



# COMMONWEALTH of VIRGINIA

## Office of the Governor

Office of the Children's Ombudsman  
Eric J. Reynolds, Esq., Director

November 1, 2022

To:           The Honorable John S. Edwards  
                  Co-Chair, Senate Committee on the Judiciary

                  The Honorable R. Creigh Deeds  
                  Co-Chair, Senate Committee on the Judiciary

                  The Honorable Robert B. Bell  
                  Chair, House Committee for Courts of Justice

Enactment Clause 3 of Senate Bill 396 (Chapter 305, Virginia Acts of Assembly – 2022 Session) directed the Office of the Children's Ombudsman to "*convene a work group to consider issues relating to the Commonwealth's model of court-appointed legal counsel in child dependency cases. . . . The work group shall make recommendations for legislative and budgetary changes to address these issues by November 1, 2022, to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice.*"

This Report summarizes the issues identified by the work group and the recommendations for legislative and budgetary changes to address these issues. The members of the Workgroup appreciate the opportunity provided by the General Assembly to review the issues related to Virginia's system of providing court-appointed counsel in child dependency cases and to make these recommendations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "EJ Reynolds", enclosed in a rectangular box.

Eric J. Reynolds, Director  
Office of the Children's Ombudsman



# SB 396 Child Dependency Legal Representation Workgroup

Report to the Chairmen of the Senate  
Committee on the Judiciary and  
the House Committee for Courts of Justice



November 1, 2022

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# SB 396 Workgroup Studying Legal Representation in Child Dependency Cases

## Table of Contents

Introduction.....	1
Identification of Issues.....	2
Opportunity for Federal Financial Assistance .....	4
Recommendations.....	4
Conclusion .....	8

## Appendices

Appendix A – Workgroup Membership

Appendix B – 2015 Report of the Virginia Commission on Youth: Court-Appointed Counsel for  
Parents in Child Welfare Cases

Appendix C – Appointment of Counsel and Guardians ad Litem in Child Dependency Cases

Appendix D – Title IV-E Funding for Legal Representation in Child Dependency Cases

Appendix E – Representation Models and Organizational Structures

Appendix F – Resources and Research Materials



## **INTRODUCTION**

This Workgroup was created pursuant to Enactment Clause No. 3 of [Senate Bill 396](#) (Virginia Acts of Assembly – 2022 Session – Chapter 305), which states that:

*the Office of the Children's Ombudsman shall convene a work group to consider issues relating to the Commonwealth's model of court-appointed legal counsel in child dependency cases.[<sup>1</sup>] The work group shall include representatives from the Virginia Indigent Defense Commission, the Virginia Bar Association Commission on the Needs of Children, the Commission on Youth, the Office of the Executive Secretary of the Supreme Court of Virginia, and the Virginia Poverty Law Center and other Virginia Legal Aid programs. The work group shall make recommendations for legislative and budgetary changes to address these issues by November 1, 2022, to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice.*

Pursuant to this charge, the Office of the Children’s Ombudsman recruited members of the groups listed in the enactment clause as well as a number of juvenile and domestic relations district courts judges, private attorneys that serve as counsel for parents, guardians ad litem for children, counsel for local departments of social services, a private child welfare expert consultant, and representatives from a local department of social services, the Office of the Attorney General, a local Court Appointed Special Advocate (CASA) program, and the University of Richmond School of Law. A list of the Workgroup members is found in Appendix A.

The Workgroup met eight times between June and October, 2022 to discuss the issues related to the appointment of counsel in child dependency cases. In the initial meetings, the members agreed that the most immediate issues to consider were those related to court-appointed counsel for parents in child dependency cases, specifically compensation and performance standards. The Workgroup considered various models of legal representation used in other states and discussed whether Virginia should consider adopting any of these other models in the long-term.

This Report summarizes the issues identified by the Workgroup and provides recommendations to address them with the goal of improving the quality of legal representation provided to parties involved in child dependency cases. The Workgroup did not conduct an in-depth study of these issues but rather relied upon the subject-matter expertise, knowledge, and experience of the members of the Workgroup, who each provided valuable input to the discussions. For a detailed study, please refer to the 2015 Report of the Virginia Commission on Youth on Court-Appointed Counsel for Parents in Child Welfare Cases, attached as Appendix B or found on-line [here](#).

<sup>1</sup> For purposes of this Workgroup, “child dependency cases” are cases involving children who have been alleged to have been abused or neglected and/or who have entered foster care. Child dependency court proceedings include emergency removal order hearings, preliminary removal hearings, preliminary child protective order hearings, adjudicatory hearings, dispositional hearings, foster care review hearings, permanency planning hearings, and termination of parental rights hearings.

## **IDENTIFICATION OF ISSUES**

Cases involving the protection of children and removal from their homes invoke the constitutional rights of the parents and children, including the parents' fundamental liberty interest in the care, custody, and control of their children;<sup>2</sup> the right of parents to family integrity, i.e. the right for the family to remain intact; and rights to due process under the law. The termination of parental rights has been characterized by numerous courts across the country as the "civil death penalty."<sup>3</sup> The stakes are very high.

Improving the quality of legal representation benefits children and parents. As the Virginia Commission on Youth noted in its study, "Strengthening the quality of parents' legal representation provided by court-appointed attorneys in child welfare cases could potentially have a number of benefits, including reducing foster care entry, assisting parents in navigating complex court proceedings, improving decision-making for all parties involved, and highlighting innovative solutions available to the court and interested parties (such as access to community-based services)."<sup>4</sup>

In Virginia's model of providing court-appointed attorneys in child dependency cases, courts (Juvenile and Domestic Relations District and Circuit Courts) appoint private attorneys to serve as counsel for parents and guardians ad litem for children from a list of qualified attorneys who have indicated their willingness to accept appointments within their judicial district. In order to be placed on this court-appointed list, the attorneys must first qualify to serve as a guardian ad litem for children (GAL).<sup>5</sup> For a detailed description of the appointment process for attorneys for parents and GALs, please see Appendix C.

The Workgroup identified the following issues related to Virginia's current model of providing court-appointed legal counsel in child dependency cases:

- a. **COMPENSATION:** Virginia's rate of compensation for court-appointed counsel for parents is one of the lowest in the nation. It has not changed for over twenty years.<sup>6</sup> With a maximum compensable amount of up to \$120 per case in district court and up to \$158 in circuit court, the rate of compensation "does not reflect the amount of time and effort put forward by an attorney."<sup>7</sup> Some judges reported that attorneys are choosing not to remain on the list of court-appointed attorneys due to the low rate of compensation and the time these cases demand.

<sup>2</sup> [Va. Code § 1-240.1](#). See also *Troxel v. Granville*, 530 U.S. 57 (2000).

<sup>3</sup> *Drury v. Lang*, 105 Nev. 430, 433 (1989); see, e.g., *In re L.B.*, 970 N.W.2d 311, 314 (Iowa 2022); *In re C.M.*, 255 A.3d 343, 362 (Pa. 2021); *Kentucky v. S.H.*, 476 S.W.3d 254, 259 (Ky. 2015); *In re K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004). The United States Supreme Court said of terminations of parental rights that "[f]ew forms of state action are both so severe and so irreversible." *Santosky v. Kramer*, 455 U.S. 745, 759 (1982).

<sup>4</sup> [Court-Appointed Counsel for Parents in Child Welfare Cases, Virginia Commission on Youth, p. 7 \(2015\) \(citation omitted\)](#).

<sup>5</sup> [Va. Code § 16.1-266.1\(C\)](#).

<sup>6</sup> In its 2000 session, the General Assembly increased the maximum compensable amounts from \$100 per case in district court and \$132 per case in circuit court to \$120 and \$157, respectively. [Chapter 436 \[H 1312\], Virginia Acts of Assembly – 2000 Session](#).

<sup>7</sup> [Court-Appointed Counsel for Parents in Child Welfare Cases, Virginia Commission on Youth, p. 22 \(2015\)](#).



Comments from members of the Workgroup regarding compensation included the following:

- “A lot of new attorneys don’t want to sign up for court-appointed lists as a result of the lack of compensation. The struggle is to find people to sign up on the list.” (Juvenile and Domestic Relations District Court judge.)
  - The low compensation “has been the biggest obstacle” to attracting attorneys to take on court-appointed work. (State agency representative.)
  - “Because parents’ counsel can only get \$120 no matter how hard they work, they are not going to do any work ahead of a 5-day hearing. They are waiting to see what the guardian [ad litem] thinks. They let guardians [ad litem] do the work or follow the LDSS recommendation because they don’t have the will to fight.” (Private attorney.)
  - “We are having a hard time getting attorneys on the [court-appointed] list. They are overwhelmed and burned out. In [the rural counties I work in], it is difficult keeping attorneys and the main complaint is compensation.” (Juvenile and Domestic Relations District Court judge.)
  - “The reason there are limited number of attorneys signing up [to be on the court-appointed list] is compensation.” (State agency representative.)
  - “Everything circles back to compensation. The attorneys view it as not worth it to do this type of work. It also touches on the diversity question regarding who can do this type of work with such little compensation. . . .Some colleagues noted that they have to determine how they can continue to do this work while keeping the lights on. Court appointment cases are always on the chopping block due to it being taxing, time consuming, and the least-compensated area [of practice].” (Private attorney.)
- b. STANDARDS. There are currently no qualification or performance standards for court-appointed counsel for parents. Representing parents takes a certain set of advocacy skills requiring discernment in how to best serve parents. Advocacy outside the courtroom may look very different from advocacy in the courtroom as there are often family partnership meetings and other meetings that are non-judicial in nature but are pivotal to the case outcome. The parent must continue to engage with and interact with the agency so the attorney should “skillfully try to get her client to work with the caseworker in a productive way, because the caseworker is the one who will make recommendations to the court about when the child can be returned home.”<sup>8</sup>
- c. TRAINING. By state law, courts must appoint attorneys to represent parents from the court’s list of qualified GALs with one exception as detailed in Appendix C. Thus, parents’ counsel receive some training specific to the representation of children through the qualification course and there are other courses available related to child dependency cases.<sup>9</sup> However,

<sup>8</sup> Vivek Sankaran, *More Than Law: Family Defense Attorneys as Relationship Builders*, The Imprint (July 7, 2019), <https://imprintnews.org/child-welfare-2/more-than-law-family-defense-attorneys-as-relationship-builders/36160>.

<sup>9</sup> Topics covered by the initial GAL qualification course are listed on the Standards to Govern the Appointment of Guardians Ad Litem adopted by the Judicial Council found [here](#).

there is no required training that is dedicated solely to the role and responsibility of, and skills needed to serve as, parents' counsel.

- d. **ACCOUNTABILITY.** There is a need for parents counsel to be held more accountable for their representation of parents in child dependency cases. The Virginia State Bar “protect[s] the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court's Rules of Professional Conduct, all at no cost to Virginia taxpayers.”<sup>10</sup> Attorneys who are appointed to represent parents in child dependency cases are required to comply with the Rules of Professional Conduct and are therefore subject to the VSB complaint process. These court-appointed attorneys can also be held accountable to the appointing judge if the judge is made aware of concerns. However, parents may find it difficult to express their concerns about their court-appointed counsel to the appointing judge. In contrast, court-appointed counsel for criminal defendants can also be held accountable by the Virginia Indigent Defense Commission through a complaint process.
- e. **WORKFORCE CHALLENGES.** As noted above, some judges reported that there are fewer attorneys choosing to remain on courts' court-appointed attorneys list to represent parents. Also, it was noted that there are fewer new attorneys getting into this area of law and willing to accept court appointments. Workgroup members reported that this contributes to a lack of diversity among the community of attorneys practicing in this area.

## **OPPORTUNITY FOR FEDERAL FINANCIAL ASSISTANCE**

In early 2019, the federal Children's Bureau issued new guidance whereby states can now access federal administrative funds under Title IV-E of the Social Security Act to be used toward the cost of providing legal counsel to parents and children involved in the foster care system. Virginia can receive federal funds to help pay for the cost of providing attorneys for parents and guardians ad litem for children.<sup>11</sup>

## **RECOMMENDATIONS**

The Workgroup considered several models of legal representation and organizational structures currently in use in other states and jurisdictions across the country. A description of these various models and structures is found in Appendix E, with information regarding studies and evaluations of these models found in Appendix F.

To address the identified needs as described above and to improve the quality of legal representation in these cases, the Workgroup recommends a comprehensive approach consisting of short-term and long-term solutions:

<sup>10</sup> [Virginia State Bar Strategic Plan, 2019-2024, p. 2.](#)

<sup>11</sup> See Appendix D for details on the federal guidance regarding Title IV-E funds for legal counsel.

- The Workgroup recommends increasing the compensable amount paid to court-appointed parents' counsel to address the urgent matter of the decreasing number of attorneys accepting appointments to represent parents in child dependency cases. The Commonwealth should take steps to access the federal Title IV-E money that is available to help with the cost of increasing this amount.
- With the proposed increase in compensation, qualification and performance standards should be developed to further improve the quality of legal representation provided to parents.
- Consideration should be given to the creation of a state-level office that could provide training and oversight of court-appointed counsel for parents in child dependency cases.
- Consideration should be given to adopting a Multidisciplinary Office model of legal representation in which attorneys have access to a social worker and/or a parent advocate to assist in supporting and advocating for the parent.

To that end, the Workgroup recommends that the General Assembly take the following statutory and budgetary actions:

- 1. The maximum amount of compensation for court-appointed counsel for parents should be increased from \$120 to the maximum amount of compensation allowed for court-appointed criminal defense counsel in cases involving Class III-IV felonies and Class II felonies resolved in district courts.**

*Comment: The current compensation rate for court-appointed parents' attorneys is \$90 per hour but is capped at \$120 per petition filed in a case, or just 1.3 hours of legal service—in a case that may take many hours and multiple hearings. The Workgroup identified compensation as the most immediate need for change in order to “stop the bleeding” of attorneys removing themselves from the court-appointed list by increasing the available compensation. Without this first step, it will be difficult to make the substantive changes necessary to improve the quality of legal representation to ensure the rights of parents and families are protected.*

*The Workgroup recommends raising the maximum amount of compensation based on the type of proceeding, as is currently allowed for court-appointed criminal defense attorneys appointed to cases involving certain felonies in accordance with state law.<sup>12</sup> Using the amounts under current law, it is recommended that the maximum amount of compensation be \$445 per case from removal proceedings through foster care and permanency planning stages, and up to \$1,235 for termination of parental rights cases. These amounts would apply in cases heard by the Juvenile and Domestic Relations District Courts as well as cases heard de novo in the Circuit Courts and in the appellate courts. The amounts would be subject to any amendments to the applicable statutes made by the General Assembly.*

<sup>12</sup> [Va. Code § 19.2-163](#). See also [The Supreme Court of Virginia Chart of Allowances](#), p. 18.

*The Workgroup examined various possible pay structures, including paying court-appointed counsel for parents at the same hourly rate as GALs with no cap. It makes this recommendation in part because the fiscal impact was possible to calculate and because the General Assembly has already provided for a similar compensation scheme for court-appointed criminal defense counsel.*

*In order to fund this recommendation, the General Assembly would have to appropriate approximately \$14,151,615 in general funds. (Virginia currently spends an average of \$3,158,342 per year for parents' counsel at the current rate of compensation.)<sup>13</sup> However, Virginia could receive approximately \$3,092,128 in federal reimbursement from Title IV-E administrative funds.<sup>14</sup>*

*Virginia does not currently draw down these federal funds to pay its court-appointed parents' counsel. In order to do so, additional accounting and reporting will be required for federal funding purposes. As a result, it is expected that both OES and VDSS, the Title IV-E agency that would receive the funds from the federal government, may require hiring additional staff to administer these funds.*

**2. Request the Judicial Council in conjunction with the Virginia State Bar and the Virginia Bar Association, adopt standards for the qualification and performance of attorneys appointed as counsel for parents.**

*Comment: Currently, there are no standards setting the expectations for legal representation for parents in child dependency cases. The Workgroup recommends that the Judicial Council adopt standards to govern their qualification and performance, akin to those adopted by the Judicial Council for GALs and by the Virginia Indigent Defense Commission (VIDC) for court-appointed criminal defense attorneys. These standards should be developed in collaboration with the Virginia State Bar, the Virginia Bar Association, and members of this Workgroup.*

**3. Create a Section 1 study for the establishment of a state-level Parent's Advocacy Commission to provide support and oversight over court-appointed counsel for parents.**

*Comment: The Workgroup recommends that the General Assembly create a Section 1 Study for the establishment of a Parent's Advocacy Commission (PAC), a state-level office that would provide training, qualification, and accountability for parents' counsel.*

*The Workgroup reviewed information about the Virginia's Indigent Defense Commission (VIDC), which was established to implement several changes regarding court-appointed criminal defense lawyers, including the creation of the standards of practice for court-*

<sup>13</sup> These amounts are based on a Fiscal Impact analysis conducted by the Court Improvement Program in 2021.

<sup>14</sup> See Appendix D for details on the federal guidance regarding Title IV-E funds for legal counsel.

*appointed defense counsel and a mandatory training and certification process.<sup>15</sup> The VIDC also manages 28 public defender offices and two satellite offices across the Commonwealth.*

*The Workgroup recommends that the Section 1 Study consider the functions of the VIDC for the development of the PAC along with other models and consider a possible long-term plan to develop local or regional offices that would provide representation for parents similar to public defender offices.*

#### **4. Appropriate funds to establish and launch pilot Multidisciplinary Offices serving diverse jurisdictions of the Commonwealth.**

*Comment: The Multidisciplinary Office (MDO) model (also referred to as an “Interdisciplinary Office”) describes an office that “employs social workers, parent advocates, . . . and other in-house personnel” in addition to attorneys.<sup>16</sup> In this model of representation, “parents are represented by a lawyer along with a social worker and/or parent advocate.”<sup>17</sup>*

*While each office would be expected to cater to the unique needs of its community, the MDOs would share a common structure. They would be staffed by salaried attorneys, social workers, and parent advocates. Thus, a client’s legal team would include a person in each of these roles.*

*The supervising and staff attorneys would practice in child dependency cases and parents’ defense exclusively. The social worker would engage closely with the parent to understand their strengths, needs and the barriers to reunification. The parent advocate would provide an understanding and confidential outlet for parents, which is crucial given the common misconceptions of system-involved families and the sensitive nature of these cases. Critically, the social workers and parent advocates assure parents receives focused and individualized services, support parents in completing services, and find appropriate providers.<sup>18</sup> This is critical because a family’s success often hinges on the parent’s access to and participation in agency-referred and court-ordered services.*

*The pilot offices would collect data and record their outcomes. This data would be evaluated to determine whether this model should be expanded to other parts of the Commonwealth.*

<sup>15</sup> Virginia Indigent Defense Commission, *Agency Overview: Statutory Authority & Organization Structure* (Apr. 14, 2022), <http://www.vadefenders.org/wp-content/uploads/2022/02/VIDC-Agency-Overview-Statutory-Authority-and-Organizational-Structure-1.pdf>, at 2.

<sup>16</sup> Lucas A. Gerber et al., *Understanding the Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, *Child. & Youth Servs. Rev.* 116, 2020, at 2.  
<https://www.sciencedirect.com/science/article/pii/S0190740920304643?via%3Dihub>.

<sup>17</sup> *Id.*

<sup>18</sup> See *Id.* at 2 (“Parent advocates are individuals who have faced proceedings in the Family Court as parents charged with maltreating their children.”) and at 9 (“The inclusion of parent advocates as staff at the offices seemed also to facilitate the teams connecting with individual clients on their cases and to support efforts to reduce implicit bias and promote understanding.”)

*The MDO model has been shown in other states to result in significant reductions in foster care spending and better outcomes for families. The study of one locality's multidisciplinary offices showed that providing this model of representation to parents resulted in a reduced length of stay in foster care for the children, who achieved permanency an average of 118 days sooner than in cases where the MDO model was not provided to parents.<sup>19</sup>*

*The study also found that “the presence of social workers and parent advocates in the [MDO] representation model appeared to increase the amount of communication between court appearances” and that social workers and parent advocates on the team “stay in touch with the client and respond promptly to their inquiries.” Judges and lawyers for the agency and children interviewed for the study observed that “[MDO] teams responded faster to their communications, facilitating the interaction between the parties to move the case forward more quickly,” which “achieve[s] better results for their clients.”<sup>20</sup>*

*See Appendix F for a list of studies and research materials from a number of other states.*

## **5. Continue the existence and charge of this Workgroup.**

*Comment: Members of the Workgroup have expressed interest in continuing its work as the recommendations made herein will require a concerted effort to evaluate program improvement and monitor case outcomes as a result of the recommended changes to Virginia's model of parent representation. In particular, the Workgroup could assist in the development of qualification and performance standards for parents counsel, the planning of the Multidisciplinary Office model pilot programs, and participating in the Article 1 study recommended herein and any further initiatives addressing the quality of legal representation in child dependency cases.*

## **CONCLUSION**

Improving the quality of legal representation provided in child dependency cases can significantly affect the lives of children and families. These cases are unique and require specialized legal knowledge and skills to advocate for parents and to help them navigate a complex child welfare system. The measures recommended herein, including providing sufficient compensation, qualification, and training of attorneys, can help improve the quality of representation, which could in turn lead to better outcomes for children and possible overall savings for the state if fewer children enter foster care and the average length of stay in foster care is decreased.

The members of the Workgroup appreciate the opportunity provided by the General Assembly to review the issues related to Virginia's system of providing court-appointed counsel in child dependency cases and to make these recommendations.

<sup>19</sup> Lucas A. Gerber et al., *Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, Child. & Youth Servs. Rev. 102 (2019) <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.

<sup>20</sup> Gerber et al., *Understanding the Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, Child. & Youth Servs. Rev. 116, 2020 at 5.

**APPENDIX A**  
**CHILD DEPENDENCY LEGAL REPRESENTATION**  
**WORKGROUP (SB 396) MEMBERS**

Eric Reynolds	Director, Office of the Children’s Ombudsman
Julie McConnell	Director, Children’s Defense Clinic, University of Richmond School of Law
Amy Atkinson	Executive Director, Virginia Commission on Youth
Will Egen	Policy Analyst, Virginia Commission on Youth
Sandra Karison	Director, Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia
Jennifer Newman	Staff Attorney, Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia
Rhonda Gardner	J&DR Court Services Manager, Department of Judicial Services, Office of the Executive Secretary, Supreme Court of Virginia
Lori Battin	Sr. Research Analyst, Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia
Jane Lissenden	Policy Analyst, Office of the Children’s Ombudsman
Maria Jankowski	Deputy Executive Director, Indigent Defense Commission
Valerie L’Herrou	Staff Attorney – Center for Family Advocacy, Virginia Poverty Law Center
Anna Daniszewski	Legal Fellow Virginia Poverty Law Center
Frank Valdez	Youth Justice Program Community Organizer, Legal Aid Justice Center
Ann H. Kloeckner	Executive Director, Legal Aid Works (Fredericksburg)
Fallon Speaker	Legal Director, Youth Justice Program Legal Aid Justice Center
The Honorable Maha-Rebekah Ramos Abejuela	Judge, Fairfax Juvenile and Domestic Relations District Court (19 <sup>th</sup> Judicial District)
The Honorable Melissa Cupp	Judge, Fauquier County Juvenile and Domestic Relations District Court (20 <sup>th</sup> Judicial District)
The Honorable Heather Ferguson	Judge, Roanoke City Juvenile and Domestic Relations District Court (23 <sup>rd</sup> Judicial District)
The Honorable Deborah S. Tinsley	Judge, Louisa Juvenile and Domestic Relations District Court (16 <sup>th</sup> Judicial District)
Rebecca Wade	Alexandria private attorney – parents’ counsel
Misty Whitehead	Henrico private attorney – GAL and parents’ counsel
Hatel Challa	Virginia Beach private attorney - GAL

Christian Brashear	Culpeper private attorney - GAL
Bretta Lewis	Virginia Beach private attorney - GAL
Lisa Piper	Chesterfield private attorney – GAL and parents’ counsel
Christopher Peace	Hanover private attorney - GAL
Morgan Cox	Private Attorney – GAL
Meredith J. Harbach	Professor of Law, University of Richmond School of Law
Kate Duvall	President and CEO, Piedmont CASA
Elizabeth Bruzzo	Assistant Commonwealth Attorney, Washington County
Esther Sherrard	E. Sherrard Consulting
Gretchen Brown	Henrico County DSS
Matthew Morris	Attorney, Richmond City DSS
Ellen Malenke	Assistant Attorney General, Office of the Attorney General





**FINAL REPORT OF THE  
VIRGINIA COMMISSION ON YOUTH**

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

# **Court-Appointed Counsel for Parents in Child Welfare Cases**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2015**





*COMMONWEALTH of VIRGINIA*  
*Commission on Youth*

Delegate Christopher K. Peace, *Chair*  
Senator Barbara A. Favola, *Vice Chair*

General Assembly Building  
201 N. 9th Street, Suite 269  
Richmond, Virginia 23219-0406

*Executive Director*  
Amy M. Atkinson

804-371-2481  
FAX 804-371-0574  
<http://vcoy.virginia.gov>

March 24, 2015

TO: The Honorable Terry McAuliffe, Governor of Virginia

and

Members of the Virginia General Assembly

In a letter received April 28, 2014, Senator George Barker requested that the Commission on Youth study court-appointed legal representation for parents in child welfare cases. On May 7, 2014, the Commission adopted a study plan for this request. At its December 2, 2014 meeting, the Commission approved the recommendations for this study. Those recommendations are included in this report, which is provided for your consideration.

This report represents the work of many government and private agencies and individuals who provided input to the study. The Commission on Youth gratefully acknowledges their support to this effort.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christopher K. Peace".

Christopher K. Peace

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**MEMBERS OF THE VIRGINIA COMMISSION ON YOUTH**

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**From the Virginia House of Delegates**

Christopher K. Peace, Chair  
Mamye E. BaCote  
Richard P. Bell  
Peter F. Farrell  
Mark L. Keam  
*One Vacancy*

**From the Senate of Virginia**

Barbara A. Favola, Vice Chair  
David W. Marsden  
Stephen H. Martin

**Gubernatorial Appointments  
from the Commonwealth at Large**

Deirdre S. Goldsmith  
Frank S. Royal, Jr., M.D.  
Charles H. Slemp, III, Esq.

**Commission on Youth Staff**

Amy M. Atkinson  
Will Egen  
Leah Mills

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## TABLE OF CONTENTS

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<b>I. Authority for Study</b> .....	1
<b>II. Members</b> .....	1
<b>III. Executive Summary</b> .....	1
<b>IV. Study Goals and Objectives</b> .....	3
A. Identified Issues	
B. Study Activities	
<b>V. Methodology</b> .....	5
A. Research and Analysis	
B. Stakeholder Interviews	
<b>VI. Background</b> .....	6
A. Importance of Quality Court-Appointed Parent Representation in Child Welfare Cases	
B. Federal Laws and National Trends	
C. Virginia: Parents’ Court-Appointed Counsel In Child Dependency Cases	
D. Virginia: Guardian ad litem for Children	
E. Virginia: Court-Appointed Special Advocates For Children	
F. Virginia: Department of Social Services Legal Representation In Child Dependency Cases	
G. Other States’ Parent Representation System In Child Welfare Cases	
<b>VII. Findings and Recommendations</b> .....	22
<b>VIII. Acknowledgments</b> .....	22

### **Appendices**

*Appendix A: Virginia Court Improvement Program: Training for Parents’ Counsel  
and the Courts*

*Appendix B: State Comparisons Chart*



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## **I. Authority for Study**

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Section 30-174 of the *Code of Virginia* establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." This section also directs the Commission to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."

Section 30-175 of the *Code of Virginia* outlines the powers and duties of the Commission on Youth and directs it to "[u]ndertake studies and to gather information and data...and to formulate and report its recommendations to the General Assembly and the Governor."

In a letter received April 28, 2014, Senator George Barker requested that the Commission on Youth study legal representation for parents in child welfare cases, review Virginia's current system for providing counsel in these cases, and ascertain whether modifications or improvements to the system would advance Virginia's efforts to improve child welfare outcomes such as increased permanency rates. The Commission on Youth designed a study plan to consider the implications of various policy options to improve Virginia's current process of providing court-appointed counsel for parents in child welfare dependency proceedings.

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## **II. Members Appointed to Serve**

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The Commission on Youth is a standing legislative commission of the Virginia General Assembly. It is comprised of twelve members: six Delegates, three Senators and three citizens appointed by the Governor.

Members of the Virginia Commission on Youth are:

Delegate Christopher K. Peace, Mechanicsville, Chair  
Delegate Mamye E. BaCote, Newport News  
Delegate Richard P. "Dickie" Bell, Staunton  
Delegate Peter F. Farrell, Richmond  
Delegate Mark L. Keam, Vienna  
Senator Barbara A. Favola, Arlington, Vice Chair  
Senator David W. Marsden, Burke  
Senator Stephen H. Martin, Chesterfield  
Deirdre S. Goldsmith, Abingdon  
Frank S. Royal, Jr., M.D., Richmond  
Charles H. Slemp, III, Esq., Norton  
*One House of Delegates seat is vacant.*

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## **III. Executive Summary**

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In a letter received April 28, 2014, Senator George Barker requested that the Commission on Youth study legal representation for parents in child welfare cases. The letter requested the Commission to review Virginia's existing system for providing counsel in these cases and ascertain whether modifications or improvements to the system would advance Virginia's efforts to improve child welfare outcomes. The topic of evaluating the quality of court-appointed counsel for parents in child dependency cases, including compensation rates and training

requirements, is a growing issue. Most states' child welfare laws and court systems provide a solid foundation for legal representation for children in child welfare cases related to child abuse or neglect and potential termination of parents' rights, but access to high quality court-appointed legal representation for parents is not as prevalent. The 1981 United States Supreme Court case, *Lassiter v. Department of Social Services*, ruled that federal law does not explicitly give indigent parents the right to court-appointed counsel.<sup>1</sup> To date, most states provide indigent parents with access to a court-appointed attorney during some point in the court process. However, many states have yet to establish standard training requirements for parents' court-appointed counsel in child welfare cases.

In Virginia, counsel can be appointed for parents in child delinquency cases as well as child welfare dependency proceedings. The scope of this study is limited to parents' need for court-appointed attorneys in cases where a local department of social services has begun a child dependency proceeding against a parent alleging child abuse or neglect. There are 120 local departments of social services and the manner in which cases are handled varies by locality. Virginia currently provides that indigent parents or guardians who are the subject of court petitions alleging abuse or neglect, or those subject to potential termination of their parental rights, have the right to counsel.<sup>2</sup> Lack of access to quality attorney representation for poor parents in child dependency cases has the potential to leave parents at a disadvantage throughout a number of court proceedings and could also have other negative implications for the various parties involved, including the child, the court system, and the general public.

At the most basic level, higher quality representation will assist parents in navigating complex court proceedings. In addition, ensuring that parents receive quality legal representation from their court-appointed counsel early and consistently throughout the duration of the case is crucial to promoting reunification as a permanency solution instead of termination of parental rights. Early intervention efforts for children in Virginia are critical to help children receive the care they need and avoid poor outcomes in the future. The Virginia Department of Social Services (VDSS) is the main agency that oversees and provides guidance to the local departments of social services. In Fiscal Year 2013, VDSS reported 6,205 abused and neglected children and 4,999 children in foster care. Forty-eight percent of the foster care children were between the ages of 13 and 19.<sup>3</sup> These older children are at risk of aging out of the foster care system, and thus unable to receive the benefits of early intervention.

One of the main issues raised by this study is the compensation level for attorneys in child dependency cases. On average, private attorneys rates range from \$200 - \$400 an hour in comparison to Virginia's current rate of \$120 per appealable case in district court and \$158 per appealable case in circuit court. Interviews with some Virginia judges and other key stakeholders revealed that these low compensation rates for court-appointed counsel as well as the lack of required standardized training could ultimately impact the quality of court-appointed counsels' representation for their parent clients. Many stakeholders support the idea of changing the compensation structure for court-appointed counsel to reflect that of court-appointed counsels representing criminal cases, which allows for a waiver submission to request additional compensation.

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<sup>1</sup> *Lassiter v. Department of Social Services of Durham County, North Carolina*. 452 U.S. 18. Available: <http://www.law.cornell.edu/supremecourt/text/452/18>. [February 20, 2015].

<sup>2</sup> *Code of Virginia* § 16.1-266 (D).

<sup>3</sup> Virginia Department of Criminal Justice Services. The National Court Appointed Special Advocate Association. (2014). *Virginia Court Appointed Special Advocate Programs*.



Many states such as Colorado, Michigan, and Washington have taken steps towards improving their parent representation model for child welfare cases. This report will provide more insight on some other states' areas of improvement and efforts they have taken to strengthen their systems. In addition, this report will examine Virginia's current system. Throughout this report, the terms "child welfare cases" and "child dependency cases" are used interchangeably.

After a presentation of the findings and recommendations and receipt of public comment at its December 2, 2015 meeting, the Commission on Youth approved the following recommendation:

### **Recommendation 1**

Allow court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation above the current cap for all stages of a child dependency case.

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## **IV. Study Goals and Objectives**

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At the Commission on Youth meeting on May 7, 2014, Commission on Youth staff was directed to assess the issues surrounding Virginia's existing system for providing court-appointed counsel for parents in child welfare and dependency cases. Virginia's compensation structure and training requirements were reviewed and compared to other states. Findings and recommendations were to be reported to the Commission prior to the 2015 General Assembly Session.

### **A. IDENTIFIED ISSUES**

- Virginia currently provides that parents or guardians who are the subject of court petitions alleging abuse, neglect, or that their child is in need of services or supervision have the right to counsel. The parent or guardian also has the right to counsel prior to any hearing at which a parent could be subject to the loss of their parental rights. Additionally, any other adult charged with abuse or neglect of a child shall also be informed of their right to counsel.<sup>4</sup> If the parent or guardian is unable to afford counsel in cases of alleged abuse or neglect, or possible loss of parental rights, then the court is required to provide counsel.
- Moreover, if the child is subject to a hearing for an initial foster care plan, a foster care review, or a permanency planning hearing, the court has the discretion to consider appointing counsel to represent the parent or guardian. If a parent or guardian fails to appear or if his identity or location is unknown, the court may appoint counsel on his behalf, at its discretion.<sup>5</sup>
- Ability to pay is based on specific financial eligibility guidelines. To qualify for court-appointed counsel, the family must provide a financial statement to the court indicating its inability to pay for counsel.<sup>6</sup>
- Court-appointed counsel representing a child, parent, or guardian is compensated up to \$120 in district court and up to \$158 when the juvenile court case is appealed to circuit court.<sup>7</sup>
- Currently, Virginia does not require any specialized training for attorneys appointed by the court to represent parents in child abuse/neglect cases.

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<sup>4</sup> Code of Virginia § 16.1-266.

<sup>5</sup> Code of Virginia § 16.1-266 (D).

<sup>6</sup> Code of Virginia § 16.1-267.

<sup>7</sup> Code of Virginia § 19.2-163.

- Child welfare cases have many steps. The timeline for permanency hearings will change on July 1, 2014. The current and future timelines are outlined below.<sup>8</sup>

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Steps in Permanency Planning	Timelines effective until June 30, 2014	Timelines effective as of July 1, 2014
Emergency Removal Petition begins timeline and attorneys are appointed		
Preliminary Removal Hearing	Within 5 days	Within 5 days
Adjudicatory Hearing	Within 30 days	Within 30 days
Dispositional Hearing	Within 75 days from the preliminary removal order hearing	Within 60 days from the preliminary removal order hearing
Foster Care Review Hearing	Within 6 months	Within 4 months
Permanency Planning Hearing	Within 5 months	Within 5 months

- Child welfare law is complicated and representation of these clients can take a lot more time, making these cases less cost effective for private attorneys.

## B. STUDY ACTIVITIES

At the Commission's meeting on May 7, 2014, the Commission approved the study plan which included the following activities:

- Conduct extensive background and literature reviews
  - Other states' initiatives and policies
  - Best practices in court-appointed counsel compensation
  - Child Welfare League of America
  - American Bar Association
  - State Policy Database from Casey Family Programs
  - Child Welfare League of America literature
  - National Association of Criminal Defense Lawyers literature
- Review federal legislation/statutes
  - *Child Abuse Prevention and Treatment Act (CAPTA)*
  - *Fostering Connections to Success and Increasing Adoptions Act*
- Review Virginia laws, regulations, and practices
  - Court-appointed counsel statutes
  - Guardian ad litem statutes
  - Juvenile court-appointed counsel statutes
  - Statutes pertaining to permanency, abuse and neglect,
  - Regulations addressing adjudication and child welfare
  - Child welfare regulations
  - Other related practices
- Analyze Virginia practices and data

<sup>8</sup> Supreme Court of Virginia, Office of the Executive Secretary, Court Improvement Program. (April 2014). *A Handbook for Parents and Guardians in Child Dependency Cases*. Available: [http://www.courts.state.va.us/courtadmin/aoc/cip/resources/handbook\\_for\\_parents\\_and\\_guardians.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/resources/handbook_for_parents_and_guardians.pdf). [February 20, 2015].

- Review Virginia’s court-appointed counsel guidance documents
  - Virginia’s Court Improvement Program
  - Virginia’s Indigent Defense Commission
  - Receive information on appointment of counsel practices from a cross-section of Virginia’s judicial districts (rural and urban)
  - Receive information from Virginia’s Juvenile and Domestic Relations Courts
  - Review data tracked and reported quarterly by the Executive Secretary of the Supreme Court of Virginia regarding amounts paid by waiver above the initial cap to court-appointed counsel
- Interview impacted agencies and stakeholder organizations
    - Office of the Executive Secretary of the Supreme Court of Virginia
    - Virginia Indigent Defense Commission
    - Virginia State Bar
    - Virginia Bar Association
    - Virginia Poverty Law Center
    - Virginia’s Court-Appointed Special Advocates
    - Department of Criminal Justice Services
    - Department of Social Services
    - Public Defenders
    - Guardian ad litem
    - Juvenile Court Judges/Court officials
    - Department of Social Services’ attorneys
    - Advocacy Organizations
- Synthesize findings of literature review and interviews
  - Develop findings and recommendations
  - Solicit feedback on draft recommendations from impacted stakeholders
  - Refine findings and recommendations
  - Present findings and recommendations to the Commission on Youth
  - Prepare final report

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## **V. Methodology and Objectives**

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### **A. RESEARCH AND ANALYSIS**

The topic of evaluating the quality of court-appointed counsel for parents in child dependency cases, including compensation rates and training requirements, is a growing issue. However, Commission staff could not locate one exclusive source that provided a comprehensive and current overview of this issue. The Commission relied mainly on literature reviews prepared by national organizations such as the American Bar Association (ABA) Center on Children and the Law, the National Conference of State Legislators, the National Council of Juvenile and Family Court Judges, Child Welfare Information Gateway, and the United States Department of Health and Human Services. The Commission also reviewed the following federal statutes: the *Child Abuse Prevention and Treatment Act of 1974 (CAPTA)*, the *Adoption and Families Safe Act of 1997 (ASFA)*, and the *Fostering Connections to Success and Increasing Adoption Act of 2008*.

Virginia resources that were particularly helpful included the *Court-Appointed Counsel Procedures and Guidelines Manual* and the *Chart of Allowances* from the Office of the

Executive Secretary, Supreme Court of Virginia, as well as relevant Virginia statutes. Several other sources provided additional insight and are cited accordingly throughout this report. Some individual states that were particularly helpful in providing an overview of this issue of improving the quality of court-appointed counsel for parents in child welfare cases were Colorado, Connecticut, Massachusetts, Michigan, New York, Vermont, Washington, and Wyoming. Both the Virginia Court Improvement Program and the Virginia Department of Social Services assisted in providing specific data related to child dependency cases in Virginia which Commission staff analyzed in order to form its final recommendation.

## **B. STAKEHOLDER INTERVIEWS**

The Commission on Youth staff relied heavily on the insight provided by several key stakeholders both in Virginia and in several other states. Experts in child welfare issues such as judges, guardian ad litem, court-appointed attorneys, Court-Appointed Special Advocates executive staff, Virginia Indigent Defense Commission staff, and Virginia Court Improvement staff were consulted by the Commission over the past several months. All of these stakeholders played a pivotal role in expressing their concerns regarding Virginia's current system of court-appointed counsel for parents in child welfare proceedings and the impact that system may have on the efficiency of child dependency proceedings and the effectiveness of child welfare outcomes. These stakeholders also helped provide opinions on various policy options proposed by the Commission as well as suggested other policy options that the Commission should investigate.

- Virginia Supreme Court/Office of the Executive Secretary/Court Improvement Program
- Guardians Ad Litem
- Defense Attorneys
- Virginia Juvenile Court Judges/Court representatives
- Advocacy organizations
- Commonwealth Attorneys
- Virginia Department of Criminal Justice Services, CASA
- Piedmont Court-Appointed Special Advocates (CASA) Program
- Virginia Indigent Defense Commission
- Vermont Parent Representation Center
- University of Virginia Law Clinic
- Virginia Poverty Law Center
- American Bar Association, Center for Family and the Law
- Family Members/Parents
- Local Departments of Social Services (DSS) representatives
- Virginia State Bar
- Virginia Bar Association

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## **VI. Background**

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The results of the research and analysis conducted by Commission staff are summarized below.

### **A. IMPORTANCE OF QUALITY COURT-APPOINTED PARENT REPRESENTATION IN CHILD WELFARE CASES**

Early intervention efforts for children in Virginia are crucial to ensure that children receive the care they need and reduce the likelihood of poor outcomes in the future. The Virginia Department of Social Services (VDSS), through local department of social services offices, is the main agency that plays an intervention role in instances where individuals' parenting ability is allegedly inadequate. For Fiscal Year 2013, VDSS reported 6,205 abused and neglected

children and 4,999 children in foster care.<sup>9</sup> Forty-eight percent of the foster care children were between the ages of 13 and 19.<sup>10</sup>

Most states' child welfare laws and court systems provide a solid foundation for legal representation for the child (by way of a guardian ad litem and Court-Appointed Special Advocate). However, in child welfare cases related to child abuse or neglect and potential termination of parents' rights, access to high quality court-appointed legal representation for parents is not as prevalent. The 1981 *Lassiter v. Department of Social Services* United States Supreme Court case ruled that federal law does not explicitly require that indigent parents be entitled to a court-appointed attorney.<sup>11</sup> Although most states have mitigated this issue by allowing indigent parents access to a court-appointed attorney during some point in the court process, many states have yet to establish standard training requirements for court-appointed counsel for parents in child welfare cases. Specifically in Virginia, court-appointed counsel for parents in child welfare cases are not currently subject to training requirements. Furthermore, compensation for such attorneys is currently \$120 per case in district court and \$158 per case in circuit court, regardless of the time duration of the case.<sup>12</sup>

In Virginia, counsel can be appointed for parents in child delinquency cases as well as child welfare dependency proceedings filed against a parent. The scope of this study is limited to parents' need for court-appointed attorneys in cases where a local department of social services has filed a child dependency petition against a parent alleging child abuse or neglect. Lack of access to quality counsel representation for parents in said cases could not only leave parents at a disadvantage, but could also have many potential negative implications for the other parties involved, including the child, the court system, and the general public. Quality legal representation for all parties results in greater efficiency when navigating the court system and could result in quicker and more effective use of social service resources aimed at finding permanency for a child. Strengthening the quality of parents' legal representation provided by court-appointed attorneys in child welfare cases could potentially have a number of benefits, including reducing foster care entry, assisting parents in navigating complex court proceedings, improving decision-making for all parties involved, and highlighting innovative solutions available to the court and interested parties (such as access to community-based services).<sup>13</sup> When all parties involved have access to quality legal representation, child welfare outcomes can be substantially improved. These outcomes include an increase in reunification rates, an increase in the number of children placed with siblings and relatives, and government-savings from reduced time in foster care and its associated use of social services.

## **B. FEDERAL LAWS AND NATIONAL TRENDS**

Federal law does not require that parents have the right to court-appointed counsel in certain child dependency cases, but most states have mandated it in their statutes (43 states for termination of parental rights cases and 39 states for abuse and neglect cases).<sup>14</sup> Virginia is

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<sup>9</sup> Virginia Department of Criminal Justice Services. The National Court Appointed Special Advocate Association. (2014). *Virginia Court Appointed Special Advocate Programs*.

<sup>10</sup> Ibid.

<sup>11</sup> *Lassiter v. Department of Social Services of Durham County, North Carolina*. 452 U.S. 18. Available: <http://www.law.cornell.edu/supremecourt/text/452/18>. [February 20, 2015].

<sup>12</sup> Supreme Court of Virginia, Office of the Executive Secretary. (July 1, 2014). *Chart of Allowances*. Available: <http://www.courts.state.va.us/courtadmin/aoc/fiscal/chart.pdf>. [February 20, 2015]; also see *Code of Virginia* 19.2-163 Compensation of court-appointed counsel.

<sup>13</sup> State Bar of Michigan Children's Law Section. (Fall 2009). *The Michigan Child Welfare Law Journal*. Vol. XIII, Issue 1. Available: [http://chanceatchildhood.msu.edu/pdf/CWLJ\\_fa09.pdf](http://chanceatchildhood.msu.edu/pdf/CWLJ_fa09.pdf). [February 20, 2015].

<sup>14</sup> Sotolongo, Wendy. (April 2011). *The Importance of the Right to Counsel in an Abuse/Neglect/Dependency and Termination of Parental Rights Proceedings in North Carolina*. North Carolina Indigent Defense Services. Available: [http://www.ncids.org/ParentRepresentation/News\\_Updates/ImportanceRightToCounsel.pdf](http://www.ncids.org/ParentRepresentation/News_Updates/ImportanceRightToCounsel.pdf). [February 20, 2015].

one such state that provides parents with the right to court-appointed counsel in abuse and neglect and termination of parental rights cases.

Some of the main federal laws governing child welfare are the *Child Abuse Prevention and Treatment Act of 1974 (CAPTA)*, the *Adoption and Families Safe Act of 1997 (ASFA)*, and the *Fostering Connections to Success and Increasing Adoption Act of 2008*, which expands adoption incentives and creates an option to provide kinship guardianship assistance payments.<sup>15</sup> The original CAPTA has been completely rewritten and amended a number of times and was most recently reauthorized as the *Child Abuse Prevention and Treatment Act of 2010*.<sup>16</sup> In 2013, Congresswoman Gwen Moore (D-Wisconsin) introduced House Resolution 1096 to establish the *Enhancing the Quality of Parent Legal Representation Act of 2013*.<sup>17</sup> <sup>18</sup> This bill however died at the end of the 113<sup>th</sup> Congress. The previous version of the bill, House Resolution 3873, died in the 112<sup>th</sup> Congress.

In accordance with the AFSA, the *Child Welfare Outcomes* is an annual report published by the United States Department of Health and Human Services (HHS) that provides information on state's performance in seven national outcome areas. Data is compiled and analyzed from HHS's two national child welfare-related data systems—the National Child Abuse and Neglect Data System and the Adoption and Foster Care Analysis and Reporting System. The seven national outcomes are:<sup>19</sup>

1. Reduce recurrence of child abuse and/or neglect;
2. Reduce the incidence of child abuse and/or neglect in foster care;
3. Increase permanency for children in foster care;
4. Reduce time in foster care to reunification without increasing reentry;
5. Reduce time in foster care to adoption;
6. Increase placement stability; and
7. Reduce placements of young children in group homes or institutions.

States have been more successful at finding permanent placement for the general foster care population than they have been for foster care children with disabilities and those older than age 12. The 2011 data also indicated the continued challenge with finding permanency within 24 months for foster care children.<sup>20</sup> On both the federal and state level, reunification with parents is the most preferred permanency option. However, foster care is inevitable in some cases where the child would not be safe with his biological parents or current guardians. In these instances, federal and state law emphasizes providing community support and services for parents in an effort of reunification as soon as possible. Guardianship, kinship, or adoption are the next best alternatives before resorting to foster care.<sup>21</sup>

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<sup>15</sup> United States Government Printing Office (2008). Bill text. Available: <http://www.gpo.gov/fdsys/pkg/BILLS-110hr6893enr/pdf/BILLS-110hr6893enr.pdf>. [February 20, 2015].

<sup>16</sup> U.S. Department of Health and Human Services. (December 31, 2011). *Child Abuse Prevention and Treatment Act*. Available: <http://www.acf.hhs.gov/sites/default/files/cb/capta2010.pdf>. [February 20, 2015].

<sup>17</sup> Center for Family Representation (2014). *The Parental Legal Representation Act*. Available: <http://www.cfrny.org/news-blog/parent-representation-act/>. [May 19, 2014].

<sup>18</sup> United States Government Printing Office. *House Resolution 1096 Bill Text*. Available: <http://www.gpo.gov/fdsys/pkg/BILLS-113hr1096ih/pdf/BILLS-113hr1096ih.pdf>. [February 20, 2015].

<sup>19</sup> United States Department of Health and Human Services. 2011. *Child Welfare Outcomes 2008–2011: Report to Congress*. Available: <http://www.acf.hhs.gov/programs/cb/resource/cwo-08-11>. [February 20, 2015].

<sup>20</sup> United States Department of Health and Human Services. 2011. *Child Welfare Outcomes 2008–2011: Report to Congress*. Available: <http://www.acf.hhs.gov/programs/cb/resource/cwo-08-11>. [February 20, 2015].

<sup>21</sup> Thornton, Elizabeth and Betsy Gwin. (Spring 2012). *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*. *Family Law Quarterly*, 46.1: 139-154.

States have also placed a greater emphasis on concurrent planning, which is the case of social workers planning for two potential outcomes in child dependency cases: 1) reunification of the child with his parent and 2) termination of parental rights and consideration of other permanency options such as kinship or foster care. Best practice literature contends that parents need to view an assigned social worker as a partner, not as an adversary, in the attempt to help parents provide the best care for their child. As such, the position of a quality court-appointed counsel for parents is essential to help emphasize this objective of working with an assigned social worker to parents.<sup>22</sup>

The seven national child welfare outcomes listed above are important to keep in mind when considering the effectiveness of various policy options aimed at improving the quality of court-appointed counsel for parents in child welfare cases in Virginia. Data specifically related to the impact of parents' legal representation in child welfare cases on child welfare outcomes and permanency has yet to be compiled. However, some best practices can be derived from some states' current policies, procedures, and programs.

In 2006, the American Bar Association (ABA) published *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*. The publication provided very detailed standards and best practices related to "basic obligations of parents' attorneys," "obligations of attorney manager," and "the role of the court."<sup>23</sup> Although these standards have yet to be enacted as federal law, a few states have utilized these standards as a framework to design a system that provides training and standards for attorneys representing indigent parents in child welfare cases. In this report, some of these states' efforts and initiatives are discussed in further detail.

In addition, the ABA compiled a report and survey on the compensation rates for attorneys in indigent defense cases in criminal matters, but has not specifically looked at the rates in child welfare cases. In 2007, The Spangenberg Group updated this report for the ABA, *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State by State Overview*.<sup>24</sup> According to the report, ranking all fifty state's compensation rates would be of limited significance because of the diversity of models which jurisdictions use to provide indigent defense.

Similarly, the ABA Center on Children and the Law is currently spearheading the National Project to Improve Representation for Parents Involved in the Child Welfare System which began in 2007.<sup>25</sup> The ABA Project contends that lack of quality representation could result in families needlessly being separated for long periods of time or indefinitely and therefore aims to accomplish current goals to improve the quality and support for parents' legal representation in child welfare cases. The Project's main goals are to improve parent attorneys' training and

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<sup>22</sup> Mississippi Parents' Counsel Project (2013). *Giving Parents Voice*. Available: <https://www.youtube.com/watch?v=4bnHYA2xajY>. [February 20, 2015].

<sup>23</sup> American Bar Association. *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*. Available: [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/ParentStds.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf). [February 20, 2015].

<sup>24</sup> The Spangenberg Group. The American Bar Association, Bar Information Program. (June 2007). *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State by State Overview*. Available: [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_2007felony\\_comp\\_rates\\_update\\_nonfelony.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_2007felony_comp_rates_update_nonfelony.authcheckdam.pdf). [February 20, 2015].

<sup>25</sup> American Bar Association. (2014). *National Project to Improve Representation for Parents Involved in the Child Welfare System Home Page*. Available: [http://www.americanbar.org/groups/child\\_law/what\\_we\\_do/projects/parentrepresentation.html](http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation.html). [February 20, 2015].

compensation fees, enhance parents' engagement in the child welfare court system, and influence related state and federal policy.

The ABA Project has prepared numerous written materials and fact sheets that any state can utilize and is also available to collaborate with states' Court Improvement Programs to provide specialized training sessions for attorneys representing parents in child dependency cases. The ABA Project has also conducted comprehensive assessments of three states' current system of legal parent representation in child dependency proceedings, and is available for any other states interested in a statewide assessment. The ABA Project provides for several opportunities for parents' attorneys to network such as through their latest conference held in May 2009 that attracted nearly 250 attorneys and a listserv available for attorneys to share resources. Lastly, the ABA Project is advocating for implementation of the 2006 ABA Practice Standards and is also working on creating a national organization for parents' attorneys.

The 2006 ABA Practice Standards are intended to promote quality representation and uniformity of practice for parents' attorneys in child abuse and neglect cases. These best practices stress the following:<sup>26</sup>

1. Appointment of an attorney as early as possible, preferably before the first hearing;
2. Frequent and consistent contact between the attorney and client during hearings to help the parent understand and engage in the court process, as well as advocating for appropriate and meaningful services; and
3. Ongoing training and preparation of court-appointed attorneys to ensure they are the most up-to-date on client-driven representation practices.

**C. VIRGINIA: PARENTS' COURT-APPOINTED COUNSEL IN CHILD DEPENDENCY CASES**

Child welfare cases have many steps. The timeline for permanency hearings changed as of July 1, 2014. The past and current timelines are outlined below.<sup>27</sup>

Steps in Permanency Planning	Timelines effective until June 30, 2014	Timelines effective as of July 1, 2014
Emergency Removal Petition begins timeline and attorneys are appointed		
Preliminary Removal Hearing	Within 5 days	Within 5 days
Adjudicatory Hearing	Within 30 days	Within 30 days
Dispositional Hearing	Within 75 days from the preliminary removal order hearing	Within 60 days from the preliminary removal order hearing
Foster Care Review Hearing	Within 6 months	Within 4 months
Permanency Planning Hearing	Within 5 months	Within 5 months

At the preliminary removal hearing, the judge determines if the child who has been removed from the home has been abused or neglected. At this hearing, the judge will decide if the child

<sup>26</sup> Thornton, Elizabeth and Betsy Gwin. (Spring 2012). *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*. Family Law Quarterly, 46.1: 139-154.

<sup>27</sup> Supreme Court of Virginia, Office of the Executive Secretary, Court Improvement Program. (2008). *A Handbook for Parents and Guardians in Child Dependency Cases*. (April 2014). Available: [http://www.courts.state.va.us/courtadmin/aoc/cip/resources/handbook\\_for\\_parents\\_and\\_guardians.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/resources/handbook_for_parents_and_guardians.pdf). [February 20, 2015].



should stay in the custody of the local department of social services until the adjudicatory hearing. At the adjudicatory hearing the judge listens to evidence and decides if the child has been abused or neglected. The judge also again decides where the child will live until the dispositional hearing. Next at the dispositional hearing, the judge determines who should have custody of the child. The choices in this situation are between returning the child to the parent under certain conditions being met, placing the child with a relative (commonly known as kinship care), or keeping the child in foster care with the local department of social services. If the child is placed in foster care, the judge will review a foster care plan prepared by social services. The plan will highlight what the parent must do to solve the problems that brought the child into court and give a time frame to solve the problems. At the next step, which is the foster care review hearing, the judge will look over the case and make sure the parent is doing what the foster care plan specifies. Finally, at the permanency planning hearing, the judge decides whether or not the child can safely be returned home. If the judge determines that the child cannot safely be returned home, the foster care plan is changed to reflect a different goal, such as adoption or some other permanent arrangement outside of the home.<sup>28</sup>

The process described above is quite complex. It is important that a qualified and properly compensated attorney make himself or herself available at all of these steps to assist the parent with the goal of safely returning the child home. Children grow best in a permanent, safe, and loving family. For a child to be returned home, a parent must prove and ensure to the courts the home is safe. The role of the attorney is to talk with the parent before every hearing and speak for the parent in court, help the parent understand their rights, and tell the parents about the hearings they will attend and what to anticipate at each hearing. The rest of this section will look at how a court-appointed counsel is appointed, trained, and compensated.<sup>29</sup>

### **Appointment**

Sections 16.1-266 and 16.1-267 of the *Code of Virginia* outline the process for court-appointment of counsel for parents. The right to be represented by a court-appointed attorney is for parents who may be subjected to a total loss of parental rights by court order. Virginia law requires a judge, clerk, or probation officer to inform parents of their right to court-appointed counsel prior to the adjudicatory hearing, although most judges inform parents of said right before or at the preliminary removal hearing. Parents are assigned a court-appointed counsel unless they waive their right, retain private counsel, or are determined not to be indigent. In accordance with § 19.2-159 of the *Code of Virginia*, indigent parents earning at or below 125 percent of the federal poverty guidelines are considered eligible for court-appointed counsel.<sup>30</sup> According to the Federal Poverty Guidelines, as of January 22, 2015, for a family of four the annual earnings must be at or under \$30,313 to be considered eligible.<sup>31</sup> In order to be appointed a court-appointed attorney, the accused parent must complete a form DC-334: Request for Appointment of a Lawyer and form DC-333: Financial Statement – Eligibility Determination for Indigent Defense Services.

Each individual judicial court maintains a list of local attorneys who may serve as court-appointed counsel for parents in child dependency proceedings. Court-appointed attorneys are assigned on a rotational basis of practicing members of the Virginia bar based on attorneys'

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> *Code of Virginia* § 19.2-159 (D). Determination of indigency; guidelines; statement of indigence; appointment of counsel. Available: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-159>. [February 20, 2015].

<sup>31</sup> Office of the Executive Secretary, Department of Judicial Services. *Eligibility for Court-Appointed Counsel Indigency Guidelines*. Available: [http://www.courts.state.va.us/courtadmin/aoc/djs/resources/indigency\\_guidelines.pdf](http://www.courts.state.va.us/courtadmin/aoc/djs/resources/indigency_guidelines.pdf). [February 20, 2015].

availability. The process is decentralized in that local judges use their own discretion to determine which attorneys will be assigned which cases. In accordance with these statutes, the Juvenile and Domestic Relations District Court Manual provides regulations for court-appointed counsel representing the following types of child welfare cases: neglect, abuse, foster care, entrustment, relief of custody, and termination of parental rights.

### **Training**

For initial certification, all court-appointed attorneys in criminal cases for juvenile and domestic relations cases are required to complete a total of ten training hours of Mandatory Continuing Legal Education (MCLE), four of which pertain to representing juveniles. These attorneys must also certify that they have participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and domestic relations district court. In addition, attorneys must complete six hours of approved MCLE training biennially and four additional hours of approved MCLE training biennially, related to representing juveniles, in order to be re-qualified as a court-appointed attorney for juvenile and domestic relation cases.<sup>32</sup> Guardian ad litem in Virginia have similar requirements for training. Initially, an attorney must take the seven hour required course, *Representation of Children as a Guardian Ad Litem*, which is offered by Virginia CLE, a non-profit educational division of the Virginia Law Foundation.<sup>33</sup> This course goes in depth into the representation of children and covers eight specific areas, including: 1) overview of the juvenile and domestic relations district court law, 2) roles, responsibilities and duties of guardian ad litem representation, 3) laws governing child abuse and neglect, foster care case review, termination of parental rights and entrustments, 4) role of social services agencies in handling abuse and neglect cases, 5) developmental needs of children, 6) characteristics of abusive and neglectful families and of children who are victims; physical, medical and mental health aspects of child abuse and neglect, 7) communication with children, children as witnesses, use of closed circuit television, and 8) cultural awareness.

Virginia's Court Improvement Program has primarily played the role of providing high-quality training for court-appointed counsel and received its first grant in 1995.<sup>34</sup> The funding for the Court Improvement Program can be used to provide training for court-appointed attorneys. As such, the Virginia Court Improvement Program has made significant progress in providing training for court-appointed counsel, guardian ad litem, and Court-Appointed Special Advocates for children. Virginia's Court Improvement Program hosted regional training seminars in October 2008 specifically for court-appointed attorneys representing parents in child welfare cases. The training was approved by the Virginia State Bar's Mandatory Continuing Legal Education Department for six hours of credit and by the Office of the Executive Secretary for six hours of continuing education for qualified guardian ad litem for children. Attorneys who attended this training were asked to commit to serving as parent's counsel on two cases during the following year. In 2012, the Virginia Court Improvement Program provided another training course for court-appointed counsel representing parents in child welfare cases.<sup>35</sup> The agenda for this training course is available as Appendix A. This course covered topics, including trial

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<sup>32</sup> *Code of Virginia*, § 19.2-163.03. Qualifications for court-appointed counsel. Available:

<http://law.lis.virginia.gov/vacode/title19.2/chapter10/section19.2-163.03/>. [February 20, 2015].

<sup>33</sup> Supreme Court of Virginia, Office of the Executive Secretary. *Standards to Govern the Appointment of Guardians Ad Litem for Children*. Available:

[http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal\\_standards\\_children.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal_standards_children.pdf). [February 20, 2015].

<sup>34</sup> Supreme Court of Virginia, Office of the Executive Secretary. *Court Improvement Program*. Available:

<http://www.courts.state.va.us/courtadmin/aoc/cip/home.html>. [February 20, 2015].

<sup>35</sup> Supreme Court of Virginia, Office of the Executive Secretary, Court Improvement Program. (May 8, 2012). *Building Connections for Children: Parents' Counsel and the Courts*. Available:

[http://www.courts.state.va.us/courtadmin/aoc/cip/resources/conf/2011/agenda\\_parents\\_512.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/resources/conf/2011/agenda_parents_512.pdf). [February 20, 2015].

advocacy, resources and best practices, and ethical issues. However, due to budget cuts, the Virginia Court Improvement Program was unable to cover attorneys' lodging expenses for the 2012 training seminar.

The Virginia Poverty Law Center has also helped with training efforts in the past.<sup>36</sup> Currently, Virginia does not require any specialized training for court-appointed attorneys representing parents in child abuse and neglect cases, beyond the standard continuing legal education training requirements that all court-appointed attorneys in criminal cases must fulfill. It is also important to note that many of the same attorneys who serve as guardian ad litem also serve as court-appointed attorneys for parents in child welfare cases, so the guardian ad litem training they receive can also be beneficial when serving as a court-appointed counsel for parents.

### **Compensation**

As outlined in § 19.2-163 of the *Code of Virginia*, the Supreme Court of Virginia currently compensates court-appointed counsel at a rate of \$90 per hour.<sup>37</sup> However, § 19.2-163 further stipulates that court-appointed counsel specifically held in juvenile and domestic relations district court receive \$120 for each appealable order. Most cases require more than one hearing prior to the court enacting an appealable order. Additionally, each child is entered into the court system as a separate case number. If a case is appealed to circuit court, court-appointed counsel is compensated at a slightly higher rate of \$158 per case.<sup>38</sup> The Office of the Executive Secretary within the Supreme Court of Virginia publishes the *Chart of Allowances* annually which provides guidelines and set compensation rates for all court-appointed counsel.<sup>39</sup>

Compensation for court-appointed counsel differs for attorneys representing indigent persons in criminal cases versus attorneys representing indigent persons in civil cases.<sup>40</sup> Since July 1, 2007, court-appointed counsel for criminal cases have been eligible to submit a written request to the Executive Secretary of the Supreme Court of Virginia for additional compensation above the statutory limit of \$120 per appealable case in district court and \$158 in circuit court. The written request must provide detailed information related to time spent on the case and justification for additional compensation. Requests for waiver of fee caps are reviewed by the presiding judge and the chief of the district or circuit court prior to approval. There is no appeal process for denied requests for additional compensation.<sup>41</sup> In contrast, court-appointed counsel representing parents in a civil matter, such as a child welfare case, do not have the option to apply for additional compensation above the statutory limit. The Appropriations Act provides that the Criminal Fund is the funding source for the courts' expenditures for court-appointed counsel and guardian ad litem. The same pool of dollars is used to compensate court-appointed attorneys in both criminal and civil court cases. Additionally, the budget currently appropriates \$4.2 million per year in the biennium from the general fund for waivers for court-

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<sup>36</sup> Virginia Poverty Law Center. (2014). *Family Law Section*. Available: <http://www.vplc.org/family-law/>. [February 20, 2015].

<sup>37</sup> *Code of Virginia*, § 19.2-163 Compensation of court-appointed counsel.

<sup>38</sup> *Code of Virginia*, § 63.1-1203 – Welfare (Social Services).

<sup>39</sup> Supreme Court of Virginia, Office of the Executive Secretary. (July 1, 2014). *Chart of Allowances*. Available: <http://www.courts.state.va.us/courtadmin/aoc/fiscal/chart.pdf>. [February 20, 2015].

<sup>40</sup> A comparison of Compensation rates for court-appointed attorneys in all 50 states can be found at Appendix B.

<sup>41</sup> Supreme Court of Virginia, Office of the Executive Secretary. (July 1, 2014). *Chart of Allowances*. Available: <http://www.courts.state.va.us/courtadmin/aoc/fiscal/chart.pdf>. [February 20, 2015].

appointed counsel pursuant to § 19.2-163, *Code of Virginia*, but this only applies to criminal cases.<sup>42</sup>

One policy option, raised by a number of stakeholders, is to improve compensation for court-appointed counsel in child welfare cases by allowing these attorneys to submit a waiver application for additional compensation in child dependency cases. Most of the critical work done by attorneys in termination of parental rights cases happens at the beginning of the case during the hearings for preliminary removal, adjudication, disposition, and permanency. At these hearings, it is crucial for a parent and their attorney to work together and doing so increases the chances of the child being safely returned home. Private attorneys rates, on average, range from \$200 to \$400 an hour in comparison to Virginia's current rate of \$120 per appealable case in district court and \$158 per appealable case in circuit court. Stakeholder interviews with some Virginia judges revealed that these low compensation rates for court-appointed counsel could ultimately impact the quality of court-appointed counsels' representation for their parent clients. Interviews with several other key stakeholders, including attorneys, also supported these concerns.

#### **D. VIRGINIA: GUARDIAN AD LITEMS FOR CHILDREN**

Section 16.1-266 of the *Code of Virginia* provides authority for appointment of guardian ad litem.<sup>43</sup> The *Standards to Govern the Performance of Guardians Ad Litem for Children* were established on September 1, 2003.<sup>44</sup> Guardian ad litem are assigned to all minor children in child welfare cases. The purpose of a guardian ad litem for a child is to serve as that child's attorney and speak on behalf of the best interest of the child. The guardian ad litem does not represent the parent in a child welfare case. However, it is necessary that the parent cooperate with the guardian ad litem by answering his or her questions and letting the guardian ad litem visit the child. The over-arching objective of a guardian ad litem, whether he or she represents a child or parent, is to advocate for solutions that are in the best interest of the child. To that end, the guardian ad litem must advise the court: a) the result of his investigation of the case; b) his recommendation as to any necessary testing necessary to make an effective disposition of the case; c) his recommendation as to the placement of the child and disposition of the case; d) the result of his monitoring of the child's welfare and of the parties' compliance with the court's orders; and e) his recommendation as to the services to be made available to the child and family or household members.<sup>45</sup>

Guardian ad litem receive \$55 per hour for out-of-court work and \$75 per hour for in-court to represent a child or parent in a child dependency proceeding. Guardian ad litem are not capped at \$120/\$158 and there is no limitation on the payments for hours that are documented and approved by the judge who appointed the guardian ad litem. The Supreme Court of Virginia approves compensation for guardian ad litem after they submit an itemized receipt and statement to the court detailing the specific dates and tasks executed for a particular case.<sup>46</sup>

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<sup>42</sup> HB5010 (Chapter 3). Supreme Court (111). *Other Court Costs and Allowances (Criminal Fund)* (32104). Available: <http://lis.virginia.gov/cgi-bin/legp604.exe?142+bud+61-34>. [February 20, 2015].

<sup>43</sup> *Code of Virginia*, § 16.1-266, Available: <https://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+16.1-266>. [February 20, 2015].

<sup>44</sup> Supreme Court of Virginia, Office of the Executive Secretary. *Standards to Govern the Performance of Guardians ad Litem for Children*. Available: [http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal\\_standards\\_children.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal_standards_children.pdf). [February 20, 2015].

<sup>45</sup> Supreme Court of Virginia, Office of the Executive Secretary, Court Improvement Program. *Advocacy in Motion*. Available: [http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/advocacy\\_in\\_motion.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/advocacy_in_motion.pdf). [February 20, 2015].

<sup>46</sup> *Ibid.*

Several interviews with current guardian ad litem for children in Virginia revealed that the representation of children is much less demanding than the representation of parents since children may not be as complicated and be defiant towards the recommendations of a guardian ad litem. As mentioned previously, many guardian ad litem are responsible for also being available to serve as court-appointed counsel for parents when needed. Again, some attorneys prefer to serve as guardian ad litem for children instead of court-appointed counsel for parents since representing parents is much more complicated, time-intensive, and provides a significantly lower compensation rate.

## **E. VIRGINIA: COURT-APPOINTED SPECIAL ADVOCATES FOR CHILDREN**

The federal Court-Appointed Special Advocates (CASA) Program for children began in the late 1970s and Virginia first established the CASA program in 1986.<sup>47</sup> For Fiscal Year 2013, the total CASA budget equaled \$5,364,190 which included a variety of sources of funding such as private donations, fundraisers, and state and local government appropriations. CASA programs receive approximately \$1.1 million annually in Department of Criminal Justice Services (DCJS) funding. All funding sources helped to train 1,499 CASA volunteers and provide advocacy services to 4,571 children in Fiscal Year 2013. As of 2014, there are 27 CASA programs in Virginia overseen by DCJS.<sup>48</sup>

As outlined in § 9.1-151 through § 9.1-157 of the *Code of Virginia*, the CASA program is very structured in that it has an intensive national and local screening process in addition to extensive training requirements. Though the individuals who are accepted into the CASA program are volunteers and do not receive financial compensation, the program is still vigorous and all CASA volunteers must complete 30 initial training hours in order to be certified. The Virginia Court Improvement Program has previously provided training for CASA Program Directors and Supervisors.<sup>49</sup> In addition, DCJS hosts a biennial statewide CASA conference.<sup>50</sup> Local CASA programs regularly provide opportunities for CASA volunteers to complete their training hours. All CASA programs in Virginia are also mandated to comply with standards for the National CASA Association member programs.

After receiving their certification, CASA volunteers have the following five responsibilities:<sup>51</sup>

1. Investigating the case to which he is assigned to provide independent factual information to the court.
2. Submitting to the court a written report of his investigation in compliance with the provisions of § 16.1-274 of the *Code of Virginia*. The report may, upon request from the court, include recommendations as to the child's welfare.

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<sup>47</sup> Virginia Department of Criminal Justice Services. (2014). Court Appointed Special Advocate Program Home Page. Available: <https://www.dcjs.virginia.gov/juvenile/casa/>. [February 20, 2015].

<sup>48</sup> Virginia Department of Criminal Justice Services. The National Court Appointed Special Advocate Association. (2014). *Virginia Court Appointed Special Advocate Programs*.

<sup>49</sup> Supreme Court of Virginia, Office of the Executive Secretary. (July 2007). *Court Appointed Special Advocates (CASA)*

*For Children*. Vol. 1, Issue 1. Available:

[http://www.courts.state.va.us/courtadmin/aoc/cip/resources/building\\_connections\\_vol1\\_issue1.pdf](http://www.courts.state.va.us/courtadmin/aoc/cip/resources/building_connections_vol1_issue1.pdf). [February 20, 2015].

<sup>50</sup> Virginia Department of Criminal Justice Services. 2014 Statewide Court Appointed Special Advocate (CASA) Conference:

"A Partnership for Kids." Available: <http://www.dcjs.virginia.gov/trainingEvents/juvenile/casaCon/2014/>. [February 20, 2015].

<sup>51</sup> *Code of Virginia*, § 9.1-153. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training. Available: <http://law.lis.virginia.gov/vacode/title9.1/chapter1/section9.1-153/>. [February 20, 2015].

3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.
4. Assisting any appointed guardian ad litem to represent the child in providing effective representation of the child's needs and best interests.
5. Reporting a suspected abused or neglected child pursuant to § 63.1-248.3 of the *Code of Virginia*.

CASA volunteers commit approximately ten hours a month and only work on one child dependency case at a time, which allows them to devote individual attention to the child which they have been assigned. CASA volunteers are required to visit their client at least once a month but volunteers usually visit the child twice a month on average. Once CASA volunteers have completed their report, they communicate their findings and recommendations directly to the child's guardian ad litem and the local department of social services' legal counsel. While the information in the report is shared with all parties before any upcoming hearings, including the parents' court-appointed counsel, communication between CASA volunteers and parents' court-appointed counsel is limited. The main focus of CASA volunteers is to make impartial recommendations to the court to serve the best interest of the child.

During the Commission on Youth's stakeholder interview process, CASA leadership staff expressed that one way to improve the effectiveness of parents' court-appointed counsel would be to request that the Virginia Court Improvement Program provide specialized training sessions for these court-appointed counsels. Such specialized training sessions would ensure that parents' court-appointed attorneys are aware of their clients' unique needs and conditions impeding their parenting abilities. Court-appointed attorneys could then emphasize to their clients the need for cooperation in various treatment and counseling services, which are often times recommended as a result of the findings in the CASA written reports.

## **F. VIRGINIA: DEPARTMENT OF SOCIAL SERVICES LEGAL REPRESENTATION IN CHILD DEPENDENCY CASES**

The local department of social services has authority to file a petition against a parent if it suspects that a child is being abused or neglected. If there is a concern that originates in the home, § 63.2-1503 (B) and (C) of the *Code of Virginia* mandates that a local department of social services needs to be capable of receiving reports and complaints alleging abuse or neglect on a twenty-four hours, seven days a week basis.<sup>52</sup> If the complaint, which alleges abuse or neglect, rises to the level where a petition for removal has been filed, then the city or county attorney for the locality will represent the local department of social services. In some small localities the city or county attorney will hire outside counsel to represent the local department of social services. In addition, § 63.2-317 of the *Code of Virginia* provides that a local board may employ legal counsel, and in that case the city or county attorney will be relieved of his or her duties.<sup>53</sup> During the trial process, attorneys for the local department of social services have a wide range of authority. For example, attorneys will often utilize expert witnesses. For example, an attorney for the local department of social services may use a medical expert witness to validate that a child's injury was not sustained by accident or to attest that a child's mental health status is the result of a strained parent-child relationship.

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<sup>52</sup> Virginia Department of Social Services Child and Family Services Manual. (August 2014). *Complaints and Reports*. Available: [http://www.dss.virginia.gov/files/division/dfs/cps/intro\\_page/manuals/08-2014/section\\_3\\_complaints\\_and\\_reports.pdf](http://www.dss.virginia.gov/files/division/dfs/cps/intro_page/manuals/08-2014/section_3_complaints_and_reports.pdf). [February 20, 2015].

<sup>53</sup> *Code of Virginia*, § 63.2-317. Employment of counsel for local boards and employees; payment of expenses. Available: <http://law.lis.virginia.gov/vacode/title63.2/chapter3/section63.2-317/>. [February 20, 2015].



## **G. OTHER STATES' PARENT REPRESENTATION SYSTEM IN CHILD WELFARE CASES**

The following states have experimented with certain pilot programs and systems to enhance the quality of court-appointed legal representation for parents: Colorado, Connecticut, Georgia, Massachusetts, Michigan, New York, Vermont, Washington, and Wyoming.<sup>54</sup> Some states, such as New York and Washington, have established successful programs while other states, such as Connecticut, have not been entirely successful. This list is not comprehensive, but instead provides some specific examples of actions states have taken to address the issue of quality legal representation for parents in child welfare court proceedings.

### Colorado

In 2005, the Colorado Supreme Court by way of the Colorado Court Improvement Program created the Respondent Parents' Counsel Task Force. This Task Force served the purpose of reviewing the system of respondent parents' counsel and proposing recommendations to the State Legislature and Colorado Supreme Court. In order to identify potential areas for improvement, the Task Force contracted with the National Center for State Courts, National Council of Juvenile and Family Court Judges, and the National Association of Counsel for Children to conduct a statewide assessment of Colorado's system of parent representation in child dependency cases.<sup>55</sup>

Colorado has continued its commitment to improving its system of parent representation over the past several years. The Respondent Parents' Counsel Work Group was established in January 2014 to examine the effectiveness of the Respondent Parents' Counsel Program in terms of attorneys' payment structure, training requirements, the appellate process, and the overall support for parents' legal representation in child dependency cases.<sup>56</sup> In addition, Colorado's Governor signed Senate Bill 203 on May 29, 2014 to establish the Office of the Respondent Parents' Counsel, beginning in January 2016.<sup>57</sup> The Work Group's final recommendations are to be submitted to the State Court Administrator by September 30, 2014, in order to determine the final structure of the Office of the Respondent Parents' Counsel.

### Connecticut

Up until July 2011, the Commission on Child Protection was the state agency in Connecticut tasked with representing parents in child welfare cases. However, it was abolished due to lack of funding, and Connecticut's State Public Defenders' office had to take on a large backlog of child welfare cases.<sup>58</sup>

Before being abolished, the Commission on Child Protection had requested \$13.8 million from the General Assembly to support compensation for parents' legal representation but was

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<sup>54</sup> State Bar of Michigan Children's Law Section. (Fall 2009). *The Michigan Child Welfare Law Journal*. Vol. XIII, Issue 1. Available: [http://chanceatchildhood.msu.edu/pdf/CWLJ\\_fa09.pdf](http://chanceatchildhood.msu.edu/pdf/CWLJ_fa09.pdf). [February 20, 2015].

<sup>55</sup> The State of Colorado Judicial Department, National Center for State Courts, National Council of Juvenile and Family Court Judges and the National Association of Counsel for Children. (March 2007). *Colorado Court Improvement Program – Respondent Parents' Counsel Task Force: Statewide Needs Assessment*. Available: [http://www.courts.state.co.us/userfiles/File/Court\\_Probation/Supreme\\_Court/Committees/Court\\_Improvement/CORP\\_CFinalNeedAsstReptApp.pdf](http://www.courts.state.co.us/userfiles/File/Court_Probation/Supreme_Court/Committees/Court_Improvement/CORP_CFinalNeedAsstReptApp.pdf). [February 20, 2015].

<sup>56</sup> State of Colorado, Judicial Branch. (2014). *Respondent Parents' Counsel Program*. Available: [http://www.courts.state.co.us/Courts/Supreme\\_Court/Committees/rptf.cfm](http://www.courts.state.co.us/Courts/Supreme_Court/Committees/rptf.cfm). [February 20, 2015].

<sup>57</sup> Colorado State Legislature. Senate Bill 14-203. Available: [http://www.leg.state.co.us/Clitics/CLICS2014A/csl.nsf/fsbillcont3/ED4A9399456D239287257C600073ACBE?Open&file=203\\_enr.pdf](http://www.leg.state.co.us/Clitics/CLICS2014A/csl.nsf/fsbillcont3/ED4A9399456D239287257C600073ACBE?Open&file=203_enr.pdf). [February 20, 2015].

<sup>58</sup> Kovner, J. (June 20, 2011). *Agency That Represents Parents In Child-Protection Cases Is Abolished*. Available: [http://articles.courant.com/2011-06-20/news/hc-child-protection-lawyers-0621-20110620\\_1\\_private-lawyers-commission-on-child-protection-public-defenders](http://articles.courant.com/2011-06-20/news/hc-child-protection-lawyers-0621-20110620_1_private-lawyers-commission-on-child-protection-public-defenders). [February 20, 2015].

appropriated only \$11.6 million. By June 2011, the Commission on Child Protection had a \$2.4 million budget deficit and attorneys were no longer being paid for the numerous hours they had worked. The General Assembly had questioned the agency's need for 196 contract attorneys and there was speculation of excessive billing in some of the cases.<sup>59</sup>

Under the Commission on Child Protection attorneys were being compensated at an hourly rate of \$40 or \$75 depending on their training. Most of the contract attorneys were committing at least 80 percent of their time to these child welfare cases. After the State Public Defenders' office took control the billing fees structure changed to a flat fee of \$500 per case plus an additional \$50 an hour for trial work.<sup>60</sup> This current system does not reward additional training the way the Commission on Child Protection did.

### Massachusetts

Massachusetts' statute has established standards similar to the 2006 American Bar Association standards, for court-appointed counsel for parents in child welfare cases.<sup>61</sup> In addition, the Children and Family Law Division within the Massachusetts Committee for Public Counsel Services (MCPCS) provides legal representation for indigent parents in child welfare cases through a panel of private attorneys.<sup>62</sup> In order for attorneys to be added to the trial panel, they must complete an application and participate in a five-day training; then eight hours annual training to remain certified. To be added to appellate panel (if trial panel certified), attorneys must attend a one-day Appealing MCPCS Children and Family Law Cases course. If attorneys are not trial-panel certified, they must attend the three-day portion of trial panel certification regarding substantive law in addition to attending the one-day Appealing MCPCS Children and Family Law Cases course. To remain certified, attorneys must accept at least one appeal case the year following initial certification and at least one appeal case every three years. MCPCS manages all the training for court-appointed counsel representing parents in child dependency cases. MCPCS revamped billing structures/allowances in the late 1990s and early 2000s and has become increasingly stricter with training requirements, accountability, and billing allowances as the years have progressed.

### Michigan

In 2009, the Michigan Court Improvement Program<sup>63</sup> partnered with the American Bar Association to conduct an assessment of Michigan's system of providing legal representation for parents in child dependency proceedings.<sup>64</sup> The creation of the Detroit Center for Family Advocacy (CFA) was one of the resulting adjustments Michigan made after having collaborated with the American Bar Association. CFA is an independent nonprofit within the University of

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<sup>59</sup> Ibid.

<sup>60</sup> Division of Public Defender Services State of Connecticut. (July 2014). *Information for Public Defender Assigned Counsel in Juvenile and Child Protection Matters*. Available: [http://www.ct.gov/ocpd/lib/ocpd/child\\_protection/cp\\_procedures\\_assigned\\_counsel/child\\_protection\\_procedures\\_for\\_assigned\\_counsel\\_7-7-14.pdf](http://www.ct.gov/ocpd/lib/ocpd/child_protection/cp_procedures_assigned_counsel/child_protection_procedures_for_assigned_counsel_7-7-14.pdf). [March 9, 2015].

<sup>61</sup> The Commonwealth of Massachusetts Committee for Public Counsel Services. *Performance Standards Governing the Representation of Children and Parents in Child Welfare Case*. Available: [http://www.law.yale.edu/rcw/rcw/jurisdictions/am\\_n/usa/massachusetts/mass\\_cpccs\\_standards.pdf](http://www.law.yale.edu/rcw/rcw/jurisdictions/am_n/usa/massachusetts/mass_cpccs_standards.pdf). [February 20, 2015].

<sup>62</sup> The Commonwealth of Massachusetts, Committee for Public Counsel Services. (n.d). *Children and Family Law Division*. Available: <http://www.publiccounsel.net/cafl/>. [February 20, 2015].

<sup>63</sup> Michigan Courts. *Court Improvement Program*. Available: <http://courts.mi.gov/administration/scao/officesprograms/cws/pages/cip.aspx>. [February 20, 2015].

<sup>64</sup> American Bar Association, Center on Children and the Law. (2009). *Legal Representation for Parents in Child Welfare Proceedings: A Performance-based analysis of Michigan practice*. Available: [http://www.americanbar.org/content/dam/aba/publications/center\\_on\\_children\\_and\\_the\\_law/parentrepresentation/michigan\\_parent\\_representation\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/michigan_parent_representation_report.authcheckdam.pdf). [February 20, 2015].



Michigan serving the urban population in Detroit, Michigan. CFA began in 2009 by serving the Osborn neighborhood residents of Detroit, Michigan during the child protection investigation phase. Each parent represented by CFA is assigned to a team of an attorney, a social worker, and a parent advocate.

CFA receives approximately 90 percent of its case referrals from the Michigan Department of Human Services. Although each CFA team does assist parents in cases of alleged abuse and neglect, the CFA team's reach is much broader. The CFA team also helps families resolve other issues such as domestic violence and landlord tenant-issues that threaten the safety and well-being of the parent's children. Housing issues such as landlord-tenant disagreements and evictions are CFA's most common legal issue.<sup>65</sup> By 2012, CFA had assisted 50 families during the child protection investigation phase, all of which resulted in the children being placed with permanent family members instead of within the child welfare system. Over a time period of two years CFA also helped 112 children avoid foster care placement.<sup>66</sup>

Michigan is one of the first states to closely examine its system of parent representation in child welfare cases, having been the first state to allow the ABA Center for Children and the Law to conduct a statewide assessment. One such finding, which is echoed in the 2010 Michigan Bar Journal article, *A Hidden Crisis: The Need to Strengthen Representation of Parents in Child Protective Proceedings*, is that Michigan has historically placed the burden of cost for parents' legal representation on counties, which has induced great variation in the training and compensation of attorneys in the state.<sup>67</sup> This is one of many issues Michigan is still working on resolving.

### New York

In New York City, the Center for Family Representation (CFR) is an independent non-profit that began in 2002 with a mission to serve a segment of the urban population in New York. After a court petition has been filed against a parent in a child dependency proceeding, the Center for Family Representation helps to provide legal representation for 80 percent of parents in Manhattan and 50 percent of parents in Queens.<sup>68</sup> Ninety-two percent of its clients are minorities and 76 percent of the households are headed by a woman.<sup>69</sup> Since its founding, the Center for Family Representation has served over 5,000 families and almost 9,000 children.<sup>70</sup> Each family is assigned a Community Advocacy Team comprised of a social worker, family advocate, and attorney. The Center for Family Representation provides legal representation and additional support services for the entire duration of case, which is typically two years.<sup>71</sup>

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<sup>65</sup> Program on Children and the Law Detroit Center for Family Advocacy. *Examples of Our Work*. Available: <https://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/ExamplesofourWork.aspx>. [February 20, 2015].

<sup>66</sup> Thornton, Elizabeth and Betsy Gwin. (Spring 2012). *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*. *Family Law Quarterly*, 46.1: 139-154.

<sup>67</sup> Sankaran, Vivek. (2010). *A Hidden Crisis: The Need to Strengthen Representation of Parents in Child Protective Proceedings*. University of Michigan Law School. Available:

<http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1364&context=articles>. [February 20, 2015].

<sup>68</sup> Thornton, Elizabeth and Betsy Gwin. (Spring 2012). *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*. *Family Law Quarterly*, 46.1: 139-154.

<sup>69</sup> Center for Family Representation. *Issues Our Families Face*. Available: <http://www.cfrny.org/our-families/>. [February 20, 2015].

<sup>70</sup> Center for Family Representation. *Our Results*. Available: <http://www.cfrny.org/about-us/our-results/>. [February 20, 2015].

<sup>71</sup> Center for Family Representation. *A Unique Approach*. Available: <http://www.cfrny.org/our-work/team-model/>. [February 20, 2015].

According to the American Bar Association, in New York the cost of providing high quality legal representation for parents is \$6,500 for the duration of a case. This is in comparison to a range of \$29,000 to \$66,000 for one year of foster care for a child in New York City in 2010.<sup>72</sup> In 2014, the Center for Family Representation reported that their Community Advocacy Team's kept about 50 percent of the children they dealt with out of foster care entirely. For the children of CFR clients who ended up entering foster care, their median length of time in foster care was less than five months in comparison to the city's average of 11.5 months.<sup>73</sup>

### Vermont

The Vermont Center for Parent Representation (VCPR) is a not-for-profit organization that began in October 2010. A group of lawyers, social workers, and parents decided to start the VCPR as a pilot program after visiting NYC's Center for Family Representation to model their program. VCPR provides legal representation to parents that have an open child protection case but does not provide representation after a court petition against the parent has been filed. VCPR receives its referrals from mainly substance abuse treatment centers and self-referral cases. In its beginning phases, VCPR operated as a virtual organization in three rural counties by physically visiting the parents in their households to help. VCPR served 18 families and 43 children from 2010 to 2013.<sup>74</sup>

One of VCPR's main goals is to provide parents with representation, guidance, and resources so they can avoid having a court petition filed against them. This is done by working with parents with the goal of helping them improve their parenting skills. VCPR reports that 86 percent of its cases resulted in a court petition never being filed against the parent. The center received some state dollars in its first year as a pilot but is not currently receiving state funds and relies mainly on fundraising and private donations. While VCPR has experienced positive outcomes in the last few years, the Center may continue to face challenges with sustainable funding in the future. The VCPR team was previously comprised of four staff individuals but has now been downsized to just the Executive Director and a contractor due to lack of sustainable funding.

### Washington

In 1999, the Washington State Office of Public Defense conducted a study at the request of the state legislature that revealed several weaknesses in Washington's representation for indigent parents.<sup>75</sup> As a result, the Office of Public Defense established the Parent Representation Program in 2000 to address disparities between state and county funding appropriated for parent representation.<sup>76</sup> The Parent Representation Program was initially established as a pilot program in Benton, Franklin, and Pierce counties with five program goals: 1) reduce the number of continuance requests, 2) limit caseloads to 80 open cases per full-time attorney, 3) strengthen parent attorneys' practice standards, 4) encourage use of expert and investigative services in dependency cases, and 5) implement indigency screenings of parents, guardians, and legal custodians.<sup>77</sup>

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<sup>72</sup> United States Government Printing Office. *House Resolution 1096 Bill Text*. Available: <http://www.gpo.gov/fdsys/pkg/BILLS-113hr1096ih/pdf/BILLS-113hr1096ih.pdf>. [February 20, 2015].

<sup>73</sup> Center for Family Representation. 2014 Report to the Community. Available: <https://www.cfrny.org/wp-content/uploads/2012/12/Annual-Report-2014-FINAL.pdf>. [February 20, 2015].

<sup>74</sup> Vermont Parent Representation Center. (2010). *Home Page*. Available: <http://vtprc.org/>. [February 20, 2015].

<sup>75</sup> Washington State Office of Public Defense. (2013). *Parent Representation Program*. Available: <http://www.opd.wa.gov/index.php/program/parents-representation>. [February 20, 2015].

<sup>76</sup> Washington State Office of Public Defense. (2002). *Dependency and Termination Parents' Representation Pilot: Evaluation*. Available: [http://www.opd.wa.gov/documents/0045-2002\\_PRP\\_Evaluation.pdf](http://www.opd.wa.gov/documents/0045-2002_PRP_Evaluation.pdf). [February 20, 2015].

<sup>77</sup> Washington State Office of Public Defense. (2011). *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care*. Available:

The pilot program provided funding to hire social workers and parent investigators to help strengthen attorneys' legal representation of parents. Attorneys were required to complete a form reporting time spent on each child dependency case, reasons for requests for continuances, and final outcomes of cases. In 2001, the State Legislature re-funded the program for another year with a new evaluation required in February 2002.<sup>78</sup> The Parent Representation Program underwent three expansions as a pilot program and was ultimately adopted statewide. The statewide program costs Washington \$12.3 million annually, but saves the state at least \$20 million a year.<sup>79</sup> Section 13.34.090 and 13.34.092 of the *Revised Code of Washington* provides further details about the authority for court-appointed counsel representing parents in child dependency cases in the state of Washington.

In 2004, Partners for Our Children at the University of Washington conducted an experiment to study the impact of the Parent Representation Program on the variation in timing of children's transition to permanency. The organization followed 12,104 children for three years (from 2004 to 2007) from the beginning of entering the foster care system. The study found that the following permanency rates were higher for Washington counties that had a Parent Representation Program in comparison to counties that did not have a Parent Representation Program. The reunification rate was 11 percent higher, the adoption rate was 83 percent higher, and the guardianship rate was 102 percent higher.<sup>80</sup>

### Wyoming

The Children's Justice Project, a project of the Wyoming Supreme Court, resulted in the first edition of *Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases* in December 2012.<sup>81</sup> Wyoming utilized the American Bar Association 2006 *Standards of Practice* as well as the existing guidelines of the states of Arkansas, Connecticut, Georgia, Iowa, North Carolina, North Dakota, Washington, and the District of Columbia to craft its own guidelines for attorneys providing legal representation to parents in child welfare cases. The handbook provides very thorough guidelines for attorneys related to case review, case investigations, case negotiations, and standards on how to proceed during each step of the court proceedings. The Court Improvement Project Basic Grant from Health and Human Services provided Wyoming with funding to complete this project.<sup>82</sup>

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[http://partnersforourchildren.org/sites/default/files/publications/2011.\\_evaluation...\\_impact\\_of\\_enhanced\\_parental\\_legal\\_representation....discussion\\_paper.pdf](http://partnersforourchildren.org/sites/default/files/publications/2011._evaluation..._impact_of_enhanced_parental_legal_representation....discussion_paper.pdf). [February 20, 2015].

<sup>78</sup> Ibid.

<sup>79</sup> Mississippi Parents' Counsel Project "Giving Parents Voice" video. (April 16, 2014). Available: <https://www.youtube.com/watch?v=4bnHYA2xajY>. [February 20, 2015].

<sup>80</sup> Courtney, M. E., Hook, J. L., & Orme, M. (February 2011). Partners for Our Children at the University of Washington. *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care*. Vol. 1, Issue 1. Available: <http://partnersforourchildren.org/publications/evaluation-impact-enhanced-parental-legal-representation-timing-permanency-outcomes>. [February 20, 2015].

<sup>81</sup> Wyoming Supreme Court, Children's Justice Project. (September 2014). *Practice Guidelines for Attorneys Representing Parents in Abuse, Neglect, and Termination of Parental Rights Cases*. Available: [http://www.courts.state.wy.us/Documents/CJP/Publications/Practice\\_Guidelines\\_for\\_Attorneys\\_Representing\\_Parents\\_in\\_Abuse\\_Neglect\\_and\\_TPRs.pdf](http://www.courts.state.wy.us/Documents/CJP/Publications/Practice_Guidelines_for_Attorneys_Representing_Parents_in_Abuse_Neglect_and_TPRs.pdf). [December 20, 2015].

<sup>82</sup> Ibid.

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## VIII. Findings and Recommendations

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At its December 2, 2014 meeting the Commission on Youth received study findings and approved a recommendation for this study.

### Findings

*Compensation of court-appointed counsel for parents in child dependency cases in Virginia often does not reflect the amount of time and effort put forward by an attorney. The compensation rate is capped at \$120 in district court and \$158 in circuit court per appealable order. A waiver is not available, unlike in criminal matters. In addition, cases typically require more than one hearing.*

*Counsel appointed to represent an indigent accused in a criminal case have been able to request waivers above the \$120/\$158 cap since the passage of Senate Bill 1168 in 2007. Currently, the budget appropriates \$4.2 million per year in the biennium from the general fund for increased reimbursements for court-appointed counsel pursuant to § 19.2-163, Code of Virginia. Guardian ad litem (GALs) are compensated \$75/hour for in-court work and \$55 for out-of-court work. GALs are not capped at \$120/\$158 and there is no limitation on the payments for hours that are documented and approved by the judge who appointed the GAL.*

### Recommendation 1

**Allow court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation above the current cap for all stages of a child dependency case.**

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## VIII. Acknowledgments

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The Virginia Commission on Youth extends special appreciation to the following local stakeholders and child welfare experts as well as experts from several other states who helped contribute their perspective to this report.

American Bar Association Center on Children and the Law  
Mimi Laver, Director, Legal Education, ABA Center on Children and the Law  
Scott Trowbridge, Center Attorney

Margaret Bacigal, Chair, Virginia Bar Association: Commission on the Needs of Children

Richard Balnave, Director of Clinical Legal Education, University of Virginia School of Law

Trine Bech, Executive Director of Vermont Parent Representation Center

Michael S. J. Chernau, Esq., Sr. Assistant County Attorney, Chesterfield County

Razan Fayez, Esquire, Fayez & Khalil, PLLC

Richard Garriott, Esquire, Pender & Coward, PC

Sheila C. Haughey, Esquire, Snook & Haughey, PC

David J. Johnson, Executive Director, Virginia Indigent Defense Commission

Scott David Landry, Esquire, guardian ad litem, Midlothian, Virginia

Alicia L. Lenahan, President of Piedmont CASA Program

Lady Lockhart, Virginia Commission on Youth, Summer Intern

Christie Marra, Virginia Poverty Law Center

Robin M. Morgan, Esquire, Blackburn, Conte, Schilling & Click, P.C.

Pennsylvania House of Representatives, Democratic Legislative Policy and Research Office  
Jennifer Chapin, Research Manager, Children & Families Unit  
Gerald Morris, Research Manager, Public Safety Unit

Charles H. Slemph, III, Esquire, Citizen Member, Virginia Commission on Youth

Supreme Court of Virginia, Office of the Executive Secretary, Court Improvement Program  
Lelia Baum Hopper, Court Improvement Program  
Jane Lissenden, Training Coordinator

University of Michigan Law School  
Vivek S. Sankaran, Clinical Professor of Law, Director, Child Advocacy Law Clinic  
Founding Director, Detroit Center for Family Advocacy  
Robbin Pott, JD, MPP, Child Advocacy Law Clinic

Frank Uvanni, Esquire, guardian ad litem, Hanover

Virginia Juvenile and Domestic Relations Court Judges  
The Honorable Judge Debbie Bryan, 2nd Judicial District, Virginia Beach  
The Honorable Judge Shannon Hoehl, 15th Judicial District, Hanover County  
The Honorable Judge Wade Bowie, 9th Judicial District, Williamsburg/James City  
The Honorable Judge Ellen White, 24th Judicial District of Virginia, Campbell County  
The Honorable Stuart L. Williams Jr., 14th Judicial District of Virginia

Virginia Department of Criminal Justice Services  
Melissa O'Neill, Court-Appointed Special Advocate Program State Coordinator  
Mary M. Wilson, Children's Justice Act Coordinator, Division of Programs and Services

Virginia Department of Social Services  
Local Departments of Social Services

Nina Williams-Mbengue, Program Director, National Conference of State Legislatures

**BUILDING CONNECTIONS FOR CHILDREN: PARENTS’ COUNSEL AND THE COURTS**

**COURT IMPROVEMENT PROGRAM  
OFFICE OF THE EXECUTIVE SECRETARY  
SUPREME COURT OF VIRGINIA**

**Holiday Inn Koger Conference Center  
Richmond, Virginia  
May 8, 2012**

<b>8:30 – 9:30 am</b>	<b>Registration</b>
<b>9:30 – 11:00 am</b>	<b>Welcome</b>
	<b>Trial Advocacy for the Child Welfare Lawyer</b> <i>Marvin Ventrell, Executive Director</i> <i>Juvenile Law Society, Denver, Colorado</i>
<b>11:00 – 11:15 am</b>	<b>Break</b>
<b>11:15 – 12:45 pm</b>	<b>Trial Advocacy for the Child Welfare Lawyer, Continued</b> <i>Marvin Ventrell</i>
<b>12:45 – 1:30 pm</b>	<b>Lunch</b>
<b>1:30 – 2:30 pm</b>	<b>Resources and Best Practices for Parents’ Counsel in Virginia</b> <i>Lelia Baum Hopper, Director, Court Improvement Program</i> <i>Office of the Executive Secretary, Supreme Court of Virginia</i>
<b>2:30 – 2:45 pm</b>	<b>Break</b>
<b>2:45 – 3:45 pm</b>	<b>Ethical Issues for Counsel Representing Parents in Child Dependency Cases</b> <i>Leslie Haley, Esq.</i> <i>Formerly Assistant Ethics Counsel, Virginia State Bar</i>
<b>3:45 pm</b>	<b>Concluding Remarks and Adjournment</b>

Appendix B – State Comparisons Chart. Source: Virginia Indigent Defense Commission, Annual Report 2014

STATE	HOURLY RATE	CAPS	AUTHORITY/NOTES
Alabama	\$70	Capital Case: No cap Class A Felony: \$4,000 Class B Felony: \$3,000 Class C Felony: \$2,000 Juvenile: \$2,500 All Other Cases: \$1,500	Code of Ala §15-12-21 (2014)
Alaska	\$60 in-court \$50 out-of-court	Misdemeanor - Guilty Plea, No Contest Plea, or Dismissal: \$400 Misdemeanor - Trial: \$800 Felony - Guilty Plea, No Contest Plea, or Dismissal: \$2,000 Felony - Trial: \$4,000 Probation Violation - Misdemeanor: \$350 Probation Violation - Felony: \$1,000	2 Alaska Admin. Code 60.010 (2014)
Arizona	Varies	Varies (Judicial discretion)	A.R.S. § 13-4013 (2014) “Compensation for services rendered to the defendant shall be in an amount that the court in its discretion deems reasonable, considering the services performed.”
Arkansas	\$90-110 - Capital \$70-90 - Homicide Class A or Y Felony \$60-80 - Other Felony \$50-80 - Dist. Ct. or	N/A	A.C.A. § 16-87-211 (2014) (Statute directs the Arkansas Public Defender Commission to set guidelines for court-appointed attorney compensation).



	Juvenile		
California	Varies	Varies	Cal Pen Code § 987.2 (2014) Ca. Pen Code § 987.3 (2014) The court determines reasonable compensation.
Colorado	\$85 - Capital Cases \$68 - Type A Felony \$65 - Type B Felony, Juvenile, Misdemeanor, Traffic \$65 - Travel	Capital: \$24,000 (with trial); \$12,000 (without trial) Class 2 Felony: \$10,000 (with trial); \$5,000 (without trial) Class 3, 4, 5, and 6 Felony: \$6,000 (with trial); \$3,000 (without trial) Class 1, 2, and 3 misdemeanors: \$2,000 (with trial); \$1,000 (without trial) Juvenile: \$2,500 (with trial); \$1,750 (without trial) Juvenile and misdemeanor appeals: \$3,000	Chief Justice Directive 04-04 (Amended July 2009)
Connecticut	\$75 - Felony, Serious Juvenile Offenses, Habeas Corpus, Appellate \$50 - Misdemeanor \$100 - Capital	Flat Fee Cases: Judicial District: \$1,000 Geographical Area: \$350 Juvenile Delinquency: \$350	Conn. Gen. Stat. § 51-291 (2014) By statute, the Chief Public Defender establishes the compensation for court-appointed attorneys.  Cases are EITHER paid on an hourly rate or a flat fee and are assigned as such pursuant to the contract with the attorney.
Delaware	\$60	Felony: \$2,000 (per attorney) Misdemeanors: \$1,000 (per attorney)	Delaware Rules of Criminal Procedure Rule 44
District of Columbia	\$60 - in-court (may be waived up to \$75)	Felony: \$7,000 (per attorney)	18 U.S.C. § 3006A



	\$40 - out-of-court (may be waived up to \$75)§	Misdemeanor: \$2,000 (per attorney)	
Florida	Flat Fees	Flat Fees not to exceed: Capital: \$15,000  Life Felony: \$3,000  Non-Life Felony: \$2,500  Misdemeanors and Juvenile Cases: \$1,000	Fla. Stat. § 27.5304 (2014)
Georgia	By contract	By contract	O.C.G.A. § 17-12-22 (2014) Georgia Public Defender Standards Council contracts with individual attorneys for conflict appointment.
Hawaii	\$90	Felony: \$6,000  Misdemeanor (jury trial): \$3,000  Misdemeanor (jury waived): \$1,500  Petty Misdemeanor: \$900	HRS § 802-5 (2014)
Idaho	Set by Court	Set by Court	Idaho Code § 19-860 (2014) (Code refers to public defenders and was amended to delete information regarding court appointed counsel; however, local judicial rules state that the court assigns a reasonable rate of compensation). First Judicial District Rule 10: Attorneys are to submit monthly vouchers for payment.
Illinois	Reasonable Fee as set by the Court  In Counties with populations greater than 2 million people:  \$40 - in-court  \$30 - out-of-court	Reasonable Fee as set by the Court  In Counties with populations greater than 2 million people:  Felony: \$1,250  Misdemeanor: \$150	725 ILCS 5/113-3 (2014)

Indiana	\$70	N/A	Burns Ind. Code Ann. § 33-40-8-2 (2014) states that “a judge shall establish the fee to be paid to an attorney or attorneys for providing services to poor people.” Indiana Public Defender Commission Standards for Indigent Defense Services in Non-Capital Cases set the hourly rate.
Iowa	\$70 - Class A Felony \$65 - Class B Felony \$60 - All other cases	Class A Felony: \$18,000 Class B Felony: \$3,600 Class C Felony: \$1,800 Class D Felony: \$1,200 Aggravated Misdemeanors: \$1,200 Serious Misdemeanors: \$600 Simple Misdemeanors: \$300 Misdemeanor appeals to District Court: \$300 Contempt/Show Cause: \$300 Probation/Parole violations: \$300	Iowa Code § 13B.4 (2013) - Flat fee contracts Iowa Code § 815.7 (2013) - Hourly rates
Kansas	\$80 (Negotiable) \$62 - Assigned Attorneys	Non-tried cases - Felony 1-5: \$1,240 Felony drug offense with more than 6 hours work in-court: \$1,240 Felony 6-10: \$930 Felony drug offenses with less than 6 hours work in-court: \$930	K.S.A. § 22-4507 (2013) The Court can negotiate a lower hourly rate with attorneys willing to accept court appointments. If appropriations for payments are insufficient, the state board of indigent’s defense services can establish a formula for pro rata payments. Kansas Administrative Regulations 105-5-2, 105-5-6-7 When a public defender, contract counsel, or conflict attorney is

		<p>Probation Revocations: \$248</p> <p>Tried cases -</p> <p>Felony 1-3, off-grid felony offenses, felony drug offenses level 1: \$6,200</p> <p>Felony 4, felony drug offenses 2-4: \$2,480</p> <p>Felony 5-10: \$1,860</p>	<p>unavailable, then the court will assign counsel who are paid at a rate of \$62/hr.</p>
Kentucky	Most cases paid by flat fee.	<p>Misdemeanor: 250</p> <p>Felony: \$500</p>	<p>KRS § 31.235 (2014)</p> <p>The court shall pay reasonable and necessary fees but not in excess of fees established by the Department of Public Advocacy. The Department has proposed higher “soft” fee caps and hourly rates ranging from \$75 to 125.</p>
Louisiana	Flat fee contracts	Flat fee contracts	<p>La. R.S. 15:147(C)(1) (2013)</p> <p>The Louisiana Public Defender Board enters into contracts with attorneys to provide indigent defense services.</p>
Maine	\$55	<p>Murder: Fee to be set by Executive Director</p> <p>Class A: \$2,750</p> <p>Class B and C (against person): \$2,062.50</p> <p>Class B and C (against property): \$1,375</p> <p>Class D and E (Superior or Unified Criminal Court): \$687.50</p> <p>Class D and E (District Court): \$495</p> <p>Probation Revocations:</p>	<p>15 M.R.S. § 810 (2014)</p> <p>4 M.R.S. § 1804(3)(F) (2014)</p> <p>The Maine Commission on Indigent Legal Services sets the rate for court appointed counsel.</p> <p>Code of Maine Rules § 94-649, Chapter 301</p>

		\$495 Juvenile: \$495	
Maryland	Same hourly rate as federal panel attorneys.	District Court - federal misdemeanor Circuit Court - federal felony Juvenile Court - federal felony	Md. Criminal Procedure Code Ann. § 16-207 (2014) The Public Defender prepares schedules for fees and expenses for panel attorneys. Maryland Administrative Code 14.06.02.06 Attorneys are compensated at the same hourly rate as federal panel attorneys.
Massachusetts	\$100 - Homicide \$60 - Superior Court non-homicide \$50 - District Court	Annual cap on billable hours: 1,650	ALM GI ch. 211D, §11 (2014)
Michigan	Set by the Court	Set by the Court	MCLS § 775.16 (2014) The statute covers appointment of counsel, but the case law notes following the statute state that the court sets the rates.
Minnesota	State Board of Public Defense determines rates	State Board of Public Defense determines rates	Minn. Stat. §611.215 (2014) State Board of Public Defense responsible for appointment of counsel and collection of costs. Minn. Stat. §611.27 (2014) The state's obligation for the costs of the public defender services (including court-appointed attorney fees) is limited to the appropriations made to the Board of Public Defense.
Mississippi	Set by the Court	Circuit Court: \$1,000 Court not of record: \$200	Miss. Code Ann. §99-15-17 (2013) Attorneys receive \$25/hr overhead costs and expenses in addition to the fee cap.
Missouri	Flat fee contracts	Murder first degree: \$10,000 Other homicide: \$6,000 Felony Class A/B - Drugs: \$750 Felony Class A/B- Other:	§600.042 R.S.Mo. (2014) The state Public Defender contracts with private attorneys for legal services. §600.021 R.S.Mo. (2014) The commission contracts with private attorneys to provide defense services.

		<p>\$1,500</p> <p>Felony Class A/B - Sex: \$2,000</p> <p>Felony Class C/D - Drugs: \$750</p> <p>Felony Class C/D - Other: \$750</p> <p>Felony Class C/D - Sex: \$1,500</p> <p>Misdemeanor: \$375</p> <p>Juvenile - Non-violent offense: \$500</p> <p>Juvenile - Violent offense: \$750</p> <p>Probation Violation: \$375</p>	
Montana	\$62	N/A	<p>47-1-216, MCA (2013) The Commission adopts rules to provide reasonable compensation to contract attorneys.</p> <p>Fee Schedule also allows for a \$25/month office stipend.</p>
Nebraska	Set by Court or Public Defender Commission	N/A	<p>R.R.S. Neb. §29-3927 (2013) Public Defender Commission is responsible for determining compensation rates for contracting attorneys and court-appointed attorneys.</p> <p>R.R.S. Neb §29-3905 (2013) Allows the court to fix reasonable expenses and fees.</p>
Nevada	<p>\$125 - Capital cases</p> <p>\$100 - all other cases</p>	<p>Capital, or life case: \$20,000</p> <p>Felony not punishable by death or life in prison: \$2,500</p>	Nev. Rev. Stat. Ann. §7.125 (2014)

		Gross misdemeanor: \$2,500  Misdemeanor: \$750	
New Hampshire	\$60	Homicides under RSA 630:1-2 (per co-counsel): \$20,000  Felony: \$4,100  Misdemeanor: \$1,400	Rules of the Supreme Court of the State of New Hampshire, Rule 47
New Jersey	\$60 - in-court  \$50 - out-of-court  \$252 - full day (per diem)	N/A	N.J. Stat. §2A:158A-7 (2014) Public Defender establishes compensation with contract attorneys. OPD Pool Attorney Application Process sets current rates.
New Mexico	Flat-fee contracts	Felony - 1st deg: \$700  Felony - 2nd deg: \$650  Felony - 3rd deg: \$595  Felony - 4th deg: \$540  Juvenile: \$250  Misdemeanor: \$180	N.M. Stat. Ann. §31-15-7 (2013) Public Defender to establish fee schedule for court appointed counsel.
New York	\$75 - Felony  \$60 - Misdemeanor	Felony: \$4,400  Misdemeanor: \$2,400	NY CLS County §722-b (2014)
North Carolina	\$70 - Class A-D felony  \$55 - All other cases resolved in district court  \$60 - All other cases resolved in Superior Court  \$60 - Parole and post-release revocation hearings	N/A	N.C. Gen. Stat. § 7A-498.5 (2014) Office of Indigent Defense Services responsible for setting rates. Private Assigned Counsel Rates were updated in March of 2014.
North Dakota	\$75	Presumed rate system	N.D. Cent. Code, § 54-61-02 (2014)

		<p>Felony - \$575 (7 hours of work)</p> <p>Misdemeanor - \$300 (4 hours of work)</p> <p>Juvenile - \$375 (5 hours of work)</p>	Commission on Legal Counsel has authority to set fees.
Ohio	<p>\$60 - in-court</p> <p>\$50 - out-of-court</p>	<p>Felony with Possible Life Sentence/Repeat Violent Offender/Major Drug Offender: \$5,000</p> <p>Felony - Deg. 1-3: \$3,000</p> <p>Felony - Deg. 4-5: \$2,500</p> <p>Misdemeanor - Deg. 1-4: \$1,000</p> <p>Contempt: \$300</p> <p>Probation violations: \$500</p> <p>Juvenile: \$1,000</p>	<p>ORC Ann. 120.33 (2014)</p> <p>The Board of County Commissioners shall establish a schedule of fees by case or an hourly basis. The County must file an up-to-date fee schedule with the Ohio Public Defender, who then will reimburse up to the maximum set by the Ohio Public Defender State Maximum Fee Schedule.</p>
Oklahoma	Flat-fee contracts	<p>Felony: \$3,500</p> <p>Misdemeanor, Juvenile, Traffic: \$800</p>	22 Okl. St. §1355.8 (2013)
Oregon	<p>\$61 - Capital lead counsel</p> <p>\$46 - Capital co-counsel</p> <p>\$46 - Non-capital cases</p>	N/A	<p>ORS §151.216 (2013)</p> <p>The Public Defense Services Commission adopts guidelines regarding the fair compensation of appointed counsel located in the Public Defense Policies and Procedures, Exhibit 3.</p>
Pennsylvania	Set by the Court	Set by the Court	<p>16 P.S. §9960.7 (2014)</p> <p>Attorney to be rewarded reasonable compensation to be fixed by the Court.</p>
Rhode Island	<p>\$100 - Murder</p> <p>\$90 - Class 1 Felony</p>	<p>Murder: \$15,000</p> <p>Class 1 Felony: \$10,000</p>	<p>General Laws of Rhode Island §8-15-2</p> <p>Supreme Court Executive Order No. 2012-06</p>



	<p>\$60 - Class 2 Felony</p> <p>\$50 - Misdemeanor Appeal (Superior Court)</p> <p>\$30 - Violation of Court Order (non-payment of fines, costs)</p> <p>\$35 - Adult Criminal Trial in Family Court</p> <p>\$30 - Delinquency</p>	<p>Class 2 Felony: \$5,000</p> <p>Misdemeanor Appeal (Superior Court): \$1,500</p> <p>Violation of Court Order (non-payment of fines, costs): \$1,500</p> <p>Adult Criminal Trial in Family Court: \$2,500</p> <p>Delinquency: \$1,000</p>	
South Carolina	<p>\$60 - in-court</p> <p>\$40 - out-of-court</p>	<p>Felony: \$3,500</p> <p>Misdemeanor: \$1,000</p>	S.C. Code Ann. §17-3-50 (2013)
South Dakota	\$84	N/A	<p>S.D. Codified Laws § 23A-40-8 (2014)</p> <p>Reasonable amount to be paid based upon guidelines established by the presiding judge of the circuit court. See Unified Judicial System Policies Regarding Court-Appointed Attorney Fees.</p>
Tennessee	<p>\$50 - in-court</p> <p>\$40 - out-of-court</p>	<p>First Degree Murder or Class A or B felony in trial court: \$2,500</p> <p>Any other felony in trial court: \$1,500</p> <p>Felony preliminary hearing, misdemeanor, probation violation, juvenile: \$1,000</p> <p>Contempt of Court, parole revocation: \$500</p>	Tennessee Supreme Court Rule 13
Texas	Court sets rate	Court sets fee	Texas Code of Criminal Procedure Article 26.05
Utah	Court sets rate	<p>Felony: \$3,500</p> <p>Misdemeanor: \$1,000</p>	Utah Code Ann. § 77-32-304.5 (2014)
Vermont	\$50	Felony with possible life	13 V.S.A. § 5205 (2013)



		<p>sentence or death penalty: \$25,000</p> <p>Other major felony: \$5,000</p> <p>Minor felony or Juvenile: \$2,000</p> <p>Misdemeanor: \$1,000</p>	Vt. A.O. 4 §6 (2014)
Virginia	\$90	<p>Felony with 20 years or more sentence (resolved in district court or circuit court): \$1,235</p> <p>Other felony (resolved in district court or circuit court): \$445</p> <p>Misdemeanor in Circuit Court: \$158</p> <p>District Court cases (misdemeanors, felony preliminary hearings where the felony was not resolved in district court): \$120</p>	<p>Va. Code § 19.2-163 Supreme Court of Virginia Chart of Allowances</p> <p>Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 year or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155.</p>
Washington	Set by Court	Set by Court	Rev. Code Wash. (ARCW) §36.26.090 (2013)
West Virginia	<p>\$65 - in-court</p> <p>\$45 - out-of-court</p>	<p>Felony offenses with possibility of life in prison: court discretion</p> <p>All other cases: \$3,000</p>	W. Va. Code §29-21-13(a) (2014)
Wisconsin	<p>\$45 - in-court</p> <p>\$35 - out-of-court</p> <p>\$25 - travel</p>	N/A	Wis. Stat. § 977.08 (2014)
Wyoming	<p>\$100 - in court</p> <p>\$35-60 - out-of-court</p>	N/A	Wyoming Rules of Criminal Procedure Rule 44(e)



## APPENDIX C

### Appointment of Counsel and Guardians ad Litem in Child Dependency Cases

In Virginia, parents of children involved in child dependency cases are advised of their right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. The parent is given the opportunity to obtain counsel of their own choice, request the court appoint counsel if the parent is determined to be indigent, or waive the right to counsel.<sup>1</sup>

In addition, courts are permitted to consider appointing counsel for parents prior to hearings in which the initial foster care plan is reviewed, subsequent foster care review hearings, and permanency planning hearings. Courts may also consider appointing counsel for a parent whose identity or location is not reasonably ascertainable to represent the interests of the absent parent.<sup>2</sup>

Judges and court clerks are encouraged and trained to advise parents of their right to counsel and to appoint counsel to represent parents as early as possible, upon the filing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect or at the emergency removal hearing.<sup>3</sup> Courts appoint attorneys to serve as the guardian ad litem for children in cases involving allegations of child abuse and neglect, foster care review hearings, and termination of parental rights.<sup>4</sup> Typically, these appointments are made upon the receipt by the court of a petition alleging a child is abused or neglected. As a general practice, the same attorneys will be appointed at each stage of the case, if possible, to maintain consistency. Each attorney's appointment therefore continues through four to six (or more) different hearings until the child achieves permanency and the foster care case is closed.

Attorneys must be qualified to serve as a guardian ad litem for children by the Supreme Court of Virginia before accepting appointments and must comply with the Standards to Govern the Performance of Guardians Ad Litem for Children adopted by the Judicial Council of Virginia.<sup>5</sup>

There are approximately 900 attorneys statewide qualified to serve as guardian ad litem for children as of October 14, 2022. Attorneys appointed to represent parents in abuse or neglect, at-risk of abuse or neglect, foster care review, permanency planning, and termination of parental rights cases must be selected from the list of attorneys who are qualified to serve as guardians ad litem for children in their judicial district, unless no attorney on the list is reasonably available or is appropriate under the circumstances of the parent or case.<sup>6</sup> Courts may appoint attorneys from the list of qualified attorneys in other judicial districts if none is available in their own district.

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<sup>1</sup> Va. Code § 16.1-266.

<sup>2</sup> Id.

<sup>3</sup> [Juvenile and Domestic Relations District Court Manual, p. 5-17.](#)

<sup>4</sup> Va. Code §§ 16.1-266, 16.1-281.

<sup>5</sup> Va. Code § The Qualification Standards are available on-line [here](#). The Standards to Govern the Performance of Guardians Ad Litem for Children are found [here](#).

<sup>6</sup> Va. Code § 16.1-266.1(C).

COMPENSATION AND ACCOUNTABILITY: Attorneys appointed by courts to represent parents in child dependency cases are paid at the same rate as court-appointed criminal defense attorneys: \$90 per hour up to a maximum fee of \$120 per case in district courts and up to a maximum fee of \$158 per case in circuit court.<sup>7</sup> Attorneys appointed as guardians ad litem to represent children are paid at a rate of \$75 per hour for time spent in court and \$55 per hour for time spent out of court.<sup>8</sup> The hourly rates for court-appointed parents' counsel and guardians ad litem were established by the Supreme Court of Virginia.<sup>9</sup>

The General Assembly appropriates funds for compensating court-appointed counsel in criminal and child dependency cases to the Criminal Fund, which is administered by the Office of the Executive Secretary of the Supreme Court of Virginia (OES). In order to be paid by OES from the Criminal Fund, court-appointed counsel for parents and guardians ad litem must submit District Court Form DC-40 reporting their time spent on the case at the court hearing disposing of the matter for which the attorney was appointed. The appointing judge must approve the submitted DC-40 before OES remits payment.

By statute, guardians ad litem are required to certify to the appointing court that they complied with the performance standards:

Prior to the commencement of the dispositional hearing of any such matter, the guardian ad litem shall file with the court, with a copy to all attorneys representing parties to such matter and all parties proceeding pro se in such matter, a certification of the guardian ad litem's compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children...<sup>10</sup>

The judge may adjust the amount requested by a guardian ad litem “[f]or good cause shown, or upon the failure of the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem.”<sup>11</sup>

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<sup>7</sup> Va. Code § 19.2-163. Court-appointed attorneys and guardians ad litem submit their request for payment at each hearing that results in an appealable order. For child dependency matters, such hearings include the dispositional hearing, the foster care review hearings, the permanency planning hearing, and termination of parental rights hearings.

<sup>8</sup> Time spent meeting the child face-to-face is compensated at the in-court rate of \$75 per hour. Va. Code § 16.1-274(D).

<sup>9</sup> See Supreme Court of Virginia Chart of Allowances, [https://www.vacourts.gov/courtadmin/aoc/fiscal/chart2022\\_0701.pdf](https://www.vacourts.gov/courtadmin/aoc/fiscal/chart2022_0701.pdf).

<sup>10</sup> Va. Code § 16.1-274(D).

<sup>11</sup> Va. Code § 16.1-266(C)(2).

## APPENDIX D

### Title IV- E Funding for Legal Representation in Child Dependency Cases

A subtle but significant change in federal guidance under Title IV-E of the Social Security Act has created an opportunity for states to claim federal funds for administrative costs to go toward the compensation of attorneys providing legal representation for parents and children in child dependency cases.<sup>1</sup> This federal financial participation is available at the rate of 50% for “administrative expenditures necessary for the proper and efficient administration of the [state’s] title IV-E plan.”<sup>2</sup>

Federal financial participation for administrative costs is based on a state’s title IV-E penetration or coverage rate, which is “the percentage of states’ foster children who meet Title IV-E eligibility requirements on a given day.”<sup>3</sup> Virginia’s Title IV-E penetration rate for FY 2021 was 43.7%.<sup>4</sup> The total amount of an administrative cost is multiplied by this Title IV-E penetration rate. The product is then multiplied by the 50% federal match rate for administrative costs. The end result of this calculation is the amount of federal matching funds the state can be reimbursed for those administrative costs.<sup>5</sup>

For example, if the Virginia’s total amount of an administrative cost is \$500,000, the amount of federal matching funds would be calculated as follows:

$$\$500,000 \times 43.7\% \times 50\% = \$109,250.$$

These federal funds could be used to reimburse the state for a portion of the cost of providing counsel for parents as well as guardians ad litem for children in child dependency cases. In order to access these federal funds, the Virginia Department of Social Services (VDSS) would have to describe how these federal funds will be used for the compensation of attorneys in its State Child and Family Services Plan (CFSP), which then must be approved by the federal Children’s Bureau. If approved, the federal funds would be allocated to VDSS, as Virginia’s designated IV-E agency, which could serve as a “pass-through” entity whereby the funds would then be allocated to reimburse the administrative costs related to the compensation of legal counsel.

More resources and information regarding the availability of Title IV-E funds for legal representation can be found on the website for the National Association for the Counsel of Children [here](#).

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<sup>1</sup> Children’s Bureau, [Child Welfare Policy Manual, Section 8.1B, Question 30](#).

<sup>2</sup> *Id.*

<sup>3</sup> *Claiming Title IV-E Funds to Pay for Parents’ and Children’s Attorneys: A Brief Technical Overview*. Mark Hardin. [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january--december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/). February 26, 2019.

<sup>4</sup> [https://www.dss.virginia.gov/geninfo/annual\\_report/fam\\_serv/index.html?pageID=3](https://www.dss.virginia.gov/geninfo/annual_report/fam_serv/index.html?pageID=3) (Tab 2 “Foster Care – Number of Children in Care”); last accessed 10/17/2022.

<sup>5</sup> See Hardin, *Claiming Title IV-E Funds to Pay for Parents’ and Children’s Attorneys: A Brief Technical Overview*, *supra*.



## APPENDIX E – REPRESENTATION MODELS AND ORGANIZATIONAL STRUCTURES

### REPRESENTATION MODELS

#### INDIVIDUAL PRIVATE ATTORNEY

Single attorney appointed by court or retained by client

- Attorneys paid by state or locality
- Virginia (paid by state OES)

#### MULTI-DISCIPLINARY MODEL OF LEGAL REPRESENTATION

Attorney supplemented with a team of representatives of different disciplines:

- social worker
- parent or peer coach/mentor
- investigator

#### PRE-PETITION LEGAL REPRESENTATION

Attorney provides representation prior to a petition filed by the local department of social services; may include elements of multi-disciplinary or inter-disciplinary models to assist client with addressing needs that put child at risk of removal.

### ORGANIZATIONAL STRUCTURES

#### PANEL SYSTEM/ATTORNEY LIST

- Interested private attorneys queue up to take cases
- Virginia: the court appoints parents' counsel and children's guardians ad litem from a list of qualified attorneys

#### CENTRAL/STATE OFFICE

- Attorneys are either employed by office or enter independent contracts with central office
- Performance standards
- Training
- Accountability/enforcement of performance standards
- May include multi-disciplinary or pre-petition model elements

#### LOCAL/REGIONAL OFFICES

- Attorneys employed by (or contracted with) local/regional office (similar to a public defender office model)
- May include multi-disciplinary or pre-petition model elements





## **APPENDIX F - RESOURCES AND RESEARCH MATERIALS**

### **National:**

[Family Justice Initiative](#) “The Family Justice Initiative is a national collaborative of children’s attorneys, parents’ attorneys, educators, researchers, national policy advocates, and lived experience experts who share a common goal: to increase access to high-quality legal representation for children and parents in child welfare cases.” It’s led by the ABA Center on Children and the Law, the Children’s Law Center of California, and the Washington State Office of Public Defense. This site includes an overview of [Parent/Child Representation Research reports](#).

ABA 2022 National Parent Representation Conference Materials

[https://www.americanbar.org/groups/public\\_interest/child\\_law/national-conferences/2022-conference-materials/2022-npr-materials/session-c1/](https://www.americanbar.org/groups/public_interest/child_law/national-conferences/2022-conference-materials/2022-npr-materials/session-c1/)

[Heeding Gideon’s Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm](#) (2013)

### **Colorado:**

[A Program Evaluation of the Colorado Office of Respondent Parent’s Counsel Social Work Pilot Program](#) (2019)

[Respondent Parents’ Counsel Work Group Final Report to the State Court Administrator](#) (2014)

[Office of Respondent Parents’ Counsel](#)

[Office of the Child’s Representative](#)

### **New Mexico:**

[Family Representation Task Force Report to the Legislature](#) (2020)

### **New York City:**

[Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare](#) (2019)

[Understanding the Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare](#) (2020)

[How Family Defender Offices in New York City Are Able to Safely Reduce the Time Children Spend in Foster Care](#) (2020)

### **North Carolina:**

[Office of Indigent Defense Services – Parent Representation](#)

**Washington State:**

[Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency \(2011\)](#)

[Evaluation of the Washington State Dependent Child Legal Representation Program \(2021\)](#)

[Office of Public Defense – Parents Representation Program](#)

[Office of Civil Legal Aid – Children’s Representation Program](#)