

**REPORT OF THE
COMMITTEE ON DISTRICT COURTS**

**Study Assessing Diligence
and Attention to Child
Dependency Court Hearings in
Virginia (Chapter 305, 2022)**

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



SENATE DOCUMENT NO. 5

**COMMONWEALTH OF VIRGINIA
RICHMOND
2023**

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November 28, 2023

The Honorable Glenn Youngkin
Governor of Virginia
P.O. Box 1475
Richmond, VA 23218

Members of the General Assembly of Virginia
Pocahontas Building
900 East Main Street
Richmond, VA 23219

Re: Chapter 305, Enactment Clause 2 Report

Dear Governor Youngkin and Members of the General Assembly:

Chapter 305, Enactment Clause 2, of the Virginia Acts of Assembly (Regular Session, 2022) requested the Committee on District Courts study the Juvenile and Domestic Relations District Court system to assess whether appropriate diligence and attention is being given to child dependency court hearings and to make recommendations as to whether a separate docket or court would result in better service to children and families involved in child dependency hearings. Please find enclosed the report and recommendations adopted by the Committee on District Courts at their October 19, 2023 meeting.

If you have any questions regarding this report, please do not hesitate to contact me.

With best wishes, I am

Very truly yours,

Karl R. Hade

KRH:jrs

cc: Division of Legislative Automated Systems

STUDY ASSESSING DILIGENCE AND ATTENTION TO CHILD DEPENDENCY COURT HEARINGS IN VIRGINIA

A Report to the Governor and General Assembly



COMMITTEE ON DISTRICT COURTS | OCTOBER 19, 2023

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EXECUTIVE SUMMARY

In 2022, the General Assembly requested that the Committee on District Courts “study the Juvenile and Domestic Relations District Court system to assess whether appropriate diligence and attention is being given to child dependency court hearings and to make recommendations as to whether a separate docket or court would result in better service to children and families involved in child dependency hearings.” 2022 Ch. 305 (SB 396, Enactment Clause 2). The Court Improvement Program (CIP) in the Office of the Executive Secretary of the Supreme Court of Virginia was requested to lead this study on behalf of the Committee on District Courts.

To address the requirements of the Enactment Clause, an advisory workgroup was established to identify study activities, review key findings, and identify recommendations to better serve children and families involved in child dependency court hearings. Members included one retired and five active juvenile and domestic relations district court judges, four juvenile and domestic relations district court clerks of court, and a juvenile and domestic relations district court management analyst with the Department of Judicial Services in the Office of the Executive Secretary. The workgroup met four times between December 2022 and September 2023. At its initial meeting in December 2022, the workgroup defined *diligence* and *attention*. For purposes of this study, *diligence* is hearing efficiency and productivity. *Attention* is procedural effectiveness and satisfaction. The workgroup also established the following activities to assess the juvenile and domestic relations district court system’s diligence and attention to child dependency court hearings:

- Analyze child dependency case data from the juvenile case management system (JCMS). JCMS is the system used by all juvenile and domestic relations district courts in Virginia to collect, organize, and analyze cases that come before these courts.
- Survey active and retired juvenile and domestic relations district court judges, juvenile and domestic relations district court clerks and deputy clerks, attorneys representing local departments of social services in child dependency cases, attorneys representing parents involved in child dependency cases, and qualified guardians ad litem for children.
- Conduct court site visits virtually with up to ten randomly selected juvenile and domestic relations district courts to include the chief judge and/or presiding judge of the court, the clerk of court, and members of the court community, as invited by the judge.

The data collected through these activities reveal the juvenile and domestic relations district court system’s diligence and attention to child dependency court hearings and highlight the priority these cases are given in Virginia’s juvenile and domestic relations district courts. Table I is demonstrative.

TABLE I

Performance with meeting the time requirements for processing child dependency court hearings shows an efficient and productive juvenile and domestic relations district court system. See Table 2 for a more detailed summary of the time requirements for all child dependency court hearings.

Overview of Child Dependency Time Line Measures Performance (2018-2022)

Case Type ¹	Timing	Median Days to Hearing	Percent of Cases Meeting Timing
Abuse or Neglect-Petition Seeking Removal	Finalized hearing within 66 days from the petition received date	57	81%
Initial Foster Care Plan Review (Va. Code § 16.1-281)	At time of the dispositional hearing of underlying abuse or neglect petition	0	93%
Foster Care Review (Va. Code § 16.1-282)	Within 4 months (120 days) of the dispositional hearing at which the initial foster care plan was reviewed	112	88%
Initial Permanency Planning Hearing	Within 10 months (300 days) of the initial foster care review hearing	252	88%
Subsequent Permanency Planning Hearings²	Within 6 months (182 days) from the hearing at which an interim plan is approved	168	84%
Foster Care Review³ (Va. Code § 16.1-282.2)	Within 12 months (365 days) of the hearing that establishes the permanent goal	348	90%

Other numerical data show that JDR courts are keeping up with incoming cases. Data from surveys demonstrate that dockets are sufficient to schedule and hold child dependency court hearings. Participants in conversations during virtual court site visits echoed this general satisfaction. However, other pressures on the system were cited as strains on the child dependency court hearing process, notably a shortage of attorneys to serve as court appointed parents' counsel and guardians ad litem for children.

RECOMMENDATIONS

Overall, the data collected and analyzed in this study demonstrate that child dependency court proceedings receive appropriate and suitable diligence and attention by the juvenile and domestic relations district courts, and that these cases consistently receive priority by the courts on their current dockets. The shortage of attorneys, cited as a strain on the child dependency court hearing process,

¹ Unless otherwise noted, data were extracted from the juvenile case management system in March 2023.

² Data generated in June 2023 using the court performance measure application in the juvenile case management system.

³ Data generated in June 2023 using the court performance measure application in the juvenile case management system.

would not be addressed by the creation of a separate docket or court. The data support the conclusion that a separate docket or court would not result in better service to children and families.

INTRODUCTION

In 2022, the General Assembly requested the Committee on District Courts “study the Juvenile and Domestic Relations District Court system to assess whether appropriate diligence and attention is being given to child dependency court hearings and to make recommendations as to whether a separate docket or court would result in better service to children and families involved in child dependency hearings.” Virginia Acts of Assembly, Chapter 305, Enactment Clause 2. The Court Improvement Program in the Office of the Executive Secretary of the Supreme Court of Virginia was requested to lead this study on behalf of the Committee on District Courts.

The Office of the Executive Secretary of the Supreme Court of Virginia has been awarded Court Improvement Program (CIP) grants from the U.S. Department of Health and Human Services since 1995. CIP works in the area of juvenile and family law to integrate best practices into the policy and routines of the court system. CIP focuses on improving the ability of the court system to manage and resolve cases involving children who are abused or neglected or are in foster care, supporting courts to timely and effectively resolve these cases, ensure compliance with federal and state laws and standards, and effectively engage the family in child dependency case processes. CIP advances this work by conducting assessments of the role, responsibilities, and effectiveness of the courts in processing child dependency cases, supporting implementation of identified improvements, and providing training to judges, clerks, and the child welfare legal community. The Office of the Executive Secretary (OES) of the Supreme Court of Virginia develops and maintains the Juvenile case Management System (JCMS), which is used by Virginia’s juvenile and domestic relations district courts (JDR courts).

To address the requirements of Enactment Clause, an advisory workgroup was established. The workgroup consisted of one retired and five active juvenile and domestic relations district court judges, 4 juvenile and domestic relations district court clerks of court, and a juvenile and domestic relations district court management analyst with the Department of Judicial Services in the Office of the Executive Secretary. (See Appendix A for a list of advisory workgroup members.) The workgroup met four times between December 2022 and September 2023 to identify study activities, review key findings, and identify recommendations to better serve children and families involved in child dependency court hearings. The workgroup was supported by staff of the Court Performance and Statistical Services Division in the OES Department of Judicial Services.

This report summarizes the child dependency court process in Virginia, provides an overview of the data collection activities completed to assess the juvenile and domestic relations district court system’s diligence and attention to child dependency court hearings, highlights key study findings, and considers pressures on the system and the impact those pressures may have on the future of child dependency court hearings.

OVERVIEW OF CHILD DEPENDENCY COURT HEARINGS

Child dependency court hearings include matters before the juvenile and domestic relations district courts involving children who are:

- Alleged to have been abused or neglected as defined by Virginia Code § 16.1-228
- Alleged to be at-risk of abuse or neglect by a parent or custodian who has been adjudicated as having abused or neglected another child in their care pursuant to Virginia Code § 16.1-241(A)(2a)

- The subject of a petition for approval of an entrustment agreement or relief of custody in accordance with Virginia Code §16. 277.01 and § 16.1-277.02, respectively
- The subject of a petition for termination of residual parental rights pursuant to Virginia Code §16.1-283
- Placed in foster care and are the subject of a hearing to review a foster care plan pursuant to Virginia Code §§ 16.1-281, 16.1-282, 16.1-282.2; or the subject of a hearing to review a permanency plan pursuant to Virginia Code § 16.1-282.1
- The subject of a petition for placement in a qualified residential treatment program (QRTP) pursuant to Virginia Code § 16.1-281 (E)
- The subject of a petition for restoration of parental rights pursuant to Virginia Code § 16.1-283.2
- The subject of a petition for approval of a voluntary continuing services and support agreement pursuant to Virginia Code § 16.1-283.3

The time frames for holding court hearings on these cases are established by federal and state law. This study focused on the hearing time requirements provided in the Code of Virginia. Child dependency cases are complex and can involve multiple statutory hearings to resolve. They involve state action, in that a local department of social services i) is usually the petitioner, ii) may be granted care and custody of the child, iii) is responsible for foster care planning and placement, and iv) may seek termination of parental rights. Juvenile and domestic relations district courts then review and order decisions in child dependency cases. This section of the report explores the various situations in which child dependency court hearings currently arise in JDR court and which statutory time limitations apply when certain child dependency hearings occur.

It is important to note that prior to the hearing by a JDR court of any case involving a child who is alleged to be abused or neglected, or who is the subject of an entrustment agreement, or a petition seeking termination of residual parental rights, the court appoints a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to Virginia Code § 16.1-266. Additionally, the parent or guardian has a 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, as well as prior to a hearing at which a parent could be subjected to the loss of residual parental rights. Courts “shall consider appointing counsel” to represent the parent in foster care and permanency planning cases pursuant to Virginia Code § 16.1-266 (D).

I. Proceedings When a Child is Removed from the Home

When a child is taken into custody, the agency or person taking such custody must file a petition to obtain an Emergency Removal Order from the JDR court as soon as possible, but in no event later than 72 hours from taking custody of the child pursuant to Virginia Code § 63.2-1517. This is done by obtaining an ex parte emergency removal order, or by obtaining a preliminary removal order after a hearing held within 72 hours of removal of the child, in accordance with Virginia Code § 16.1-252.

Pursuant to Virginia Code § 16.1-251, an emergency removal order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that:

- I. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian, or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition.

Whenever a child is taken into immediate custody pursuant to an emergency removal order as set forth hereinabove, a hearing shall be held in accordance with Virginia Code § 16.1-252 as soon as practicable, but in no event later than five (5) business days after the removal of the child.

In order for a preliminary order to issue, or for an existing order to be continued, the petitioning party or agency must prove:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition.

The JDR court may determine whether the child has been abused or neglected at the preliminary removal hearing. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem, or the local department of social services objects to a finding being made at the hearing, Virginia Code § 16.1-252 (G) makes it clear that the court shall schedule an adjudicatory hearing to be held within 30 days of the date of the initial preliminary removal hearing.

Subsequent to the court making any finding of abuse and neglect, Virginia Code § 16.1-252 (H) mandates that a dispositional hearing must be scheduled at the time of the preliminary removal hearing and must be held within 60 days of the preliminary removal hearing.

Virginia Code § 16.1-278.2 reiterates that a dispositional hearing shall be held if the court found abuse or neglect and either ordered removal of the child from his home or entered a preliminary protective order pursuant to Virginia Code § 16.1-253.

After a child enters foster care, Virginia Code § 16.1-282 specifies that a foster care review hearing shall be held within four months of the dispositional hearing at which the initial foster care plan was reviewed if the child (i) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order or (ii) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights granted, filed or ordered to be filed on the child's behalf; has not been placed in permanent foster care; or is age 16 or over and the plan for the child is not independent living.

Virginia Code § 16.1-282.1 mandates that a permanency planning hearing be held within 10 months of the dispositional hearing at which the initial foster care plan was reviewed. The purpose of a permanency planning hearing is to establish a permanent goal for the child and to either achieve the permanent goal that is established, or to defer such action through the approval of an interim plan for the child. If the local social services board or child welfare agency petitions for approval of an interim plan, such plan may be approved by the court for a maximum period of six months.

Additionally, pursuant to Virginia Code § 16.1-282.1, if a child has been in the custody of a local board or child welfare agency for 15 of the most recent 22 months and no petition for termination of parental rights has been filed with the court, the local board or child welfare agency shall state in its petition for a permanency planning hearing (a) the reasons, as to why a petition for termination of parental rights has not been filed and (b) the reasonable efforts made regarding reunification or transfer of custody to a relative and the timeline of such efforts.

However, once a petition for termination of parental rights is filed with the court, Virginia Code § 16.1-283 provides the specific and detailed roadmap by which the JDR court hears and adjudicates such petitions.

In accordance with Virginia Code § 16.1-282.2, the JDR court shall review a foster care plan annually for any child who remains in the legal custody of a local board of social services or a child welfare agency and (i) on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed, (ii) who is placed in permanent foster care, or (iii) who is age 16 or over and for whom the plan is independent living. This foster care review hearing shall be held within 12 months of the date of such order, so long as the child remains in the custody of the board or agency.

2. Voluntary Services (“Fostering Futures”) Proceeding:

The “Fostering Futures” program is available, on a voluntary basis, to an individual between 18 and 21 years of age who was (i) in the custody of a local department immediately prior to reaching 18 years of age, remained in foster care upon turning 18 years of age, and entered foster care pursuant to a court order; or (ii) in the custody of a local department immediately prior to commitment to the Department of Juvenile Justice and is transitioning from such commitment to self-sufficiency. Additional specific criteria and requirements must be met in order for a person to receive continuing services pursuant to the “Fostering Futures” program. Virginia Code § 63.2-919.

In accordance with Virginia Code § 16.1-283.3, a court hearing shall be held to review the agreement and approve the program participant's case plan. The petition for review of the voluntary continuing services and support agreement and approval of the program participant's case plan shall be filed by the local department of social services no later than 30 days after execution of the voluntary continuing services and support agreement, and upon receiving a petition for review of the voluntary continuing services and support agreement and approval of the program participant's case plan, the court shall schedule a hearing to be held within 45 days after receipt of the petition. After the initial hearing, the court may close the case or schedule a subsequent hearing to be held within six months to review the program participant's case plan. Subsequent review hearings may be held at six-month or shorter intervals in the discretion of the court.

3. Abuse and Neglect Proceedings Requesting a Child Protective Order

In general, the required statutory time frames that apply when a child's custody is removed and the child is placed in foster care similarly apply to situations when abuse and neglect is alleged and a child protective order is requested as the remedy, rather than a removal.

Virginia Code § 16.1-253 sets forth the procedure to be utilized when a child protective order is requested ex parte, that is, without all parties appearing in court prior to the order being issued. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

Virginia Code § 16.1-253 also addresses the procedure to be followed, and the remedies available, when a preliminary child protective order is not requested ex parte. Regardless of whether a preliminary child protective order of any type is issued, the petition alleging that the child has been abused or neglected must be adjudicated at the adjudicatory hearing which is governed by Virginia Code § 16.1-253. A person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services may object to a finding being made at the preliminary protective order hearing, in which case the court schedules an adjudicatory hearing to be held within 30 days of that hearing.

Additionally, just as with child removals, in accordance with Virginia Code § 16.1-253 (G), if the court makes a finding of abuse or neglect at the preliminary protective order hearing, a dispositional hearing shall be held within 60 days of the hearing for a preliminary protective order if the court found abuse or neglect and entered a preliminary protective order.

At the dispositional hearing, if a child has been found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make orders of disposition to protect the welfare of the child pursuant to Virginia Code § 16.1-278.2, including, but not limited to, entering another child protective order.

4. Entrustment Agreement Proceedings

A child's custody can be entrusted to a local board of social services or a child welfare agency pursuant to Virginia Code §§ 63.2-903 or 63.2-1817. When that occurs, time limitations set forth in Virginia Code § 16.1-277.01 will apply. The board or agency shall petition for approval of the entrustment agreement within a reasonable period of time, no later than 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to the caretaker from whom he was entrusted within that period, or shall file a petition not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child. The board or agency may also file a petition in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

When any such petition for approval of an entrustment agreement is filed, the JDR court shall appoint a guardian ad litem to represent the child and schedules the matter for a hearing to be held within 45 days of the filing of a petition except where an order of publication has been ordered by the court, in which case the hearing shall be held within 75 days of the filing of the petition.

5. Relief of Care and Custody Proceedings

Pursuant to Virginia Code § 16.1-277.02, petitions for relief of the care and custody of a child are referred initially to the local department of social services for investigation and the provision of services, if appropriate. Upon the filing of a petition for relief of a child's care and custody, the JDR court schedules the matter for a hearing on the petition. Within 60 days of a hearing on a petition for relief of the care and custody of any child at which the court found (i) good cause for the petitioner's desire to be relieved of a child's care and custody or (ii) that permanent relief of custody and termination of residual parental rights is in the best interest of the child, a dispositional hearing shall be held, if a final order disposing of the matter was not entered at the conclusion of the hearing on the petition. The

court may make any of the orders of disposition permitted in a case involving an abused or neglected child, or, if the parent or other custodian petitioned to be relieved permanently of the care and custody of any child and the court finds by clear and convincing evidence that termination of the parent's parental rights is in the best interest of the child, the court may terminate the parental rights of that parent.

6. Foster Care Placement of Child In Need of Services, Child in Need of Supervision, and Child in Delinquency Proceedings

Children may also enter foster care as a dispositional alternative in instances when the JDR court has found that a child is in need of services (Virginia Code § 16.1-278.4), is in need of supervision (Virginia Code § 16.1-278.5), is a status offender (Virginia Code § 16.1-278.6) or is a delinquent child (Virginia Code § 16.1-278.8). Any court order authorizing the removal of the child from the home and transferring legal custody of the child to a local board of social services shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal, and that continued placement in the home would be contrary to the welfare of the child. The local department must accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard.

Regardless of which avenue is taken to place the child in foster care, the department or child welfare agency must file a foster care plan with JDR court within 45 days following the transfer of custody and the court must hold a dispositional hearing within 60 days of (i) the child's initial foster care placement. See Virginia Code §16.1-281 (C).

It is evident that child dependency cases are complex and the attendant time requirements are numerous and extensive. Therefore, the time requirements referenced hereinabove are outlined on Virginia's Time Line and Related Forms for Child Dependency Cases, which is summarized below for ease of reference (Table 2).

TABLE 2

Summary of the Time Requirements for Child Dependency Court Hearings

Case Type	Hearing	Timing	Virginia Code Section
Abuse or Neglect and At-Risk of Abuse or Neglect	Ex parte hearing	Upon the filing of the petition (best practice is not more than 1 business day after the petition is received)	§ 16.1-251 Emergency removal order § 16.1-253 Preliminary protective order
	Preliminary hearing	Within 5 business days of the child's physical removal from the home <u>or</u> entry of an ex parte preliminary protective order	§ 16.1-252 Preliminary removal order, hearing § 16.1-253 Preliminary protective order
	Adjudicatory hearing	Within 30 days of the preliminary hearing, if adjudication does not occur at the time of the preliminary hearing	§ 16.1-252 (G) Preliminary removal order, hearing § 16.1-253 F Preliminary protective order
	Dispositional hearing	Within 60 days of the preliminary hearing	§ 16.1-278.2 Abused, neglected, or abandoned children or children without parental care
Entrustment Agreement	Dispositional hearing	Within 45 days (75 days for Order of Publication) of the filing of a petition to approve an entrustment agreement	§ 16.1-277.01 Approval of entrustment agreement § 16.1-278.2 Abused, neglected, or abandoned children or children without parental care
Relief of Custody	Dispositional hearing	Within 60 days of the initial hearing on the petition for relief of custody	§ 16.1-277.02 Petition for relief of care and custody § 16.1-278.2 Abused, neglected, or abandoned children or children without parental care § 16.1-278.3 Relief of care and custody
Initial Foster Care Review	Dispositional hearing	At the time of the disposition hearing on the underlying petition <u>or</u> within 60 days of the child's placement into foster care if custody is transferred for the first time at disposition (i.e., relief of custody, child in need of services, child in need of supervision, delinquency, and status offense cases)	§ 16.1-281 Foster Care Plan
Foster Care Review	Dispositional hearing	Within 4 months of the dispositional hearing at which the initial foster care plan was reviewed	§ 16.1-282 Foster Care Review

Case Type	Hearing	Timing	Virginia Code Section
Initial Permanency Planning	Dispositional hearing	Within 10 months of the dispositional hearing at which the initial foster care plan was reviewed	§ 16.1-282.1 Permanency planning hearing for children in foster care
Termination of Parental Rights		Petition filed by the local department of social services ⁴	§ 16.1-283 Termination of residual parental rights
Second Permanency Planning	Dispositional hearing	Within 6 months of the hearing approving an interim plan	§ 16.1-282.1 Permanency planning hearing for children in foster care
Annual Foster Care Review	Dispositional hearing	Annually from approval of a foster care plan for a child who remains in the legal custody of the local department of social services after the entry of certain orders to achieve a permanent goal for the child	§ 16.1-282.2 Annual foster care review

THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT SYSTEM GIVES APPROPRIATE DILIGENCE AND ATTENTION TO CHILD DEPENDENCY COURT HEARINGS; A SEPARATE DOCKET OR COURT WOULD NOT RESULT IN BETTER SERVICE TO CHILDREN AND FAMILIES

To assess the juvenile and domestic relations district court system’s diligence and attention to child dependency court hearings, staff in the Office of the Executive Secretary and the advisory workgroup defined *diligence* and *attention*. For purposes of this study, *diligence* is hearing efficiency and productivity. It is measured using numerical data generated from juvenile case management system (JCMS)⁵ to assess the number of child dependency cases filed and finalized, the clearance rate, and the timeliness of child dependency court hearings.

Attention is procedural effectiveness and satisfaction. It is measured by evaluating the quality of court hearings and the court process through peoples’ experiences to identify system strengths and areas in need of improvement. To collect these data, staff in the Office of the Executive Secretary administered surveys electronically between March 1, 2023, and March 15, 2023 to (1) active juvenile and domestic relations district court judges, (2) retired juvenile and domestic relations district court judges, (3) juvenile and domestic relations district court clerks and deputy clerks, and (4) attorneys serving in child

⁴ Pursuant to Va. Code § 63.2-910.2, the local department of social services (LDSS) shall file a petition to terminate the rights of a child’s parents if the child has been in foster care 15 of the most recent 22 months, or the child’s parents have been convicted of certain offenses outlined in the statute, unless an exception to filing has been documented in the child’s foster care plan. Exceptions include: the child is being cared for by a relative, the LDSS has determined that filing such a petition would not be in the best interest of the child, or the services deemed necessary to return the child home have not been provided to the family of the child within the time period established in the foster care plan.

⁵ The juvenile court management system is the system used by all of Virginia’s juvenile and domestic relations district courts to collect, organize, and analyze cases that come before these courts.

dependency cases as counsel for local departments of social services, guardians ad litem for children, and counsel for parents. (See Appendix B for a description of the surveys administered and completed survey response rates.)

In addition to surveys, court site visits were conducted virtually during which conversations took place with judges, clerks, and members of the court community from nine randomly selected juvenile and domestic relations district courts. (See Appendix C for a list of juvenile and domestic relations district courts participating in court community conversations.) These conversations took place between July 14, 2023, and August 8, 2023.

An analysis of the data collected show that appropriate diligence and attention is being given to child dependency court hearings and that these cases receive priority on the courts' dockets. The data do not show that a separate docket or court would enhance diligence and attention in these matters or result in better service to children and families.

The Juvenile and Domestic Relations District Court System is Keeping Up with Incoming Cases

Data generated from the JCMS for the period January 1, 2018, through December 31, 2022, show diligence in child dependency court hearings. During this time, there were 98,295 child dependency cases filed in Virginia's juvenile and domestic relations district courts and 97,753 cases finalized (Figure 1). These numbers compute to a five-year clearance rate of 99% (Figure 2). This rate indicates that the juvenile and domestic relations district court system is keeping up with incoming cases.

FIGURE 1

Child dependency case filings fell 6% two consecutive years (CY 2020 and CY 2021) and increased 2% in CY 2022.

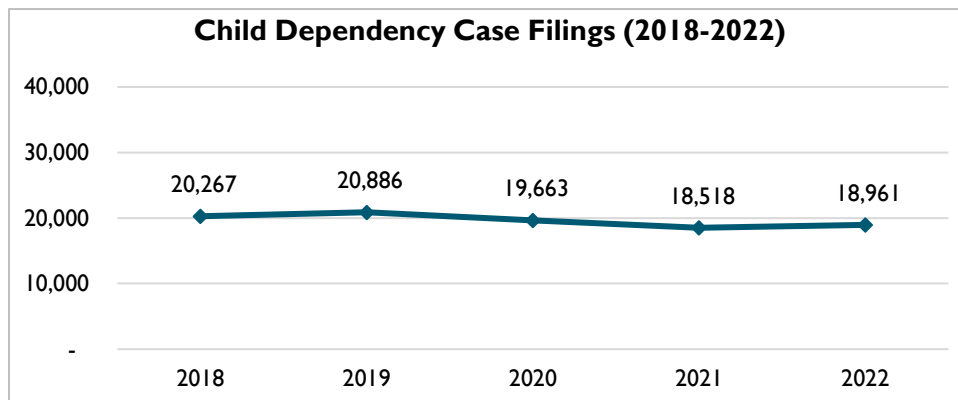
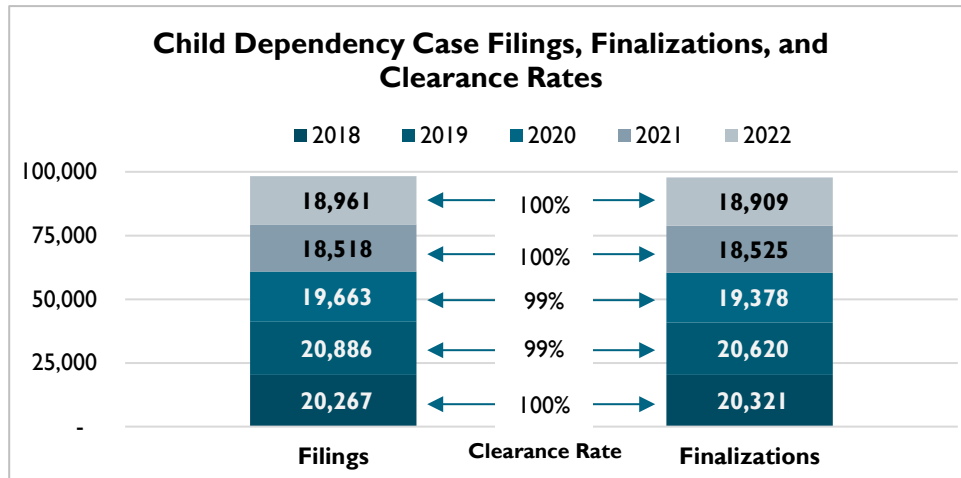


FIGURE 2

Child dependency case filings and finalizations during calendar years 2018-2022 show clearance rates of 99% or higher, indicating that the juvenile and domestic relations district court system is keeping up with incoming cases.



Juvenile and Domestic Relations District Court Dockets are Sufficient to Schedule and Hold Child Dependency Court Hearings

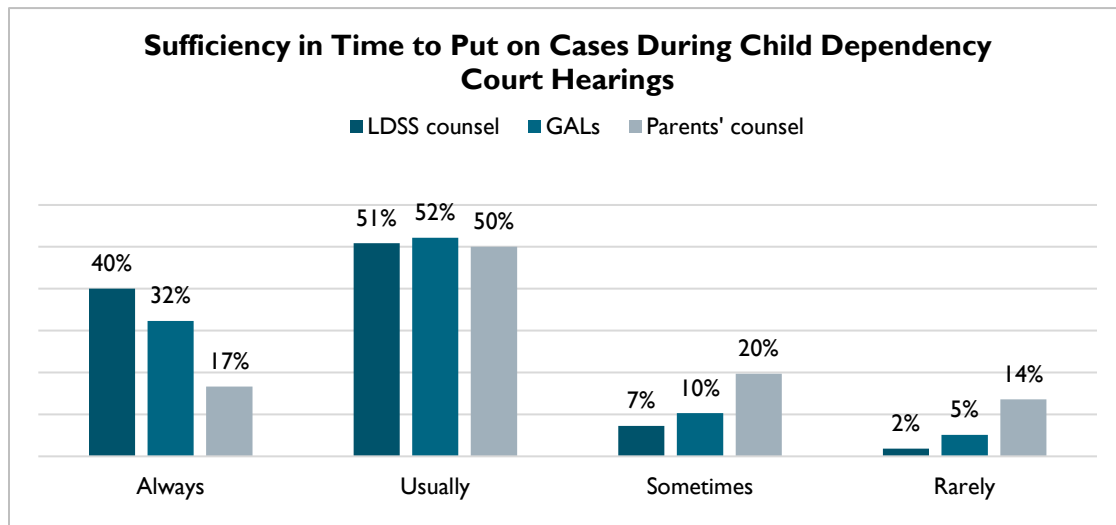
Survey results and virtual court site visits show that appropriate attention is paid to child dependency cases and that dockets are sufficient to schedule and hear the number of cases coming before the courts. When surveyed about time on the docket and how often the court adheres to the time allotted on the docket to hear child dependency cases:

- 79% of active and retired juvenile and domestic relations district court judges indicated that there is enough time
- 72% of active and retired juvenile and domestic relations district court judges indicated they usually or always adhere to the time allotted
- 89% of juvenile and domestic relations district court clerks and deputy clerks indicate the court usually or always adheres to the time allotted.

Attorneys and guardians ad litem indicated that they always or usually have sufficient time to put on their case during a child dependency court hearing, showing that appropriate attention is paid to these cases (Figure 3).

FIGURE 3

Fewer parents' counsel than counsel for local departments of social services or guardians ad litem indicated that they always or usually have sufficient time to put on their case.



When attorneys request more time to present their cases, 93% of active and retired juvenile and domestic relations district court judges indicated they always or usually give attorneys more time.

The Juvenile and Domestic Relations District Court System is Holding Child Dependency Court Hearings Within Required Time Frames

The time frames for holding child dependency court hearings are set out in federal and state law. This study focused on the hearing time requirements provided in the Code of Virginia. Table 2 summarizes these time requirements.

Data generated from the JCMS for the period, January 1, 2018-December 31, 2022, for purposes of calculating the number of days between court events (i.e., filing dates and hearing dates) show Virginia's juvenile and domestic relations district courts are diligent about holding hearings on these cases within required time frames (Figures 4 and 5). Of the 144,461 child dependency cases analyzed, more than three-quarters (79%) met the required time frames.⁶ (See Appendix D to review the Child Dependency Case Time Line Measures report for the juvenile and domestic relations district court system.) Data entry was identified as one reason for the cases analyzed not meeting the time requirements.

⁶ The accuracy of the data is dependent upon information being properly entered in the Juvenile Case Management System (JCMS).

FIGURE 4

Data represent abuse or neglect cases filed between January 1, 2018, and December 31, 2022, in which the local department of social services (LDSS) sought removal of a child from the home.

Child Dependency Case Performance – Abuse or Neglect Cases Seeking Removal
Median Days and Percentage of Cases Analyzed that Meet Time Requirements

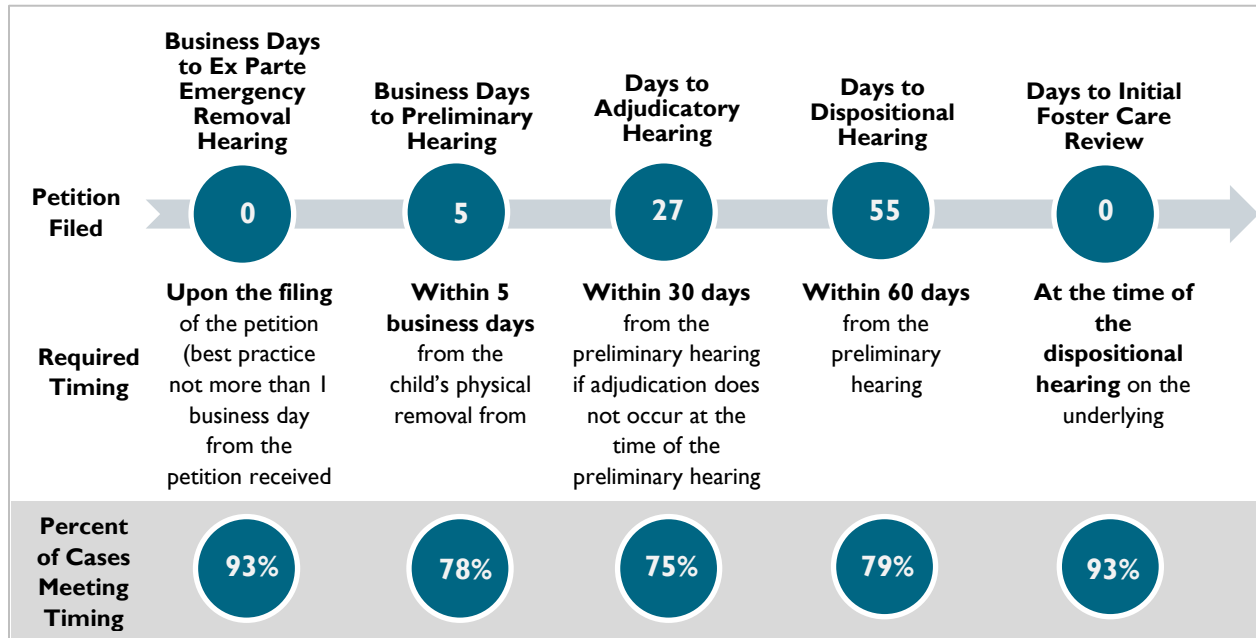
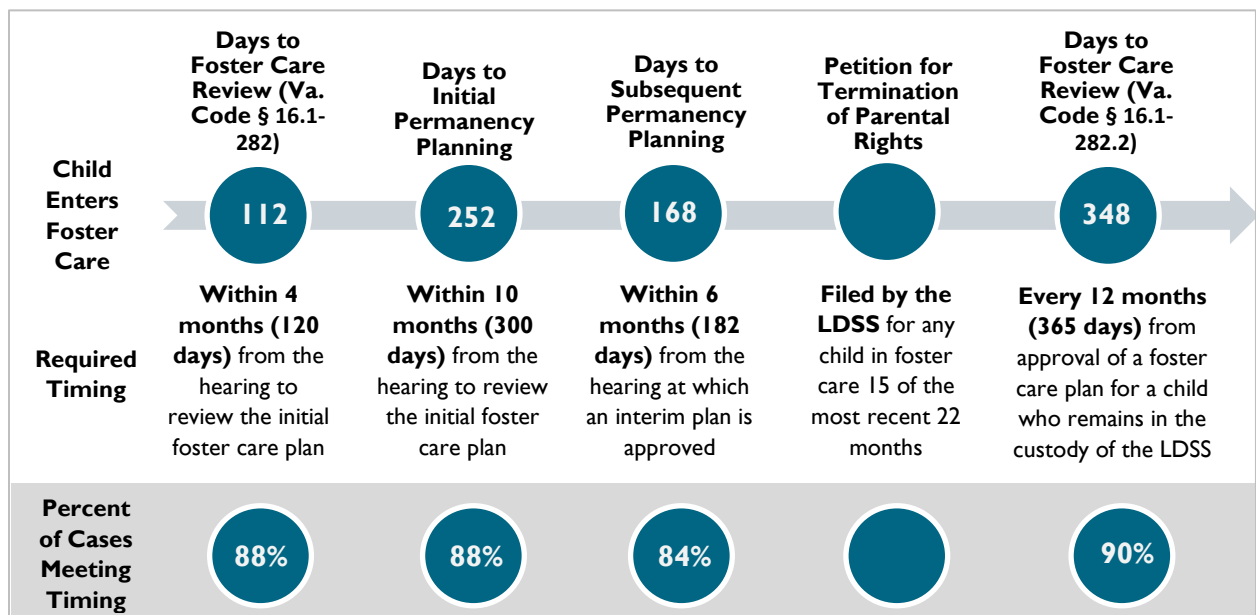


FIGURE 5

Unless noted otherwise, data represent foster care review, permanency planning, and annual foster care review cases filed between January 1, 2018, and December 31, 2022.

Child Dependency Case Performance – Foster Care Cases
Median Days and Percentage of Cases Analyzed that Meet Time Requirements



The timely processing of child dependency court hearings shows an efficient and productive juvenile and domestic relations district court system.

PRESSURES ON THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT SYSTEM

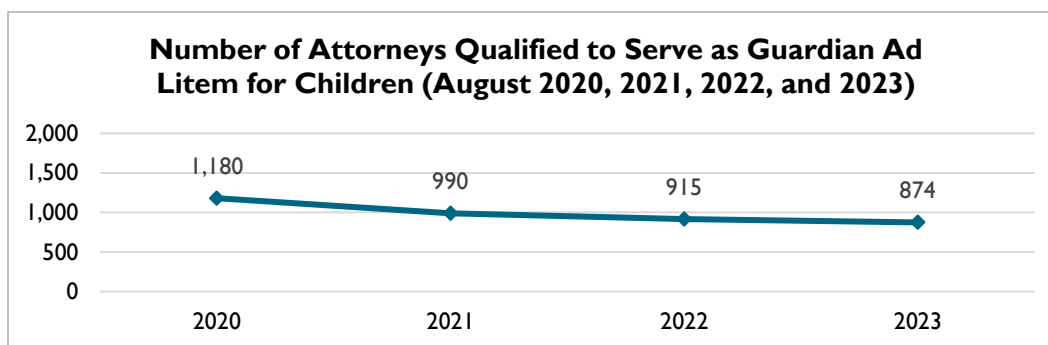
While data show that the juvenile and domestic relations district court system gives appropriate diligence and attention to child dependency court hearings, it also reveals pressures on the system that challenge child dependency case processing.

A Shortage of Attorneys Serving as Guardians Ad Litem and Court Appointed Parents' Counsel in Child Dependency Cases

The shortage of attorneys qualified to serve as guardians ad litem and court appointed parents' counsel in child dependency cases was identified in all virtual court site visits as a strain on the juvenile and domestic relations district court system. Guardian ad litem and parent counsel appointments in these cases are governed by Virginia Code § 16.1-266.1, which requires that (1) the Judicial Council of Virginia maintain a list of attorneys qualified to serve as guardian ad litem and (2) that counsel appointed for a parent or guardian pursuant to Virginia Code § 16.1-266 (D) be selected from the list of attorneys qualified to serve as guardian ad litem.⁷ Data generated from the guardian ad litem information system, the system used to maintain the list of attorneys qualified to serve as guardians ad litem, show that the number of attorneys qualified to serve in these capacities is trending down (Figure 6).

FIGURE 6

The number of attorneys qualified to serve as guardians ad litem dropped 26% from 1,180 in August 2020 to 874 in August 2023.



This shortage has not gone unnoticed by courts. In most instances, the parents and guardians involved in child dependency cases qualify for court appointed counsel. Participants in the court community conversations noted the difficulties with finding attorneys to accept appointments, particularly as

⁷ Virginia Code § 16.1-266 (A) and (D) provide for the appointment of guardians ad litem and court appointed parents' counsel in child dependency cases. Subsection A requires the juvenile and domestic relations district court to appoint a guardian ad litem in any case involving a child who is alleged to be abused or neglected, the subject of a petition for approval of an entrustment agreement or relief of custody, the subject of a petition seeking termination of residual parental rights.

Subsection D of Virginia Code § 16.1-266 requires the judge, clerk, or probation officer to notify the parent or guardian of a child who is the subject of a petition alleging abuse or neglect or at-risk of abuse or neglect, or who at a hearing could be subjected to losing their residual parental rights of their right to counsel and to appoint counsel if the court determines the parent, guardian, or other adult is indigent.

parents' counsel. Repeatedly, participants cited the low rate of compensation for this representation as problematic. Several participants indicated they have begged attorneys to accept appointments and expressed concern that over-reliance on the same attorneys to accept appointments will result in burn-out and further reduce the number of attorneys serving.

While juvenile and domestic relations district court judges have the authority to appoint “any discrete and competent attorney”⁸ to serve as guardian ad litem or parents' counsel when someone on the qualified list is not reasonably available, judges noted that it is not that easy. The experience brought by attorneys trained to serve in these matters is essential to quality child dependency court hearings. A report, [Ensuring High Quality Legal Representation for Children and Families](#), from the American Bar Association Center on Children and the Law notes,

Judges depend on attorneys to ensure all important information is brought to their attention to allow for fair and meaningful decisions about the family. High-quality legal representation of parents and children:

- Leads to more timely family reunifications and use of kinship care.
- Helps ensure a well-functioning child welfare system.
- Ensures judges have the information they need to make informed decisions in court cases involving children and families.
- Ensures parties' rights are protected, their voices are heard in court, and the legal system treats them fairly.
- Promotes greater understanding of the court process by parties.
- Saves the system money.
- Promotes positive case outcomes for parties by increasing presence and participation in court.⁹

In addition, the shortage of attorneys has required some rural juvenile and domestic relations district courts, many of which share the attorneys serving as guardians ad litem and parents' counsel, to schedule child dependency court hearings in the early morning and/or late afternoon to allow the attorneys time to travel between courts.

Lack of Services and Experts Available to Children and Parents

Lack of existing services for children and families in or near a court's jurisdiction was identified in virtual court site visits as a strain on the juvenile and domestic relations district court system. The more difficult it is to access services for children and families, the more difficult it is to attain timely and appropriate permanency options for children in foster care. Additionally, lack of access to experts by parents' counsel was cited as hampering their ability to best represent parents. Neither of these resource issues, however, would be alleviated by creating a separate docket or court for child dependency matters.

⁸ Virginia Code § 16.1-266.1 (B) and (C).

⁹ American Bar Association Center on Children and the Law, [Ensuring High Quality Legal Representation for Children and Families](https://www.ncjfcj.org/wp-content/uploads/2020/08/Ensuring-High-Quality-Legal-Representation_508-Final.pdf), https://www.ncjfcj.org/wp-content/uploads/2020/08/Ensuring-High-Quality-Legal-Representation_508-Final.pdf, 2020. Citing Children's Bureau Informational Memorandum 17-02, High Quality Legal Representation for All Parties in Child Welfare Proceedings, <https://www.acf.hhs.gov/sites/default/files/documents/cb/im1702.pdf>, January 17, 2017.

Training of Judges, Clerks Office Staff, and Attorneys Participating in the Child Dependency Case Process

Assessment of practice and training on the child dependency case process is necessary to ensure effective functioning of the juvenile and domestic relations district court system. The need for training is significant in Virginia where, of 135 authorized juvenile and domestic relations district court judgeships, Fifty-three percent (53%) have been on the bench fewer than 6 years while 47% have been on the bench 6 years or longer. With members of the bench, clerks' offices, and attorneys participating in child dependency matters fluctuating, there is an ongoing need for assistance for judges, clerks, and attorneys who serve as guardians ad litem, parents' counsel, and local department of social services counsel. This, too, is an issue that is being addressed currently without need for a separate docket or court. The Office of the Executive Secretary through its Court Improvement Program, Department of Judicial Services, and Department of Judicial Information Technology in the Office of the Executive Secretary of the Supreme Court of Virginia provide the infrastructure, resources, training, technology, and direct technical assistance to support courts in implementing strong child dependency case processes and practices with diligence and attention, and regularly offer trainings and resources to attorneys who serve as guardians ad litem, parents' counsel, and local Department of Social Services counsel.

SUMMARY AND RECOMMENDATIONS

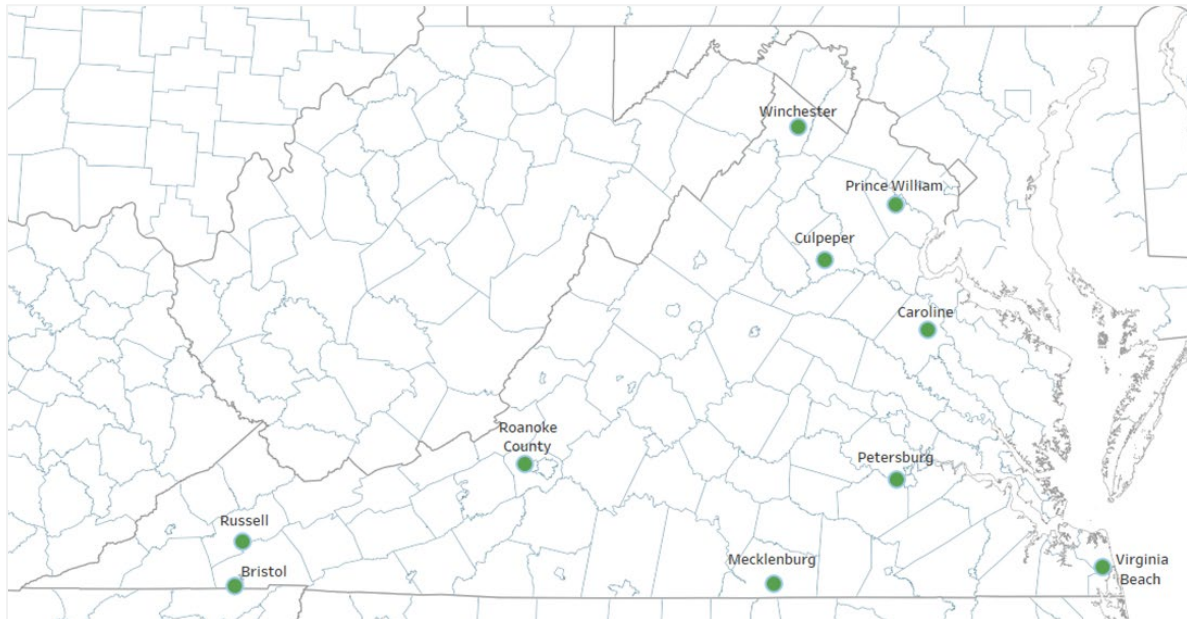
Overall, the data collected and analyzed by this study demonstrate that child dependency court proceedings receive appropriate and suitable diligence and attention by the juvenile and domestic relations district courts, and that these cases are consistently prioritized by the courts on their current dockets. Other pressures, most notably the shortage of attorneys qualified to serve as guardians ad litem and court appointed parents' counsel in child dependency cases, were cited as strains on the child dependency court hearing process, but those pressures would not be addressed by the creation of a separate docket or court.

The data support the conclusion that a separate docket or court would not enhance or increase the already heightened diligence and attention shown to these matters, and a separate docket or court would not result in better service to children and families.

APPENDIX A

Advisory Workgroup Members

Name	Judicial District	Court
Hon. Deborah V. Bryan, Judge (Ret.), Chair	2	Virginia Beach JDR District Court
Hon. Leisa K. Ciaffone, Judge	23	Roanoke County JDR District Court
Laura B. Craig, Clerk	11	Petersburg City JDR District Court
Monica J. Burnett, Clerk	31	Prince William JDR District Court
Hon. Elizabeth Burton Kellas, Chief Judge	26	Frederick/Winchester JDR District Court
Kristie Gail Daily, Clerk	15	Caroline County JDR District Court
Donna Israel Hale, Clerk	29	Russell County Combined District
Sherrie Lester, Court Management Analyst		Department of Judicial Services, Office of the Executive Secretary, Supreme Court of Virginia
Hon. Joseph B. Lyle, Judge	28	Bristol JDR District Court
Hon. Nora J. Miller, Judge	10	Mecklenburg County JDR District Court
Hon. Frank W. Somerville, Judge	16	Culpeper County JDR District Court

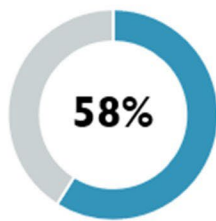


APPENDIX B

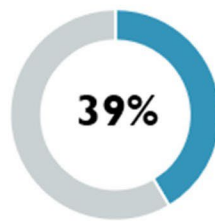
Survey Response Rates

In March 2023, the Court Improvement Program surveyed active and retired juvenile and domestic relations district court judges, clerks, and deputy clerks; attorneys serving as guardians ad litem for children; parents' counsel; and counsel for local departments of social services as part of a study to assess whether the Juvenile and Domestic Relations District Court system is giving appropriate diligence and attention to child dependency court hearings. Enactment Clause 2 of Senate Bill 396 (Chapter 305, 2022 Regular Session). Copies of the surveys administered are attached.

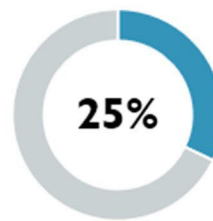
Response Rates-Completed Surveys



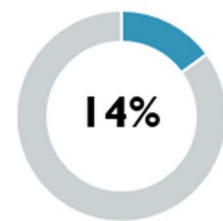
Active J&DR District
Court Judges
136 Surveys
79 Responses



Retired J&DR
District Court Judges
44 Surveys
17 Responses



Attorneys/GALs
1,008 Surveys
257 Responses



J&DR District Court
Clerks & Deputy Clerks
1,495 Surveys
211 Responses

Survey Respondents Screened Out

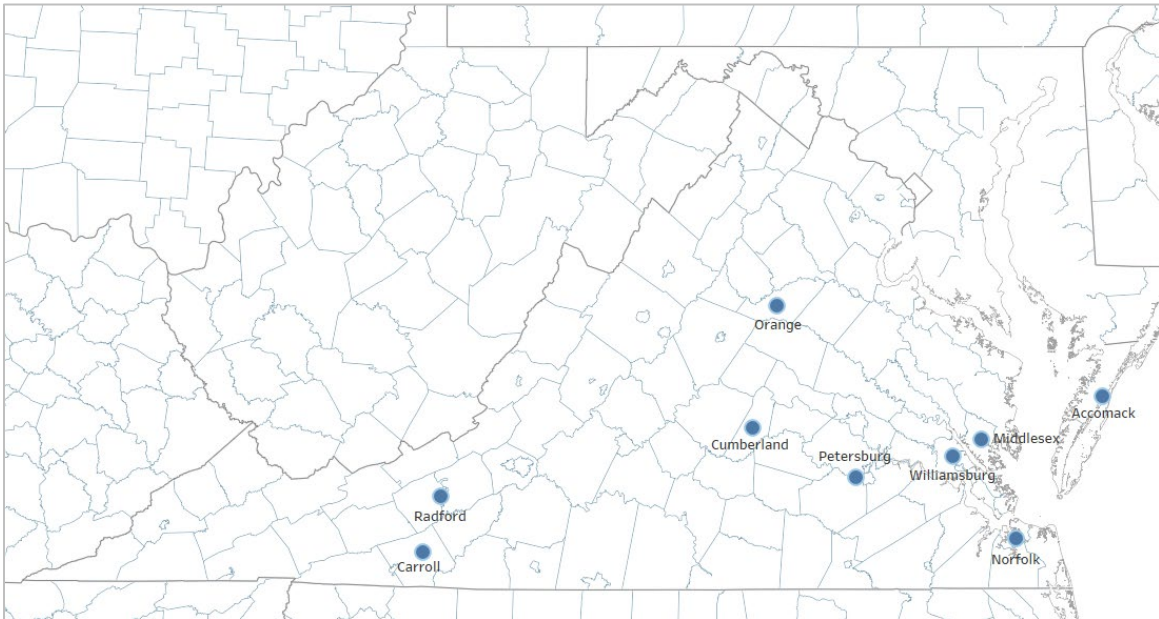
Active J&DR District Court Judges	Retired J&DR District Court Judges	Attorneys/ Guardians Ad Litem	J&DR District Court Clerks & Deputy Clerks	Total
Not Applicable	3	171	42	216

- Retired J&DR district court judges were screened out of the survey if they did not preside over at least 1 child dependency case in the past 12 months.
- Attorneys and guardians ad litem were screened out of the survey if they did not serve as in at least 11 child dependency cases in the past 12 months.
- J&DR district court clerks and deputy clerks were screened out of the survey if they do not have child dependency case entry/update responsibilities.

APPENDIX C

Juvenile and Domestic Relations District Courts Participating in Virtual Conversations

Judicial District	Court
2	Accomack JDR District Court
27	Carroll Co. JDR District Court
10	Cumberland JDR District Court
9	Middlesex JDR District Court
4	Norfolk JDR District Court
16	Orange JDR District Court
11	Petersburg JDR District Court
27	Radford JDR District Court
9	Williamsburg JDR District Court



APPENDIX D

Child Dependency Case Time Line Measures[i][ii]

January 1, 2018 – December 1, 2022

Virginia's Juvenile and Domestic Relations District Courts

Case Type	Court Event and Timing	Number of Cases Analyzed	Avg. (Mean) Days	Median Days	Percent of Cases Meeting Timing
Abuse or Neglect-Seeking a Child's Removal from the Home	Ex Parte Emergency Removal Order Hearing Timing: Upon the filing of the petition (best practice is not more than 1 business day from the petition received date)	10,209	0	0	93%
	Preliminary Hearing as Initial Hearing Timing: Within 72 hours (3 days) from the child's physical removal from the home, unless the is court not open due to a weekend, holiday, or lawful closure (Va. Code § 63.2-1517)	924	115	6	38%
	Preliminary (5-Day) Hearing Timing: Within 5 business days from the child's physical removal from the home	7,798	11	5	78%
	Adjudicatory Hearing Timing: Within 30 days from the preliminary hearing	8,141	35	27	75%
	Dispositional Hearing Timing: Within 60 days from the preliminary hearing	8,270	70	55	79%
	Finalized Hearing Timing: Within 66 days from petition received date	11,009	68	57	81%

Case Type	Court Event and Timing	Number of Cases Analyzed	Avg. (Mean) Days	Median Days	Percent of Cases Meeting Timing
Abuse or Neglect-Seeking Protective Order	Ex Parte Preliminary Protective Order Hearing Timing: Upon the filing of the petition (best practice is not more than 1 business day from the petition received date)	9,546	4	4	76%
	Preliminary (5-Day) Hearing Timing: Within 5 business days from issuance of preliminary protective order	10,341	6	4	82%
	Adjudicatory Hearing Timing: Within 30 days from the preliminary hearing	7,903	44	28	64%
	Dispositional Hearing Timing: Within 60 days from the preliminary hearing	7,366	110	58	55%
	Finalized Hearing Timing: Within 66 days from petition received date	12,585	92	60	63%
At-Risk of Abuse or Neglect-Seeking a Child's Removal from the Home	Ex Parte Emergency Removal Hearing Timing: Upon the filing of the petition (best practice is not more than 1 business day from the petition received date)	117	0	0	100%
	Preliminary Hearing as Initial Hearing Timing: Within 72 hours (3 days) from the child's physical removal from the home, unless the court is not open due to a weekend, holiday, or lawful closure (Va. Code § 63.2-1517)	15	467	27	7%

At-Risk of Abuse or Neglect-Seeking a Child's Removal from the Home (cont.)	Court Event and Timing	Number of Cases Analyzed	Avg. (Mean) Days	Median Days	Percent of Cases Meeting Timing
	Preliminary (5-Day) Hearing Timing: Within 5 business days from the child's physical removal from the home	61	4	5	89%
	Adjudicatory Hearing Timing: Within 30 days from the preliminary hearing	107	36	28	72%
	Dispositional Hearing Timing: Within 60 days from the preliminary hearing	86	106	57	56%
	Finalized Hearing Timing: Within 66 days from petition received date	131	90	63	0%
At-Risk of Abuse or Neglect-Protective Orders	Ex Parte Preliminary Protective Order Hearing Timing: Upon the filing of the petition (best practice is within 1 business day from the petition received date)	872	4	0	78%
	Preliminary (5-Day) Hearing Timing: Within 5 business days from issuance of preliminary protective order	1,023	8	4	76%
	Adjudicatory Hearing Timing: Within 30 days from the preliminary hearing	703	36	27	72%
	Dispositional Hearing Timing: Within 60 days from the preliminary hearing	558	87	56	67%
	Finalized Hearing Timing: Within 66 days from petition received date	1,279	65	55	70%

Case Type	Court Event and Timing	Number of Cases Analyzed	Avg. (Mean) Days	Median Days	Percent of Cases Meeting Timing
Entrustment Agreement	Dispositional Hearing Timing: Within 45 days (75 days for order of publication) from the petition received date **Percent cases meeting timing is for cases <= 45 days**	2,126	45	29	73%
Relief of Custody	Dispositional Hearing Timing: Within 60 days from the date of the initial hearing on the petition	1,443	48	20	77%
Initial Foster Care Review	Underlying Abuse or Neglect Case-Removal Timing: At the time of the dispositional hearing on the underlying petition	7,325	4	0	93%
	Underlying Abuse or Neglect Case-Preliminary Protective Order Timing: Within 60 days from a child's entry into foster care	51	51	54	82%
	Underlying At-risk of Abuse or Neglect Case-Removal Timing: At the time of the dispositional hearing on the underlying petition	0	0	0	0%
	Underlying At-Risk of Abuse or Neglect Case-Preliminary Protective Order Timing: Within 60 days from a child's entry into foster care	0	0	0	0%
	Underlying Entrustment Agreement case Timing: At the time of the dispositional hearing on the entrustment agreement	183	1	0	98%

Initial Foster Care Review (cont.)	Court Event and Timing	Number of Cases Analyzed	Avg. (Mean) Days	Median Days	Percent of Cases Meeting Timing
	Underlying Relief of Custody Case Timing: Within 60 days from a child's entry into foster care	93	81	49	88%
	Underlying Child in Need of Services Timing: Within 60 days from a child's entry into foster care	130	56	51	85%
	Underlying Child in Need of Supervision Timing: Within 60 days from a child's entry into foster care	92	50	54	87%
	Underlying Delinquency Misdemeanor Timing: Within 60 days from a child's entry into foster care	75	53	55	88%
	Underlying Delinquency Felony Timing: Within 60 days from a child's entry into foster care	10	45	50	90%
Foster Care Review	Foster Care Review-VA Code § 16.1-282 Timing: Within 4 months (120 days) from the hearing to review the initial foster care plan (i.e., initial foster care review)	8,086	115	112	88%
Permanency Planning^[iii]	Initial Permanency Planning Timing: Within 10 months (300 days) from the hearing to review the initial foster care plan (i.e., initial foster care review)	8,020	260	252	88%

Permanency Planning ^[iii] (cont.)	Court Event and Timing	Number of Cases Analyzed	Avg. (Mean) Days	Median Days	Percent of Cases Meeting Timing
	Subsequent Permanency Planning Hearings Timing: Within 6 months (180 days) from the hearing at which an interim plan is approved	11,615 (Cases Finalized)	—	168	84%
	Petition for Termination of Parental Rights (TPR) Filed by the Local Department of Social Services (LDSS) Timing: A petition for involuntary TPR is filed not more than 456 days (15 months) after a child's entry into foster care	—	—	—	—
Post Permanency Planning^[iv]	Annual Foster Care Review - VA Code § 16.1-282.2 Timing: Every 12 months (365 days) from approval of a foster care plan for a child who remains in the custody of the local department of social services after the entry of certain orders to achieve the permanent goal for the child	5719 (Cases Finalized)	—	348	90%
Hearing Pursuant to Va. Code § 16.1-282.1 A2^[v]	Hearing to Review Foster Care Plan with Approved Goal of Another Planned Permanent Living Arrangement (APPLA) Timing: Every 6 months (182 days) from date approving goal of APPLA	449 (Case Finalized)	—	168	88%

[i] The accuracy of the data is dependent upon information being properly entered in the Juvenile Case Management System (JCMS).

[ii] Unless otherwise noted, data were extracted from the juvenile case management system in March 2023 and are based on cases with a received date between January 1, 2018-December 31, 2022.

[iii] Data for subsequent permanency planning hearings were generated in June 2023 using the Court Performance Measures for Child Dependency Cases application in JCMS.

[iv] Data were generated in June 2023 using the Court Performance Measures for Child Dependency Cases application in JCMS.

[v] Data were generated in June 2023 using the Court Performance Measures for Child Dependency Cases application in JCMS.

CHAPTER 305

An Act to amend and reenact §§ 16.1-278.2, 16.1-278.4, 16.1-278.8, and 16.1-281 of the Code of Virginia, relating to foster care placements; court review.

[S 396]

Approved April 11, 2022

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.2, 16.1-278.4, 16.1-278.8, and 16.1-281 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.

A. Within 60 days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian, or other person standing in loco parentis in accordance with § 16.1-263. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian, or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;
3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter that may include limiting or prohibiting contact for another 180 days;
4. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child. *Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.*

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

- a. A person with a legitimate interest subject to the provisions of subsection A1;
- b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or
- c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child

for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this section shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child. *Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.*

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate in such services and programs or to refrain from such conduct as the court may prescribe; or

7. Terminate the rights of the parent pursuant to § 16.1-283.

A1. Any order transferring custody of the child to a person with a legitimate interest pursuant to subdivision A 5 shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a person with a legitimate interest should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

B. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed in accordance with § 16.1-281 by the local department of social services, a public agency designated by the community policy and management team which places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardians, or child welfare agency.

C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

D. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

§ 16.1-278.4. Children in need of services.

If a child is found to be in need of services or a status offender, the juvenile court or the circuit court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.
2. Permit the child to remain with his parent subject to such conditions and limitations as the court may order with respect to such child and his parent.
3. Order the parent with whom the child is living to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and his parent.
4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance as provided under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.
5. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child caring-institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child. *Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.*

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

6. Transfer legal custody to any of the following:
 - a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child;
 - b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child. The court shall not transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or
 - c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child. *Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.*

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear

and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

7. Require the child to participate in a public service project under such conditions as the court prescribes.

§ 16.1-278.8. Delinquent juveniles.

A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;

2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;

3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;

4. Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department, and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at

30-day intervals;

8. Impose a fine not to exceed \$500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The restricted permit shall be issued in accordance with the provisions of such subsection. However, only an abstract of the court order that identifies the juvenile and the conditions under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with its terms.

Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § 46.2-301.

The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order imposing the curfew;

10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the juvenile was found to be delinquent;

11. Require the juvenile to participate in a public service project under such conditions as the court prescribes;

12. In case of traffic violations, impose only those penalties that are authorized to be imposed on adults for such violations. However, for those violations punishable by confinement if committed by an adult, confinement shall be imposed only as authorized by this title;

13. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the juvenile;

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the approval of the Director; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the juvenile has residence if other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. *Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.* Any order authorizing removal from the home and transferring legal custody of a juvenile to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if (i) he is 11 years of age or older and has been adjudicated delinquent of an act enumerated in subsection B or C of § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an offense that would be a felony if committed by an adult, (b) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent

based on an offense that would be a felony if committed by an adult, or (c) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

15. Impose the penalty authorized by § 16.1-284;

16. Impose the penalty authorized by § 16.1-284.1;

17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

18. Impose the penalty authorized by § 16.1-278.9; or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 15.2-1812.2.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

§ 16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of social services or a child welfare agency, the local department of social services or child welfare agency shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements of this section.

The representatives of such department or agency shall involve in the development of the plan the child's parent(s), except when parental rights have been terminated or the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, relatives and fictive kin who are interested in the child's welfare, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child. The representatives of such department or agency shall involve a child who is 12 years of age or older in the development of the plan and, at the option of such child, up to two members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child. A child under 12 years of age may be involved in the development of the plan if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department or agency shall include in the plan a full description of the reasons therefor.

The department or child welfare agency shall file the plan with the juvenile and domestic relations district court within 45 days following the transfer of custody or the board's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional 60 days. However, a foster care plan shall be filed in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within 45 days following transfer of custody to the board or agency or the board's placement of the child.

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child, *including an assessment of the stability of each placement, the services provided or plans for services to be provided to address placement instability or to prevent disruption of the placement, and a description of other placements that were considered for the child, if any, and reasons why such other placements were not provided*; (v) for school-age children, the school placement of the child; (vi) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; and (vii) for children 14 years and older, an explanation of the child's rights with respect to education, health, visitation, court participation, and the right to stay safe and avoid exploitation. The foster care plan shall

include all documentation specified in 42 U.S.C. § 675(5)(1) and § 63.2-905.3. If the child in foster care is placed in a qualified residential treatment program as defined in § 16.1-228, the foster care plan shall also include the report and documentation set forth in subsection A of § 63.2-906.1. If the child in foster care is pregnant or is the parent of a child, the foster care plan shall also include (a) a list of the services and programs to be provided to or on behalf of the child to ensure parental readiness or capability and (b) a description of the foster care prevention strategy for any child born to the child in foster care. In cases in which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process. For a child 14 years of age and older, the plan shall include a signed acknowledgment by the child that the child has received a copy of the plan and that the rights contained therein have been explained to the child in an age-appropriate manner.

If the department or child welfare agency concludes that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, the department, child welfare agency or team shall (1) include a full description of the reasons for this conclusion; (2) provide information on the opportunities for placing the child with a relative or in an adoptive home; (3) design the plan to lead to the child's successful placement with a relative or fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1306 or in an adoptive home within the shortest practicable time; and (4) if neither of such placements is feasible, explain why permanent foster care is the plan for the child or independent living is the plan for the child in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living.

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (A) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (B) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (C) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (D) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Independent living" has the meaning set forth in § 63.2-100.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

Within 30 days of making a determination that reasonable efforts to reunite the child with the parents are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child, to the parents or other person standing in loco parentis, and such other persons

as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within 60 days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to § 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A of § 16.1-282.1; or, in cases in which independent living was identified as the goal for a child in a foster care plan approved prior to July 1, 2011, or in which a child has been admitted to the United States as a refugee or asylee and is over 16 years of age and independent living has been identified as the permanency goal for the child, by directing the board or agency to provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

D. The court in which the foster care plan is filed shall be notified immediately if the child is returned to his parents or other persons standing in loco parentis at the time the board or agency obtained custody or the board placed the child.

E. 1. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, a hearing shall be held within 60 days of such placement. Prior to such hearing, the qualified residential treatment program shall file with the court the assessment report prepared pursuant to clause (viii) of the definition of qualified residential treatment program set forth in § 16.1-228. The court shall (i) consider the assessment report prepared by a qualified individual pursuant to clause (viii) of the definition of qualified residential treatment program set forth in § 16.1-228 and submitted pursuant to this subsection; (ii) consider the report and documentation required under subsection A of § 63.2-906.1 and filed with the foster care or permanency plan; (iii) determine whether the needs of the child can be met through placement in a foster home or, if not, whether placement in the qualified residential treatment program would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; and (iv) approve or deny the placement of the child in the qualified residential treatment program. The hearing required by this subsection may be held in conjunction with a dispositional hearing held pursuant to subsection C, a foster care review hearing held pursuant to § 16.1-282, a permanency planning hearing held pursuant to § 16.1-282.1, or an annual foster care review hearing held pursuant to § 16.1-282.2, provided that such hearing has already been scheduled by the court and is held within 60 days of the child's placement in the qualified residential treatment program.

2. If the child remains placed in the qualified residential treatment program during any subsequent hearings held pursuant to subsection C or § 16.1-282, 16.1-282.1, or 16.1-282.2, the local board of social services or licensed child-placing agency shall present evidence at such hearing that demonstrates (i) that the ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement in a foster home and that the child's placement in the qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and is consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (ii) the specific treatment or service

needs of the child that will be met in the qualified residential treatment program and the length of time the child is expected to need such treatment or services; and (iii) the efforts made by the local board of social services to prepare the child to return home or to be placed with a fit and willing relative, legal guardian, or adoptive parent, or in a foster home. The court shall review such evidence and approve or deny the continued placement of the child in the qualified residential treatment program.

F. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within four months in accordance with § 16.1-282. However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall be given notice of the date set for the foster care review hearing and parties who are not present shall be summoned as provided in § 16.1-263.

G. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of social services or placed by local boards of social services on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

2. That the Committee on District Courts be requested to study the Juvenile and Domestic Relations District Court system to assess whether appropriate diligence and attention is being given to child dependency court hearings and to make recommendations as to whether a separate docket or court would result in better service to children and families involved in child dependency hearings. The Committee on District Courts shall complete its meetings by November 30, 2023, and shall submit to the Governor and General Assembly an executive summary and a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2024 Regular Session of the General Assembly and shall be posted on the General Assembly's website.

3. 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. 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.

