

delivery of the deficient services and all existing staffing and financial resources assigned to the services, and maintain control over the services until the shortcomings have been resolved. Circumstances that necessitate intervention could include evidence of child maltreatment, placement of children in potentially unsafe settings, evidence that children are not receiving needed physical or mental health services, infrequent caseworker visits with children, or high rates of congregate care placements. In circumstances in which interventions occur, local departments could be required to continue supporting the services at existing funding levels to offset the additional costs incurred by the state for its efforts.

RECOMMENDATION 33

The General Assembly may wish to consider amending § 63.2-900 of the Code of Virginia to specify the conditions under which the Virginia Department of Social Services (VDSS) should intervene at local departments of social services to address shortcomings with the delivery of foster care services and to expressly authorize VDSS action to ensure that local departments comply with state foster care laws and regulations.

VDSS does not have enough regional staff to identify and address problems

If VDSS assumes greater responsibility for supervising Virginia's foster care system and intervening when necessary, the state will likely need some additional regional staff to support this increased engagement. Regional staff are a critical component of an effective state-supervised, locally administered social services system, as they help to translate state policy into local practices, provide technical feedback to address problems identified in qualitative services reviews, and allow for more day-to-day oversight of local departments than is possible at state offices in Richmond. The importance of regional staff for effective supervision was identified in prior JLARC reports (1981 and 2005) on Virginia's social services system.

Currently there are only two staff who specialize in foster care or adoption at each of VDSS's five regional offices—an average of one regional staff person per 530 children in foster care. VDS regional staff are responsible for providing oversight, guidance, technical assistance, and training to support local implementation of state policy, as well as reviewing a sample of case files at each agency at least once per year.

The exact number of additional regional staff needed to ensure effective supervision, as well as their exact responsibilities and minimum qualifications, is unclear. VDSS could be directed to develop a plan that leverages existing state and federal resources to staff its regional offices in order to facilitate effective supervision of Virginia's foster care system and proactive involvement by the state when warranted.

RECOMMENDATION 34

The General Assembly may wish to consider including language in the Appropriation Act requiring the Virginia Department of Social Services to develop a plan for staffing its regional offices in such a way that facilitates effective state supervision of the delivery of foster care services by local departments of social services. The plan should be submitted to the House Appropriations and Senate Finance Committees no later than November 1, 2020.

Appendix A: Study mandate

Resolution of the Joint Legislative Audit and Review Commission directing staff to review Virginia's Foster Care System

Authorized by the Commission on September 11, 2017

WHEREAS, nearly 5,000 of Virginia's children and youth are in foster care placements; and

WHEREAS, Virginia's foster care caseloads have recently begun to increase after a 10-year decline, but for undetermined reasons; and

WHEREAS, caseload increases in other states have been tied to accelerating rates of opioid abuse, and opioid abuse has also risen quickly in Virginia; and

WHEREAS, Virginia ranks low (49th) in the proportion of foster care youth who are adopted, even though the number of adoptions has increased; and

WHEREAS, foster care youth who are never adopted face greater lifetime challenges, and the proportion of these youth in Virginia is higher than in many other states; and WHEREAS, adoption and foster care programs are administered by the Virginia Department of Social Services and its 121 local departments of social services (LDSS); and

WHEREAS, youth in foster care are mandated recipients of services through the Children's Services Act (CSA), which is administered at the state level by the Office of Comprehensive Services and at the local level by LDSS; and

WHEREAS, concern has been expressed about the provision of services for those children and youth with the most complex needs, many of whom are likely recipients of CSA services; and

WHEREAS, the General Assembly appropriates more than \$200 million for "Child Welfare Services" and \$330 million for services provided under the CSA; and

WHEREAS, the Children's Services Transformation, a major initiative to reform the provision of child welfare services, was undertaken in 2007, but a follow-up evaluation has not occurred; and

WHEREAS, the Joint Legislative Audit and Review Commission identified gaps in case management services and an inadequate number of foster families for children and youth in its 2007 report Evaluation of Children's Residential Services Delivered through the Comprehensive Services Act, preventing some children from receiving the most appropriate services to meet their needs; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission (JLARC) that staff be directed to review the administration of the state's adoption and foster care programs and the provision of those programs' services to youth and their families.

In conducting its study, staff shall

- (i) summarize changes and trends in foster care caseloads over time and identify the reasons for any recent increases, either statewide or regionally;

- (ii) examine the current and future capacity of local departments of social services and other government agencies to provide foster care, foster care prevention, and adoption services, including effective case management services for children and families with the most complex needs, such as those served through the Children's Services Act;
- (iii) evaluate the effectiveness of state and local efforts to recruit and retain foster care and adoptive families and place foster youth in permanent homes through successful adoptions;
- (iv) evaluate how well government agencies are measuring the effectiveness of services provided to foster care youth;
- (v) determine whether agencies currently maximize the availability of federal funds and coordinate the various funding streams involved in foster care and adoption service delivery;
- (vi) propose options or make recommendations to improve the administration and delivery of foster care and adoption services to the state's youth and increase the rate of successful adoptions; and
- (vii) review other issues as appropriate.

All agencies of the Commonwealth, including the Virginia Department of Social Services and its local departments, the Department of Behavioral Health and Developmental Services, and the state's 40 Comprehensive Services Boards shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

JLARC staff shall complete their work and submit a report of findings and recommendations to the Commission by December 15, 2018.

Appendix B: Research activities and methods

Key research activities performed by JLARC staff for this study included

- structured interviews with leadership and staff of state agencies; leadership and staff of local departments of social services; stakeholders and subject-matter experts in Virginia and nationally; and social services staff in other states;
- surveys of staff of local departments of social services and Virginia foster parents;
- collection and analysis of data from Virginia state agencies, federal agencies, and other national entities;
- syntheses of existing federal and state reviews of local foster care services;
- a review of national research; and
- a review of laws, regulations, and policies relevant to the provision of foster care services in Virginia.

Structured interviews

Structured interviews were a key research method for this report. JLARC staff conducted 151 interviews. Key interviewees included:

- leadership and staff of Virginia state agencies;
- leadership and staff of local departments of social services;
- stakeholders and subject-matter experts in Virginia and nationally; and
- staff in other states.

Leadership and staff of state agencies

JLARC staff conducted 40 in-depth interviews in person and by phone with staff of the Virginia Department of Social Services (VDSS), including interviews with VDSS leadership, other Richmond-based foster care and adoption staff, and VDSS regional foster care and adoption staff in all five regions of the state.

JLARC staff conducted interviews with staff of other Virginia agencies and programs, including staff of

- Court Appointed Special Advocate Program (Virginia Department of Criminal Justice Services);
- Division of Legislative Services;
- Department of Medical Assistance Services;
- Great Expectations Program (Virginia Community College System);
- Office of Children's Services (OCS);
- Office of the Attorney General;
- Supreme Court of Virginia (the Court Improvement Program and Office of the Executive Secretary); and the
- Virginia Commission on Youth.

Topics included the policies, implementation, and effectiveness of services provided to children in Virginia's foster care system, suggestions for approaches to improve the foster care system, and clarifications of data to inform JLARC staff analyses. Additionally, JLARC staff attended meetings of the State Board of Social Services, Child Welfare Advisory Committee, and the Permanency Advisory Committee.

Leadership and staff of local departments of social services

JLARC staff conducted at least one site visit to local departments of social services in all five regions of the state to understand more about the local provision of foster care services and opportunities to improve Virginia's foster care system. Each visit typically included interviews with local department leadership (e.g., department director, foster care program supervisors) and separate interviews with caseworkers. A total of 54 local department staff participated in interviews with JLARC staff at the following local departments of social services:

- Charlottesville
- Chesterfield County and Colonial Heights
- Fairfax County
- Hampton
- Hanover County
- New Kent County
- Pulaski
- Richmond City
- Shenandoah County
- Virginia Beach
- Wise County

Other stakeholders

JLARC staff conducted in-depth interviews with stakeholders in Virginia who could provide perspectives on Virginia's foster care system. Topics varied across interviews, but included current strengths and weaknesses of Virginia's foster care system and opportunities to improve it. Interviews with other stakeholders included representatives of

- Community Attention Foster Families;
- Consortium for Resource, Adoptive and Foster Family Training;
- Legal Aid Justice Center;
- licensed child placing agencies;
- NewFound Families;
- UMFS;
- Virginia Association of Child Homes;
- Virginia Bar Association;
- Virginia Commonwealth University's School of Social Work;
- Virginia juvenile and domestic relations courts (six judges) and circuit courts (two judges);
- Virginia League of Social Services Executives;
- Virginia Poverty Law Center; and
- Voices for Virginia's Children.

JLARC staff also held a group interview with members of SPEAKOUT, a group of young adults and youth who were either currently in or had recently exited Virginia's foster care system, about their experiences and opportunities to improve the services provided to children in foster care.

JLARC staff also conducted interviews by phone with national subject-matter experts. Topics included effective approaches to particular aspects of foster care, such as finding appropriate placements for children in foster care, best practices in other states, and discussions of the latest national research. Interviews with national subject matter experts included representatives from

- Annie E. Casey Foundation;
- Center for the Study of Social Policy;
- Chapin Hall (University of Chicago);
- Child Trends;
- Child Welfare Policy and Practice Group;
- Generations United;
- Jim Casey Youth Opportunities;
- National Center for State Courts;
- National Conference of State Legislatures;
- Quality Improvement Center for Adoption & Guardianship Support and Preservation;
- University of Washington School of Social Work;
- Westat's Permanency Innovations Initiative; and
- Youth Law Center.

Other states

JLARC staff also conducted interviews with individuals in four other states (North Carolina, New Jersey, Tennessee, and Utah) with the purpose of informing possible improvements to Virginia's foster care system. These states were either identified by subject-matter experts as leading in one or more aspects of foster care, or were currently in the process of reforming their foster care system. Additionally, JLARC staff interviewed individuals from Alabama's court system to clarify their termination of parental rights appeals process.

Surveys

Two surveys were conducted for this study: (1) a survey of local department of social services staff, and (2) a survey of Virginia foster parents.

Staff of local departments of social services

The survey of local department of social services staff was administered electronically to employees of local departments. Individuals were selected for the survey using a subset of all local employees likely to include staff with adoption and foster care case management responsibilities. The subset of 2,791 staff included family services specialists and managers/supervisors, human services assistants, program coordinators and supervisors, and directors/assistant directors of social services. JLARC received survey responses from 849 individuals across 118 local departments (98 percent of all departments) for an overall response rate of 30 percent.

Of the 849 individuals who responded to the survey, 385 (across 110 departments, 92 percent of all departments) indicated they have responsibility and/or oversight of foster care or adoption services.

Respondents answered different questions depending on their roles as foster care caseworkers or supervisors or local department leadership, with 161 respondents answering questions directed at foster care caseworkers.

Topics covered in the caseworker sections of the survey included general foster care case management and caseloads, finding appropriate foster care placements, connecting children to needed services, working toward a timely and appropriate permanent family for children, assisting foster youth in preparing for their transition to adulthood, as well as questions relating to training, supervisor support, and job satisfaction.

Topics covered in the supervisor and local department leadership sections of the survey included supervisory workloads, capacity to supervise and provide support to caseworkers, caseworker recruitment and retention, foster family recruitment and retention, and regional supports.

Foster parents

JLARC also administered an electronic survey to a sample of foster parents in Virginia. Because there is no statewide list of foster families, as mentioned in Chapter 3, JLARC worked with NewFound Families (Virginia's adoption, foster care, and kinship association) to survey its network of foster families.

To ensure the survey reflected recent experiences, the survey screened out respondents who had not served as foster parents in the past five years. Respondents who had served as foster parents in the past five years, but not the past 12 months completed an abbreviated survey to learn more about the reasons why they were no longer serving as foster parents. Respondents who had served as foster parents in the past 12 months completed the full survey.

JLARC received 118 responses from foster parents serving 38 local departments and 12 licensed child placing agencies. Topics covered in the survey included: (1) satisfaction with the support provided by local departments of social services; (2) satisfaction with the support provided by licensed child placing agencies; and (3) foster parents' ability to access needed services for children in their care.

Data collection and analysis

Data from many sources were collected and analyzed for this study. JLARC staff collected or accessed data from state agencies including VDSS (LASER, LETS, OASIS, SafeMeasures), the Office of Children's Services (LEDRS, CANS), and the Department of Medical Assistance Services (Medicaid spending data). JLARC also collected and analyzed data from other data sources including from the U.S. Children's Bureau, Chapin Hall (of the University of Chicago), and the National Center for State Courts.

Analysis of spending on foster care in Virginia (Chapter 1)

In order to calculate total foster spending across years and by service and support type, JLARC staff analyzed multiple data sets from three primary sources: VDSS, the Office of Children's Services, and the Department of Medical Assistance Services (DMAS). Total foster care system spending was calculated for FY13-FY17.

Calculating foster care spending for FY17

JLARC staff calculated total VDSS-administered spending using the Locality Automated System for Expenditure Reimbursement (LASER) dataset, which is VDSS's statewide reimbursement system for all social services, including adoption. This data was available annually for FY13-FY17, and only included cost categories directly related to the foster care system. The analysis did not include VDSS or local departments of social services' administrative costs (including staff salaries), as JLARC staff could not accurately allocate the amount of time (and cost) associated strictly with foster care-related activities.

To calculate spending administered through the Office of Children's Services, JLARC staff utilized the Local Expenditure and Data Reimbursement System (LEDERS) system, which was only fully implemented beginning in FY17. This dataset includes transaction-level data, including: the child's primary mandate type (which denotes whether the child is in foster care), the expenditure category for the expense, the support type for the expense, the local amount spent, the state amount spent, and the gross and net expenditure amount. JLARC staff took steps, where necessary and appropriate, to clean the LEDRS data to ensure accurate spending figures for children in foster care.

DMAS spending was calculated using DMAS-reported Medicaid spending for children who had been assigned to either the foster care or adoption eligibility categories. This Medicaid data included DMAS state expenditures, federal expenditures, and CSA expenditures for services that are eligible for both Medicaid and CSA payments (i.e., residential treatment facility placements and treatment foster care case management). To avoid double counting the total amount of CSA spending between the DMAS and OCS files, JLARC staff subtracted the amount of CSA spending reported by DMAS from total Medicaid foster care spending, and confirmed this approach with DMAS staff familiar with the data. JLARC staff used the true source of CSA spending, the LEDRS file, to calculate CSA spending for these medical services.

Total gross foster care spending for FY17 is reported when comparing spending across years, as it was not possible to calculate net spending for FY13-FY16, is discussed in the next section.

Calculating foster care spending for FY13-FY16

Calculating total foster care spending for FY13-FY16 was more complicated than the FY17 calculation, as data availability across sources was more limited. VDSS LASER data was complete and fully available for FY13-FY16, similar to FY17. To calculate total CSA foster care spending for FY13-FY16, JLARC staff received total gross spending by primary mandate type by fiscal year from OCS. JLARC staff are only able to report gross expenditures by primary mandate type, and cannot report on more granular expenditures by the categories listed above due to issues with FY13-FY16 child-level data.

JLARC staff were able to use DMAS Medicaid data to determine medical spending for FY13-FY16 with some caveats. In order to ensure that JLARC staff are not double counting CSA expenditures between OCS and DMAS datasets, JLARC staff subtracted out the amount of CSA spending on residential treatment facilities and treatment foster care case management from the total Medicaid spending, similar to the FY17 spending analyses. Because it was not possible to calculate these exact amounts using the FY13-FY16 OCS data, JLARC staff relied on reported CSA expenditures that were reported in DMAS Medicaid data, and assumed that those expenditures correctly represent CSA spending.

JLARC staff took the following steps to calculate per-child spending on certain services:

- To calculate per-child spending on children in congregate care, JLARC staff gathered data from Safe Measures on children residing in congregate care for 365 days or longer as of July 2017. JLARC staff then matched this group of children with a merged FY17 LEDRS-DMAS Medicaid file (as spending data on residential treatment facilities is found in both), and calculated annual expenditures for the children whom JLARC staff were able to identify in the merged file. JLARC staff took steps to validate these findings, including by annualizing the total cost of congregate care for children in congregate care for less than a year whose costs related to their congregate care stay could be properly isolated and calculated.
- To calculate per-child spending on children in therapeutic foster care, JLARC staff undertook the same exercise as above, but for children in therapeutic foster care for longer than 365 days.
- JLARC staff then calculated per-child spending for children who appeared to be only in regular foster care (neither therapeutic nor congregate care) for the year.

Local Employee Tracking System (LETS) data

For Chapter 4, JLARC staff calculated annual turnover by local departments of social services for non-supervisory and supervisory employees between FY14 and FY18 using individual-level data from VDSS's Local Employee Tracking System (LETS). Turnover for family services specialists was compared to turnover for other types of roles. (Note: family services specialists include foster care caseworkers as well as other types of caseworkers such as CPS prevention and investigation, and available data does not allow for differentiation across these types of caseworkers.)

JLARC staff also calculated vacancy rates by local department as of June 30 of each year from 2014 to 2018 using individual-level LETS data. This data was compared to the vacancy rate for state employees in comparable health and human services occupations and the vacancy rate for all state employees.

As a point of comparison for LETS data, JLARC staff used FY17 vacancy and turnover data for all state employees obtained through JLARC's 2017 study of total state employee compensation to calculate vacancy and turnover rates for comparable state employees, specifically Bachelor's-level non-supervisors in the non-medical human services career groups 49010, 49050, 49210, and 49230.

Adoption and Foster Care Analysis and Reporting System (AFCARS) data

All states submit bi-annual information about their foster care systems to the federal government's AFCARS database. These files contain information about children who spent any time in foster care during that year. AFCARS data is one of the key sources for the federal government's annual assessment of state performance for child welfare systems. JLARC staff used AFCARS data to conduct its analyses of trends in Virginia's foster care population, as discussed in Chapter 1. Entry cohorts (e.g., all children *entering* foster care in FFY2012, rather than all children *in* foster care in FFY2012) were used where appropriate, as recommended by national experts.

JLARC staff used AFCARS data in one of two approaches to evaluate the *appropriateness of congregate care placements* for children in foster care (Chapter 3). (Note: The other approach is described in the "Chapin Hall" section). JLARC staff replicated the AFCARS analysis conducted in the Children's Bureau's 2015 report, "A National Look at the Use of Congregate Care in Child Welfare." JLARC

assumed that children who have been diagnosed with a mental health diagnosis (according to the Diagnostic and Statistical Manual of Mental Disorders), have been removed from their home due to a child behavior problem, or have another clinical disability would be the children most likely to require treatment in a congregate care setting. Staff then calculated which children had one or more of the clinical indicators listed above. The 23 percent cited in Chapter 3 refers to the proportion of children in FFY16 who were in congregate care and had no clinical indicator.

JLARC staff also used AFCARS data to assess *the frequency of children leaving foster care, in Virginia and other states, to the following exit types*: reunification with birth parents, relative custody, relative guardianship, adoption, and aging out (Chapter 4). This analysis encompassed children who first entered foster care between FFY07 and FFY16. This time period was chosen because FFY16 was the last year of data available to JLARC and FFY07 allows for analysis of a full decade. JLARC's analysis was limited to children who turned 18 by September 30, 2016, because only they had the possibility of aging out during the observed time period. In addition, most of JLARC's analyses were limited to children who were 12 or older at entry into foster care, because they have a much higher risk of aging out than younger children. Including all ages of children tends to make states with younger children look like they have lower rates of aging out. Due to JLARC's approach, the number of years of data available for each child depends on the year that they entered foster care and the year they turned 18. For example, the cohort of children entering in FFY14 was limited to children ages 16 or above, because a 15-year old would not yet have turned 18 (and thus aged out of foster care) by FFY16.

JLARC staff's analysis differed from the federal government's approach of calculating the frequency of exit types in an important way. JLARC staff generally defined the population as children *entering* in a particular time period, while the federal government defines the population as children *exiting* in a particular time period. Staff of Chapin Hall at the University of Chicago endorse the former approach as the most valid method because it follows the same cohort of children over time and better accounts for children with very long stays in foster care.

To evaluate the extent to which children's characteristics predicted the likelihood of aging out of foster care, JLARC developed a multivariate logistic regression using annual 2007-2016 AFCARS files for all states. The dependent variable was dichotomous, with "1" meaning a child had aged out and "0" meaning any other type of exit. The independent variables were

- age at entry into foster care,
- age squared (to capture any nonlinearities),
- race (individual variables for white, black, and multiracial),
- gender,
- clinically-diagnosed disability,
- below-average cognitive and motor function,
- visual or hearing impairment,
- physical disability,
- emotionally disturbed,
- other diagnosed condition,
- whether removal was court ordered,
- physical abuse as a reason for removal,
- sexual abuse as a reason for removal,

- neglect as a reason for removal,
- parent alcohol abuse as a reason for removal,
- parent drug abuse as a reason for removal,
- child alcohol abuse as a reason for removal,
- child drug abuse as a reason for removal,
- child disability as a reason for removal,
- child behavior problem as a reason for removal,
- parent death as a reason for removal,
- parent incarceration as a reason for removal,
- caretaker inability to cope as a reason for removal,
- abandonment as a reason for removal,
- relinquishment as a reason for removal,
- inadequate housing as a reason for removal,
- whether a child ever received any Title IV-E foster care payments,
- whether a child received payments from the state, and
- whether a child was enrolled in Title XIX Medicaid.

The population size for the regression model was approximately 350,000 children nationwide. The results suggest that the factors most strongly associated with aging out are: age at entry into care, Medicaid enrollment, relinquishment, abandonment, and whether a child received any payments while in foster care. These factors had a positive estimated effect, meaning they increased the likelihood of aging out, although the strength of the effect varied across factors.

Lastly, staff used AFCARS data to *compare Virginia's length of stay to the national average* (Chapter 4). This analysis encompassed children who entered foster care between FFY07 and FFY15. The median length of stay in Virginia was compared to the average of all states' median lengths of stay. These calculations included all foster care episodes, in order to account for a child's entire foster care experience.

Online Automated Services Information System (OASIS) data

OASIS is the official system of record for Virginia's foster care system. It contains extensive information about children in foster care, such as demographic identifiers, reasons for entering foster care, foster care placements, educational progress, doctor's visits, caseworker visits, and the goal for a permanent home. It also contains information about related adults (e.g., birth parents, foster parents, relatives) and caseworkers' contacts with them. JLARC staff used OASIS data to calculate recent trends in Virginia's foster care population (Chapter 1). For each analyses of OASIS data, JLARC staff took steps to clean the data and deduplicate records, where necessary and appropriate, for more accurate analyses and results.

JLARC staff used OASIS data to calculate foster care caseloads among local department of social services staff (Chapter 5). Because the number of children in foster care across Virginia changes on a daily basis, JLARC staff calculated caseloads at a comparable point in time across years. Specifically, JLARC staff conducted a spans of control analysis by matching client IDs to primary worker names for all children in foster care on June 30 or July 1 of two recent fiscal years (2018 and 2016). JLARC staff used worker *names* as a unique identifier because worker IDs in the 2018 dataset were not unique.

The spans of control analysis used the frequency with which each primary worker name was found in the records of children who were in foster care on that date. The number of records in which the primary worker appeared indicated their active caseload. For example, if a primary worker name was found in 13 different children’s records, this caseworker would have 13 active foster care cases.

JLARC staff also used OASIS data to analyze the frequency and duration of termination of parental rights (Chapter 4). VDSS provided termination of parental rights (TPR) data from OASIS as of August 2018. The original data included 25,513 children, but JLARC’s analyses were restricted to the 12,528 children who entered foster care SFY12-SFY16, of which 4,388 had TPR initiated. The SFY12-SFY16 time period was chosen because data for children entering foster care *before* that time period is more likely to have errors, according to VDSS staff, and children entering foster care *after* that time period are less likely to have their TPR cases initiated or completed. The dataset was cleaned to account for missing or unclear information. For example, if dates for certain events were indicated to be in the future, they were treated as missing. The analysis excludes children whose TPR decision (granted or denied) was not finalized. When the dataset included multiple appeals for the same birth parent and child, the analyses were based on the decision from the highest level appeal.

The TPR analyses summarized in Chapter 4 were based on particular definitions and exclusions. The chapter refers to local departments of social services “initiating” TPR, or filing the petition for TPR. This was defined as occurring for a child if any information about a TPR (i.e., the date the petition was filed, the date of the J&DR decision, the J&DR decision, the J&DR order) was present in the dataset, even if some information about the TPR was missing. Two variables (one each for mother and father) in the OASIS extract indicated whether a parent had appealed the petition for TPR. The proportion of children with a TPR appeal was defined as the number of children with an appeal by at least one parent divided by the number of children with a TPR petition for at least one parent, regardless of whether the ultimate outcome of the appeal was known.

The ultimate outcome of the appeal was determined based on the court’s decision at the highest level of appeal. Of the 1,815 children with appeals, 1,497 had the birth mother appeal and 1,105 had the birth father appeal (not mutually exclusive events). Because the final court decision was missing (usually pending), 47 birth mother appeals and 34 birth father appeals were excluded from the analysis of the ultimate outcome of appeals. Birth parents “losing” the appeals included withdrawn cases.

The duration of the TPR process was defined as the time between the date of the TPR petition being filed in J&DR court and the date of the last court’s decision. The median duration of TPR for children that had appeals was 6.4 months; the median duration of TPR for children that did *not* have appeals was 1.6 months. 24 percent of children that had appeals took a year or longer for the TPR process to conclude; 4 percent of children that did *not* have appeals took a year or longer for the TPR process to conclude. Statistics about the duration of the TPR process were limited to children for whom a TPR petition was filed for at least one birth parent, and excluded children with appeals decision pending.

SafeMeasures data

SafeMeasures is a data reporting tool to which VDSS subscribes. It is owned by the nonprofit National Council on Crime and Delinquency. SafeMeasures translates raw OASIS data into a more user-friendly, and summarized format. It enables monthly summaries at the child, local department of social services, region, or state-level for each performance measure. The time periods used vary throughout the

report, but were typically limited to March 2018 as the most recent month, in order to account for a lag in data entry by local department of social services staff—an approach recommended by VDSS staff. JLARC staff limited their analysis of SafeMeasures data to children in foster care under age 18.

JLARC staff also used data from SafeMeasures in addition to raw OASIS data to estimate the effect of worker caseloads on child outcomes (Chapter 5). In order to determine whether larger worker caseloads appear to be associated with worse outcomes for children, JLARC staff conducted non-parametric regressions using (1) an OASIS extract of a snapshot of 5,000 children in foster care as of July 1, 2018 and (2) various child-level extracts from SafeMeasures as of July 1, 2018. JLARC regressed physical exams, dental exams, length of stay, in-home visits, and family contacts on (1) cases per foster care worker and (2) children per foster care worker.

Child and Adolescent Needs and Strengths Assessment (CANS) data

CANS is the needs assessment required by Virginia for all children in foster care. It is also used by other Virginia programs (such as CSA) and some other states. JLARC staff used CANS data in one of two approaches to evaluate the appropriateness of congregate care placements for children in foster care (Chapter 3). (The other approach is described in the “AFCARS” section).

JLARC staff used CANS assessment data, provided by OCS, to evaluate whether children were appropriately placed in residential treatment settings. The file submitted by OCS contained one observation per assessment, so one child could have many observations. JLARC staff placed children into yearly “entry cohorts” according to the date that they first received residential treatment. JLARC staff then calculated the proportion of children who entered residential treatment each year who had ever met criteria for the residential treatment algorithm.

Chapin Hall data

JLARC staff used Chapin Hall data to calculate the proportion of children in Virginia’s foster care program in congregate care (Chapter 3). This analysis groups children by their first admission entry year into foster care. For example, if a child entered foster care for the first time in 2010, they would be counted in year 2010. Placement type is a child’s predominant placement type, the type of placement where they spent more than 50 percent of their time in foster care. For example, if a child spent 25 percent of their time in foster care in a foster home, 20 percent of their time in a kinship home, and 55 percent of their time in a congregate care setting, their placement type would be congregate care. Data was analyzed annually CY 2012-2017 and reported for children of all ages as well as children over the age of 12.

JLARC staff also used Chapin Hall data to analyze the lengths of stay in foster care in Virginia and compare Virginia to other states (Chapter 4). Length of stay analyses were limited to children entering CY 2012-2016. Cohorts of children were defined as those entering foster care in a particular year. The types of exits are the same as AFCARS, with the exception that Chapin Hall combines relative custody and relative guardianship into one “relative” category, while AFCARS reports those two exit types separately. JLARC staff analyzed the variation in length of stay between local department social services in Virginia. This analysis excluded localities with fewer than 10 children in care during the time period of analysis.

National Center for State Courts (NCSC) information

Information on other states' TPR appeals processes derives from a NCSC analysis and JLARC staff research (Chapter 4). NCSC conducted a review of states' TPR appeals process, in response to JLARC's information request. In doing this, NCSC staff referenced NCSC's State Court Structure Charts and State Court Organization database (both consisting of information submitted by states) and other sources to provide JLARC with a list of states whose court systems include a limited jurisdiction court for juvenile cases. The 34 states without such courts can be assumed to have an appellate appeal (i.e., the original hearing of the TPR case is on the record), according to NCSC staff.

NCSC staff also provided JLARC with information about states' appeals processes for child welfare cases. JLARC supplemented this information with additional research to confirm the process for TPR cases. This led to the conclusion that of the 15 states (excluding Virginia) with limited jurisdiction courts for juvenile cases, at least eight states have established processes for appeals of TPR cases to receive appellate review. The remaining seven states were either confirmed to share Virginia's practice of a *de novo* appeal (i.e., the original hearing of the TPR case is not on the record) or information about the TPR process wasn't readily available.

Syntheses of existing federal and state reviews of local foster care services

Three recent or ongoing processes for case reviews provided information on the local provision of foster care services: Child and Family Services Reviews, Agency Case Reviews, and the Child Welfare Case Reviews.

Child and Family Services Reviews (CFSRs) (U.S. Children's Bureau)

The most recent CFSR occurred in Virginia in 2017, and prior CFSRs occurred in 2009 and 2004. CFSRs are administered by the Children's Bureau to assess states' provision of child welfare services. The CFSR includes a review of a sample of cases against 36 standards for safety, permanency, well-being, and system processes. For the 2017 CFSR, 44 foster care cases were sampled from nine localities in Virginia. JLARC staff referenced the summary of those case reviews in the Children's Bureau's CFSR report. Comparisons to other states' performance on the CFSR were limited to 24 states for which data was available. These were the states who participated in CFSRs in FY15 and FY16. The report's references to "other states'" performance on the CFSR refers to the percentage of total cases in those 24 states that met requirements for a particular standard. This report refers to the CFSRs as "federal reviews."

Some standard reflected a review of all cases in the sample, while other standards reflected a review of a subset of applicable cases in the sample. Of the standards referenced in this report, the following were limited to a subset of the 44 cases that were applicable: "concerted efforts" to achieve permanent homes (24 cases), TPR was either requested at 15 months or a compelling reason for not doing so was documented (24 cases), assessment of birth parents' needs and provide them with services (29 cases), visitation between the child and the birth mother (27 cases), and visitation between the child and the birth father (18 cases), frequency and quality of caseworker visits with children in foster care (44 cases), and assessment of the mental and behavioral health needs of children (34 cases), provision of appropriate services (23 cases).

Agency case reviews (VDSS regional staff)

Virginia implemented the agency case review process in 2017. Each local department of social services is reviewed annually by three VDSS regional staff in the following areas: (1) child protective services, (2) foster care, and (3) adoption and resource families. VDSS regional staff conduct on-site electronic and hard-copy case file reviews of a random sample of five files, supplemented by review of performance data. VDSS regional staff provide a high-level narrative on the local departments of social services' strengths and areas needing improvement, which can include identification of the causes of problems and suggestions for addressing problems—although the level of detail about problems varies substantially across regional staff reviews.

JLARC staff synthesized the agency case reviews through two methods. First, JLARC staff tallied the number of cases that met requirements, and then calculated the percentage of cases that met requirements. Second, JLARC staff reviewed all narrative comments in agency case reviews and identified common themes across the reviews. The agency case reviews that were reviewed by JLARC span January 2017 (the first month available) to July 2018 (the most recent available when JLARC requested the reviews).

Child welfare case reviews (VDSS central office staff)

Virginia implemented the Child Welfare Case Review process in 2017. All new foster care cases and a sample of ongoing foster care cases in each local department of social services is reviewed quarterly by VDSS central office staff. Foster care cases are evaluated against a checklist of 33 standards for compliance with documentation and other state requirements. JLARC staff referenced the statewide summary of all FY18 child welfare case reviews (2,556 cases) provided by VDSS staff.

Review of national research

JLARC staff reviewed peer-reviewed academic research on foster care, as well as research published by government agencies and advocacy groups. JLARC staff reviewed articles from the *Children and Youth Services Review*, *Journal of Child and Family Studies*, *Journal of Public Child Welfare*, and *Journal of Family Social Work*, among others.

JLARC staff also reviewed research from other sources, such as other government agencies and advocacy groups. JLARC staff reviewed documents in the Children's Bureau's Child Welfare Information Gateway that describe best practices, summarize federal policy, and synthesize states' policies. Documents from other federal agencies or federally-funded entities such as the Government Accountability Office, Congressional Research Service, and National Center for Child Welfare Excellence were also consulted, as well as evaluations of foster care initiatives by the Children's Bureau, Child Trends, and the California Evidence-Based Clearinghouse for Child Welfare.

JLARC staff also reviewed best practices and syntheses of other states' policies published by the Children's Defense Fund, Casey Family Programs, Child Trends, GrandFamilies, National Center for Youth Law, and the National Conference for State Legislatures (NCSL)'s Child Welfare Project. NCSL further informed the study by conducting a review of existing research on particular aspects foster care research. Information on best practices from other research and advocacy organizations including the Annie E. Casey Foundation, Jim Casey Youth Opportunities Initiative, North American Council

on Adoptable Children, Child Welfare League of America's Standards of Excellence for Child Welfare Services, the National Association of Social Workers' Standards for Social Work Practice in Child Welfare, and the National Council of Juvenile and Family Court Judges were also reviewed.

Document review

JLARC staff reviewed numerous other documents and literature pertaining to foster care in Virginia and nationwide, such as:

- federal laws and regulations affecting states' foster care systems;
- Virginia laws, regulations, and policies related to the responsibilities and requirements of the State Board of Social Services, VDSS, local boards of social services, local departments of social services, licensed child-placing agencies, and courts in the provision of foster care services to children;
- prior studies and reports on Virginia's foster care program, such as those by the Commission on Youth, JLARC, Hornby Zeller Associates, and the Butler Institute for Children and Families;
- publications by other Virginia agencies such as the Court Improvement Program and the Office of Children's Services;
- other states' laws, regulations, and policies;
- documents related to class-action lawsuits of other states' foster care programs, such as those published by the Center for the Study of Social Policy, Public Catalyst, Children's Rights, and the National Center for Youth Law's Foster Care Docket; and
- legislative reviews of other states' foster care systems.

Appendix C: Problems with Virginia’s child protective services identified through federal and state reviews

Background

Local departments of social services are responsible for administering Child Protective Services (CPS) to promptly investigate allegations of child abuse or neglect and take necessary steps to protect child safety (§ 63.2-1503). Each allegation of child maltreatment (i.e., “referral” or “report”) must be documented, screened for validity, checked against any prior history of family involvement with CPS or foster care, and investigated within timeframes established in state law (§ 63.2-1505).

Virginia’s CPS system uses “differential responses” depending on the circumstances of each allegation and the level of risk to child safety. When a referral results in an *investigation*, local staff must ultimately determine and document whether the allegation of child abuse or neglect is founded or unfounded. When a referral results in a *family assessment*, local staff do not make an official finding of abuse or neglect but provide ongoing prevention and case management services to the family. Local departments are expected to assess the risk of harm to children on an ongoing basis and to modify case plans or other aspects of their response in accordance with the level of risk.

Concerns raised about Virginia’s CPS system in recent state and federal reviews

Recent reviews by Virginia Department of Social Services’ (VDSS) central office staff have documented problems with CPS in Virginia. For example, of a sample of 3,867 CPS referrals for family assessments and investigations reviewed by VDSS staff for FY18,

- the initial investigation or family assessment was not completed within 60 days in 25 percent of all sampled referrals;
- face-to-face contact with the alleged victim was not made within required timeframes in 21 percent of all sampled referrals; and
- key participants were not interviewed in 24 percent of all sampled referrals.

Similarly, recent reviews of a sample of case files conducted by VDSS regional staff since January 2017 have also documented concerns with local departments’ responses to CPS complaints. For example, in these reviews, regional staff found instances where local departments were

- screening out valid referrals, including referrals containing serious allegations of abuse or neglect;
- screening out referrals without documenting the reasons for doing so, including from one review to the next and despite explicit guidance after the first review; and
- failing to make initial contact with alleged victim(s) and close referrals within the time frames established by law.

VDSS regional staff have documented the same concerns across multiple annual reviews for some departments—indicating that problems with the administration of CPS in those departments are not being resolved after local departments have been made aware of them.

The 2017 federal Child and Family Services Review also found deficiencies in local CPS practices, particularly with the timeliness of initiating investigations of reports of child maltreatment and practices around risk assessments and safety management. Similar federal reviews conducted in 2004 and 2009 also found serious deficiencies with CPS practice in Virginia:

- “DSS was not consistent with regard to initiating investigations of maltreatment reports and/or establishing face-to-face contact with the children who were the subject of the maltreatment reports in accordance with the timeframes established by the State or local agency. Case reviewers determined that in these cases, children were not sufficiently protected from abuse or neglect.” (2004)
- “Although both case review findings and data from the State Data Profile indicate a low incidence of recurrence of substantiated maltreatment reports within a six-month period, the Statewide Assessment reports that maltreatment reports received on open cases are not routinely subjected to a formal investigation and that this practice varies across the State. As a result, it is difficult to determine the actual rate of maltreatment recurrence.” (2004)
- Reviewers “determined that the agency had initiated an investigation of a maltreatment report or a family assessment in accordance with required timeframes” in only nine of 15 applicable cases. (2009)

Problems within Virginia’s CPS system can affect the state’s foster care system. For example, when a local CPS does not function as it should, local departments can miss or fail to respond appropriately to situations in which children are actively experiencing maltreatment—and may need to be removed from their homes for their safety.

Additionally, it is possible that the 99.74 percent rate at which children *do not* experience maltreatment while in foster care in Virginia may not be entirely accurate, given the problems that have been identified with the state’s CPS over the past decade. Because the rate at which children experience maltreatment in foster care is calculated using *founded* CPS complaints, problems within local CPS programs may contribute to an undercounting of the extent to which children in foster care actually experience maltreatment.

Appendix D: Targeted strategies for identifying and addressing gaps in community-based services

A key component of foster care system capacity is a service array within each community capable of meeting the specific, complex needs of children and families that brought them into the foster care system in the first place. The federal Child and Family Services Review has documented gaps in the service array available to children in Virginia's foster care system in each of the three reviews conducted since 2004. JLARC's 2006 review of residential services provided through the Children's Services Act (CSA) also pointed to service gaps as a key underlying problem affecting the implementation of the CSA program.

Service gaps are often beyond the capability of individual localities to address. The state could consider certain targeted strategies to identify and address gaps in community-based services for children in foster care. For example:

- **Several other states** that utilize the Child and Adolescent Needs and Strengths (CANS) assessment as their official assessment tool (like Virginia) also use CANS data – coupled with mapping software – to identify gaps in community-based services that correspond to children's documented needs. For example, zip codes with CANS scores indicating the *highest* level of need for child therapists specializing in domestic violence, but the *lowest* number of providers with that specialty could be prioritized in any strategies designed to close service gaps. States doing a particularly good job at using CANS and provider mapping data to identify and address service gaps include Indiana, Wisconsin, Tennessee, and New Jersey, according to a national subject-matter expert involved in creating the CANS assessment. Improving the utilization of CANS to assess the needs of children in Virginia's foster care system could therefore have the added effect of improving the state's ability to target areas with the most severe gaps in services and the greatest need for state assistance in addressing these gaps.
- **Illinois** developed a process and invested in software to periodically track the availability of service providers in communities across the state. This provider database is updated every six months and includes information about whether each provider accepts Medicaid as well as new patients.
- **Tennessee** was required by the terms of its foster care system settlement agreement to improve the service array available to children and families involved in foster care. The state created a dedicated position within its Department of Children's Services for this purpose. Tennessee's Executive Director of Network Development is responsible for managing and improving the network of private providers serving children in foster care.

The General Assembly could also consider once again making grant funds for regional collaboration available, as legislators did in response to a recommendation in the 2006 JLARC review of the CSA program. Anecdotally, the amount of funding available and the limitations on the number of awards that could be made were not sufficient to encourage participation in the program. Lawmakers could model an updated version of regional collaboration grants on GO Virginia to make competitive grants available to localities who collaborate with regional partners to address specific service gaps.

Appendix E: Agency responses

As part of an extensive validation process, the state agencies and other entities that are subject to a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff sent an exposure draft of this report, or relevant sections of it, to the Secretary of Health and Human Resources, the Virginia Department of Social Services, the Virginia Office of Children's Services, the Department of Medical Assistance Services, and the Office of the Executive Secretary of the Supreme Court. Appropriate corrections resulting from technical and substantive comments are incorporated in this version of the report.

This appendix includes response letters from the following:

- Secretary of Health and Human Resources
- Office of the Executive Secretary of the Supreme Court



COMMONWEALTH of VIRGINIA

Office of the Governor

Daniel Carey, MD
Secretary of Health and Human Resources

November 30, 2018

Hal Greer, Director
JLARC
919 East Main St.
Richmond, VA 23219

RE: Improving Virginia's Foster Care System Exposure Draft

Good afternoon Mr. Greer:

Thank you for the opportunity to review the exposure draft of the JLARC report on Improving Virginia's Foster Care System. This response is on behalf of both the Virginia Department of Social Services (VDSS) and the Office of Children's Services (OCS).

We appreciate the Commission's attention to Virginia's foster care system. Our administration believes that children are the Commonwealth's most precious resource and we are committed to working with you and the General Assembly to improve the system of care for our most vulnerable children.

Overall, VDSS and OCS are supportive of the recommendations in the report. We do wish to offer a couple of specific comments:

1. Timeframe for implementing the recommendations

The challenges and recommendations identified in the report are the result of decades of changes and resource challenges in the system. We will need to develop a strategic plan, analysis of the resources necessary to implement the plan, and timeline. Our intention is to develop a timeline that is both aggressive and feasible. We will work with the Governor and legislators and their staffs on this strategic plan and timeline.

2. Caseload Standards (Recommendation #25)

VDSS supports the establishment of a caseload standard to address the workloads of family services specialists. However, this recommendation has a significant fiscal impact.

November 30, 2018

Page Two

We appreciate the opportunity to work with JLARC on this review and look forward to continuing to improve our foster care system.

Sincerely,

A handwritten signature in black ink that reads "Daniel Carey". The signature is written in a cursive style with a long, sweeping underline.

Daniel Carey, M.D.

EXECUTIVE SECRETARY
KARL R. HADE

**ASSISTANT EXECUTIVE SECRETARY &
LEGAL COUNSEL**
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November 20, 2018

Hal E. Greer, Director
Joint Legislative Audit & Review Commission
919 East Main Street, Suite 2101
Richmond, VA 23219

Re: Chapter 4 of Draft Report, *Improving Virginia's Foster Care System*

Dear Mr. Greer:

Thank you for your letter dated November 13, 2018 and the opportunity to review a draft of Chapter 4 of the draft JLARC report, *Improving Virginia's Foster Care System*. This will confirm that I have reviewed the relevant section of the report.

Please let me know if my office may be of further assistance.

Sincerely,

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

Karl R. Hade



JLARC.VIRGINIA.GOV

919 East Main Street Suite 2101 Richmond, VA 23219