

**REPORT OF THE OFFICE OF THE
CHILDREN'S OMBUDSMAN**

**SJR 241 Workgroup Studying
Legal Representation in
Child Dependency Cases
(SJR 241, 2023)**

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



SENATE DOCUMENT NO. 8

**COMMONWEALTH OF VIRGINIA
RICHMOND
2023**



COMMONWEALTH of VIRGINIA

Office of the Governor

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

December 27, 2023

The Honorable Glenn Youngkin
Governor of Virginia
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

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

Senate Joint Resolution No. 241, 2023 Session of the General Assembly, states that

the Office of the Children's Ombudsman be requested to continue its study of legal representation in child dependency cases. In conducting its study, the Office of the Children's Ombudsman shall direct the work group convened pursuant to Chapter 305 of the Acts of Assembly of 2022 to continue its work regarding the implementation of the recommendations made in its November 1, 2022, report. The work group 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.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric J. Reynolds".

Eric J. Reynolds, Director

SJR 241 Workgroup Studying Legal Representation in Child Dependency Cases

Report to the Governor
and the General Assembly



December 27, 2023

SJR 241 Workgroup Studying Legal Representation in Child Dependency Cases

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EXECUTIVE SUMMARY

Across the country, there has been growing awareness that improving the quality of the legal representation provided to parents in child dependency cases can result in better outcomes for children. The improved outcomes have been demonstrated from robust data collected from a variety of different states and jurisdictions, which showed that children's permanency goals were achieved over shorter periods of time in care and at less cost to states when parents were provided quality legal representation.

In recognition of this, the federal government amended its policies in 2019 to allow states to seek federal funds for the reimbursement of costs associated with providing parents and children with legal representation. Virginia can take advantage of these federal funds to implement much-needed changes to the system of providing legal counsel for parents, which currently lacks adequate compensation, standards, and accountability for attorneys representing parents. Short- and long-term goals in improving the quality of legal representation parents receive can be achieved if the following initiatives are implemented:

1. Increase the rate of compensation paid to court-appointed counsel for parents in child dependency cases to the rates currently applicable for court-appointed defense counsel in cases involving Class II and III felonies in the district courts.
2. Direct the Judicial Council to establish standards for the qualification and performance of court-appointed attorneys for parents in child dependency cases.
3. Consider establishing a state-level Parent's Advocacy Commission that would serve similar functions such as training and oversight over court-appointed counsel for parents in child dependency cases as the Virginia Indigent Defense Commission currently serves for court-appointed criminal defense attorneys and attorneys employed in the Commonwealth's Public Defender offices.
4. Establish and fund pilot programs implementing a multidisciplinary model of legal representation in which parents in child dependency cases are represented by an attorney along with a social worker or parent support advocate.

The costs of investing in these measures could be offset in part by the federal funding that is now available along with the savings that can be realized when fewer children enter foster care and when children who enter foster care achieve permanency sooner. In short, investing in these measures will address the immediate need to attract more attorneys willing to accept appointments and will provide a bold long-term plan that will improve and sustain the quality and provision of legal representation for parents involved in child dependency cases.

INTRODUCTION

Across the country, there has been growing awareness that improving the quality of the legal representation provided to parents in child dependency cases can result in better outcomes for children. The improved outcomes have been demonstrated from robust data collected from a variety of different states and jurisdictions, which showed that children’s permanency goals were achieved over shorter periods of time in care and at less cost to states when parents were provided quality legal representation. As a result, there has been a sea change in the federal government’s views of the legal system’s important role in improving states’ child welfare system.

In 2019, the federal Children’s Bureau added legal services provided to parents and children to the list of child welfare system expenditures for which states can request reimbursement under Title IV-E of the Social Security Act.¹ Previously, states could seek Title IV-E reimbursement for costs associated with providing legal representation only for child welfare agencies. This change by the Children’s Bureau was a clear signal to states that providing quality legal representation to parents and children should be a priority in improving their child welfare systems.

Virginia is one of only eight states that has never drawn down Title IV-E funds for legal representation for any of the parties involved in child dependency cases. Recognition of this, and the need to develop plans to draw down such funds to improve Virginia’s system of providing legal representation in child dependency cases, led to legislation in 2022 and 2023 to create work groups and studies to identify how Virginia can improve the quality of legal representation and take advantage of the federal money that is now available.

This Work Group was created pursuant to Senate Joint Resolution No. 241 (2023 Session of the General Assembly), which states that:

WHEREAS, the third enactment of Chapter 305 of the Acts of Assembly of 2022 directed the Office of the Children's Ombudsman to convene a work group to consider issues relating to the Commonwealth's model of court-appointed legal counsel in child dependency cases and to make recommendations for legislative and budgetary changes to address such issues; and

WHEREAS, the work group convened by the Office of the Children's Ombudsman met eight times in 2022 and identified key issues relating to the appointment of legal counsel in child dependency cases, including compensation, standards, training, accountability, and workforce challenges; and

WHEREAS, the work group convened by the Office of the Children's Ombudsman made recommendations for legislative and budgetary changes to address such key issues to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice in a report dated November 1, 2022; and

WHEREAS, the work group convened by the Office of the Children's Ombudsman reported that, if implemented, such recommendations would require additional action, including the development of qualification and performance standards for attorneys appointed as counsel for parents and the appropriation of funds for the establishment of a pilot program for multidisciplinary offices staffed by attorneys, social workers, and parent advocates to serve diverse jurisdictions in the Commonwealth; now, therefore, be it

¹ 42 U.S.C. §§ 670 *et seq.*

RESOLVED by the Senate, the House of Delegates concurring, That the Office of the Children’s Ombudsman be requested to continue its study of legal representation in child dependency cases. In conducting its study, the Office of the Children’s Ombudsman shall direct the work group convened pursuant to Chapter 305 of the Acts of Assembly of 2022 to continue its work regarding the implementation of the recommendations made in its November 1, 2022, report. The work group 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.

Accordingly, the Office of the Children’s Ombudsman reconvened the members of the SB 396 Child Dependency Legal Representation Workgroup that was established pursuant to the third enactment of Chapter 305 of the Acts of Assembly of 2022. This Report incorporates the findings and recommendations of the 2022 Report, summarizes the efforts made by the 2023 Work Group to support implementation of the recommendations, and provides updates and additional recommendations to that end. This Report also reflects new information, participation from additional stakeholders, and describes changes in the landscape since the issuance of the 2022 report.

Members of the reconvened Work Group included 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, as well as a number of juvenile and domestic relations district courts judges, private attorneys that serve as counsel for parents, guardians ad litem for children, counsel for local departments of social services, a private child welfare expert consultant, and representatives from local departments of social services, the Office of the Attorney General, local Court Appointed Special Advocate (CASA) programs, and the University of Richmond School of Law. A list of the Work group members is found in Appendix A.

The Work Group met four times between May and November 2023, to discuss the issues related to the appointment of counsel in child dependency cases and the findings and recommendations made in the Report of the SB 396 Child Dependency Legal Representation Workgroup submitted November 1, 2022, found [here](#) (the “2022 Report”).

IDENTIFICATION OF ISSUES

In the 2022 Report, the SB 396 Child Dependency Legal Representation Workgroup identified the following issues related to Virginia’s current model of providing court-appointed legal counsel in child dependency cases:

- a. **COMPENSATION:** Virginia’s rate of compensation for court-appointed counsel for parents is one of the lowest in the nation. The maximum compensable amount is \$120 per case in

district court and \$158 in circuit court. This has not changed for over twenty years,² and when adjusted for inflation, it is \$64 – just over half of what the legislature intended. The rate of compensation “does not reflect the amount of time and effort put forward by an attorney.”³ Judges reported that attorneys are choosing not to remain on the list of court-appointed attorneys due to the low rate of compensation and the time these cases demand. Without considering the out-of-court time that should be put into preparation for these cases, just the in-court time can span multiple days, depending on the type of hearing. Additionally, the travel time to get to court can be significant for attorneys who serve in rural areas of the Commonwealth.

- b. **STANDARDS.** There are currently no qualification or performance standards for court-appointed counsel for parents. Representing parents takes a specialized set of advocacy skills requiring discernment in how to best serve parents. Advocacy outside the courtroom may look very different from advocacy in the courtroom or in other areas of practice, as there are family partnership meetings, requirements on parents, and an ongoing investigative element – all of which are pivotal to the outcome of the case and the family’s future. The parent must continue to engage with and interact with the agency so the attorney should “skillfully try to get her client to work with the caseworker in a productive way, because the caseworker is the one who will make recommendations to the court about when the child can be returned home.”⁴
- c. **TRAINING.** By state law, courts must appoint attorneys to represent parents from the court’s list of qualified guardians ad litem for children.⁵ Thus, most parents’ counsel receive training specific to the representation of children through the qualification course.⁶ Unfortunately, these attorneys do not receive training in representing parents in these matters. Further, when attorneys from the GAL list are not available, as is increasingly the case, it is common for attorneys on the criminal court-appointed list to be added to the list for dependency cases. Since there is no required training, standards to be met, or certification process dedicated solely to the role and responsibility of and skills needed to serve as parents’ counsel, parents may not be receiving competent and effective counsel.
- d. **ACCOUNTABILITY.** There is a need for parents' counsel to be held more accountable for their representation of parents in child dependency cases. These cases have constitutional implications and can result in permanent termination of a parent’s rights, sometimes referred as a parent’s “civil death penalty.” When parents’ attorneys do not have the requisite skills and knowledge, the children may suffer, remaining separated from their families for longer periods of time, and often never achieving permanency, resulting in a high rate of children aging out of foster care.

² In its 2000 session, the General Assembly increased the maximum compensable amounts from \$100 per case in district court and \$132 per case in circuit court to \$120 and \$157, respectively. [Chapter 436 \[H 1312\], Virginia Acts of Assembly – 2000 Session](#).

³ [Court-Appointed Counsel for Parents in Child Welfare Cases, Virginia Commission on Youth, p. 22 \(2015\)](#).

⁴ Vivek Sankaran, *More Than Law: Family Defense Attorneys as Relationship Builders*, The Imprint (July 7, 2019), <https://imprintnews.org/child-welfare-2/more-than-law-family-defense-attorneys-as-relationship-builders/36160>.

⁵ Va. Code 16.1-266.1(C).

⁶ Topics covered by the initial GAL qualification course are listed on the Standards to Govern the Appointment of Guardians Ad Litem adopted by the Judicial Council found [here](#).

The Virginia State Bar “protect[s] the public by educating and assisting lawyers to practice ethically and competently, and by disciplining those who violate the Supreme Court’s Rules of Professional Conduct, all at no cost to Virginia taxpayers.”⁷ Attorneys who are appointed to represent parents in child dependency cases are required to comply with the Rules of Professional Conduct and are therefore subject to the Virginia State Bar’s complaint process. However, without practice-specific standards, such as those that exist for guardians ad litem and court-appointed criminal defense attorneys, the Virginia State Bar’s complaint process does not necessarily lend itself to resolving practice-specific issues.

Court-appointed attorneys can also be held accountable to the appointing judge if the judge is made aware of concerns. However, parents often find it difficult to express their concerns about their court-appointed counsel to the appointing judge. If they do, judges may simply dismiss the attorney, leaving the client to navigate a highly complex system of procedures and state and federal laws, without benefit of any counsel or support. In contrast, court-appointed counsel for criminal defendants can also be held accountable by the Virginia Indigent Defense Commission through a complaint process.

- e. **WORKFORCE CHALLENGES.** Judges reported that there are fewer attorneys choosing to remain on courts’ court-appointed attorneys list to represent parents. It was reported that this has a compounding effect of putting even more pressure on the attorneys who continue to accept appointments. Also, it was noted that there are fewer new attorneys getting into this area of law and willing to accept court appointments. Workgroup members also reported that this contributes to a lack of diversity among the community of attorneys practicing in this area.

RECOMMENDATIONS

The recommendations made by the SB 396 Child Dependency Legal Representation Workgroup in its 2022 Report to address these issues, along with updates from the 2023 Work Group, were as follows:

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

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

⁷ [Virginia State Bar Strategic Plan, 2019-2024, p. 2.](#)

The Workgroup recommends raising the maximum amount of compensation based on the type of proceeding, as is currently allowed for court-appointed criminal defense attorneys appointed to cases involving certain felonies in accordance with state law.⁸ Using the amounts under current law, it is recommended that the maximum amount of compensation be \$445 per case from removal proceedings through foster care and permanency planning stages, and up to \$1,235 for termination of parental rights cases. These amounts would apply in cases heard by the Juvenile and Domestic Relations District Courts as well as cases heard de novo in the Circuit Courts and in the appellate courts. The amounts would be subject to any amendments to the applicable statutes made by the General Assembly.

The Workgroup examined other possible pay structures, including paying court-appointed counsel for parents at the same hourly rate as guardians ad litem with no cap. However, the fiscal impact of such other pay structures was difficult if not nearly impossible to accurately calculate.

To fund this recommendation, the General Assembly would have to appropriate approximately \$14,151,615 in general funds. (Virginia currently spends an average of \$3,158,342 per year for parents' counsel at the current rate of compensation.)⁹ However, Virginia could receive approximately \$3,092,128 in federal reimbursement from Title IV-E administrative funds.¹⁰

Virginia does not currently draw down these federal funds to pay its court-appointed parents' counsel. Additional accounting and reporting will be required for federal funding purposes. As a result, it is expected that both the Office of the Executive Secretary of the Supreme Court of Virginia (OES) and the Virginia Department of Social Services (VDSS) may require additional staff to administer these funds.

Update: The budget amendment filed by Senator Edwards in the 2023 session to fund this recommendation, Item 44 #2s, did not make it through the budget process. In the meantime, the situation has only grown more dire. Judges continue to report that they cannot find attorneys willing to accept appointments to represent parents in these matters due to the low rate of compensation. At least one judge has indicated a need to initiate proceedings without counsel appointed and indigent parents have indicated counsel was not appointed despite their request. Members of the Work Group have reported other issues, such as cases being delayed due to counsel failing to appear or leaving mid-hearing to attend a hearing in a different matter. Parents continue to report that attorneys do not return their calls and attorneys report that in cases where they have communicated and represented parents zealously, their compensation has amounted to less than minimum wage.

A legislative proposal to effectuate this recommendation is attached as Appendix C. Funding this proposal will require a budget item appropriating sufficient general funds.

⁸ [Va. Code § 19.2-163](#). See also [The Supreme Court of Virginia Chart of Allowances](#), p. 18.

⁹ These amounts are based on a Fiscal Impact analysis conducted by the Court Improvement Program in 2021.

¹⁰ See Appendix B for details on the federal guidance regarding Title IV-E funds for legal counsel.

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

Comment: The Workgroup recommends that the Judicial Council adopt standards to govern their qualification and performance. These standards should be developed in collaboration with the Virginia State Bar, the Virginia Bar Association, and members of this Work Group.

Update: The Work Group members discussed the importance of developing specific standards for training, qualification, and practice for counsel appointed to represent parents in these matters. Additionally, the attorneys appointed to represent parents are currently, by statute, chosen from the list of qualified guardians ad litem. Thus, the training they receive is specific to the very unique role of a guardian ad litem for children, which in Virginia is a legal advocate for the child's best interests, not a legal advocate for the client's - the child's - stated goals. The responsibilities of a guardian ad litem include conducting an independent investigation in order to make recommendations to the court, whereas parents' counsel must present evidence and represent and advocate for the parent's directed goals. As a guardian ad litem for the child, an attorney serves as an independent representative; as counsel for a parent, an attorney is entrusted to provide a meaningful defense against the government's allegations and any efforts to separate the family, and to advocate for and support the parent in meeting his or her goals and completing any service plans. The Judicial Council, when creating standards for parents' counsel, should reconsider the propriety of the statute requiring that parents' counsel be appointed from the list of qualified guardians ad litem.

The legislative proposal attached as Appendix C includes language directing the development of standards of qualification and performance by the Judicial Council.

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

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

The Workgroup reviewed information about the Virginia's Indigent Defense Commission (VIDC), which was established to implement several changes regarding court-appointed criminal defense lawyers, including the creation of the standards of practice for court-appointed defense counsel and a mandatory training and certification process.¹¹ The VIDC also manages 28 public defender offices and two satellite offices across the Commonwealth.

The Workgroup recommends that the Section 1 Study consider the functions of the VIDC for the development of the PAC along with other models and consider a possible long-term plan

¹¹ Virginia Indigent Defense Commission, Agency Overview: Statutory Authority & Organization Structure (Apr. 14, 2022), <http://www.vadefenders.org/wp-content/uploads/2022/02/VIDC-Agency-Overview-Statutory-Authority-and-Organizational-Structure-1.pdf>, at 2.

to develop local or regional offices that would provide representation for parents similar to public defender offices.

Update: SB 1443, passed in the 2023 Session of the General Assembly, directed that a work group conduct a study of the creation of a Parent’s Advocacy Commission. This study is currently being conducted by a work group that includes experts from the National Center for State Courts (the SB1443 Work Group). That work group will issue a report of this study upon its completion in January 2024.

Work Group members continued discussion of the advantages of creating a PAC. The low rate of compensation, the lack of standards and training, and the absence of an entity providing oversight present a significant barrier to Virginia’s ability to provide quality legal representation for indigent parents in child dependency cases. Similar issues with court-appointed counsel for indigent criminal defendants in the 1970s led to the creation of the Public Defender Commission, now named the Virginia Indigent Defense Commission, which oversees both a system of local Public Defender offices, and the training, certification, and standards of practice, as well as accountability, for *all* counsel accepting court appointments for criminal defendants, whether public defenders or private court-appointed attorneys.

Members noted that one reason for improved representation by Public Defender offices is the VIDC’s development of initial and advanced level trainings for attorneys, including “bootcamp” style trial workshops and annual Continuing Legal Education conferences that efficiently provide training to both public defenders and court-appointed attorneys simultaneously. The Parents Advocacy Commission is intended to provide similar training opportunities for increasing levels of expertise.

The PAC, if established, would enter an arrangement with the state Title IV-E agency, VDSS, to receive and administer the Title IV-E federal funds for legal representation for parents. Thus, PAC staff would assume the administrative and reporting responsibilities required for federal reimbursement, thus likely eliminating the need for OES or VDSS to hire additional staff.

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

Comment: The Multidisciplinary Office (MDO) model (also referred to as an “Interdisciplinary Office”) describes an office that “employs social workers, parent advocates, . . .and other in-house personnel” in addition to attorneys.¹² In this model of representation, “parents are represented by a lawyer along with a social worker and/or parent advocate.”¹³

¹² Lucas A. Gerber et al., *Understanding the Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, Child. & Youth Servs. Rev. 116, 2020, at 2.

<https://www.sciencedirect.com/science/article/pii/S0190740920304643?via%3Dihub>.

¹³ *Id.*

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

The supervising and staff attorneys would practice in child dependency cases and parents' defense exclusively. The social worker would engage closely with the parent to understand their strengths, needs and the barriers to reunification. The parent advocate would provide an understanding and confidential outlet for parents, which is crucial given the common misconceptions of system-involved families and the sensitive nature of these cases. Critically, the social workers and parent advocates assure parents receive focused and individualized services, support parents in completing services, and find appropriate providers.¹⁴ This is critical because a family's success often hinges on the parent's access to and participation in agency-referred and court-ordered services.

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

Update: The recommendation that Virginia establish pilot MDOs echoes Virginia's actions in 1972 to address needs in the area of public criminal defense. In addition to the creation of the Public Defender Commission, two pilot public defender offices were funded to operate in Staunton and Virginia Beach. Today, the VIDC supports 28 public defender offices throughout the Commonwealth.

The MDO model of parent legal representation has been shown to bring significant improvements to court processes and outcomes for children by improving the quality of legal practice, bringing wrap-around services and supports to the family, preventing delays in court hearings, and achieving permanency plans. The MDO model accomplishes these while also having an important ancillary outcome of significant cost savings by preventing entries into, and expediting exits from, foster care, which is very costly (Virginia spends over \$305 million annually on foster care for approximately 5,000 children).¹⁵

These pilot programs should also explore the provision of legal representation prior to the filing of any court petition. Research from multiple jurisdictions has shown the importance of providing counsel early in a case, notably when the family first comes into contact with the local department of social services responding to a report of child abuse or neglect, in preventing children from having to enter foster care. Such pre-petition legal representation was provided in a program conducted in Southwest Virginia in the early 2010s that was successful in preserving families who were the subject of child abuse and neglect

¹⁴ See *Id.* at 2 (“Parent advocates are individuals who have faced proceedings in the Family Court as parents charged with maltreating their children.”) and at 9 (“The inclusion of parent advocates as staff at the offices seemed also to facilitate the teams connecting with individual clients on their cases and to support efforts to reduce implicit bias and promote understanding.”)

¹⁵ Virginia Joint Legislative Audit and Review Commission, “Improving Virginia’s Foster Care System, Report to the Governor and the General Assembly of Virginia,” December 2018, at page 14
<http://jlarc.virginia.gov/pdfs/reports/Rpt513-2.pdf>

investigations and family assessments. In these arrangements, attorneys can support the family and negotiate safety plans and services with the agency to ameliorate the issues that brought the family to the agency's attention and avoid family separations.

The National Preventive Legal Advocacy Partnership (NPLAP), a multidisciplinary collaboration of national experts in child welfare practice, access to justice, and the legal system, issued a brief finding that “[t]he goal of pre-petition representation is to prevent the unnecessary and traumatic separation of children from their families, particularly when poverty-related issues are conflated with neglect. Far too many families lack adequate income, housing, or education because of systemic inequities that have left opportunities scarce in certain communities, particularly communities of color. Providing legal representation before a dependency petition is filed is one way to make sure families have the support and resources they need to keep their children safely with them.”¹⁶

Additionally, locally based MDOs can cater their services to the systemic issues in their community. Some localities, especially in the northern and Tidewater areas of Virginia, experience higher rates of racial disparities, with the removal of Black children occurring two to four times the rate of others. In the southwest region of Virginia, opioid and substance use, the lack of access to treatment, and poverty contribute to the challenges faced by families that can lead to higher rates of system involvement, more removals of children, and lower rates of achieving permanency for children who enter foster care. MDO staff could work with stakeholders to address community-specific challenges not just for the parents they represent but also to advocate for systemic changes affecting the community at large.

The Work Group identified several factors to consider when choosing which jurisdictions should host MDO pilot programs. These factors include community readiness (at least three jurisdictions have passed resolutions in support of such offices); interest from the local bar associations and judiciary; the community's poverty rate; local child protective services and foster care data, such as the average length of time cases last; racial and other demographic information or disparities; and compactness (can the attorneys serve multiple jurisdictions within a judicial district?).

The legislative proposal attached as Appendix C includes language for a budget amendment allocating funds for the establishment of MDO pilot programs.

CONCLUSION

Parents faced with the possibility of losing custody or their parental rights of their children deserve quality legal representation. Virginia's current system of providing attorneys to indigent parents needs significant improvement. Increasing the rate of compensation, providing more specialized training, developing standards of performance, and the creation of a state-level office to provide oversight have been identified by this Work Group of subject matter experts and practitioners as

¹⁶ "How is pre-petition legal representation critical to the continuum of legal advocacy?" Casey Family Programs and the National Preventive Legal Advocacy Partnership (NPLAP) (2021) <https://www.casey.org/pre-petition-legal-advocacy/>

short-term and long-term measures to improve the quality of legal representation for parents in child dependency cases.

The costs of investing in these measures could be offset in part by federal funding that is now available along with the savings that can be realized when fewer children enter foster care and when children who enter foster care achieve permanency sooner. In short, investing in these measures will address the immediate need to attract more attorneys willing to accept appointments and will provide a bold long-term plan that will improve and sustain the quality and provision of legal representation for parents involved in child dependency cases.

APPENDIX A
CHILD DEPENDENCY LEGAL REPRESENTATION
WORKGROUP (SJ241/SB1443) MEMBERS

Eric Reynolds	Director, Office of the Children’s Ombudsman
Amy Atkinson	Executive Director, Virginia Commission on Youth
Will Egen	Policy Analyst, Virginia Commission on Youth
Sandra Karison	Director, Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia
Rhonda Gardner	J&DR Court Services Manager, Department of Judicial Services, Office of the Executive Secretary, Supreme Court of Virginia
Lori Battin	Data Analyst, Court Performance & Statistical Services, Office of the Executive Secretary, Supreme Court of Virginia
Jane Lissenden	Policy Analyst, Office of the Children’s Ombudsman
William Efird	Certification & Enforcement Attorney, Indigent Defense Commission
Crista Gantz	Director, Access to Legal Services, Virginia State Bar
Leslie Haley	Deputy Attorney General, Office of the Attorney General
Ellen Fulmer	Senior Assistant Attorney General, Office of the Attorney General
Jennifer Phillips	Program Manager, Quality Assurance and Accountability, Virginia Department of Social Services
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The Honorable Maha-Rebekah Ramos Abejuela	Judge, Fairfax Juvenile and Domestic Relations District Court (19 th Judicial District)
The Honorable Melissa Cupp	Judge, Fauquier County Juvenile and Domestic Relations District Court (20 th Judicial District)
The Honorable Heather Ferguson	Judge, Roanoke City Juvenile and Domestic Relations District Court (23 rd Judicial District)
The Honorable Deborah S. Tinsley	Judge, Louisa Juvenile and Domestic Relations District Court (16 th Judicial District)
<hr/>	
Jennifer Newman	Attorney, Chesterfield County
Rebecca Wade	Attorney, Alexandria
Misty Whitehead	Attorney, Henrico County
Christian Brashear	Attorney, Culpeper
Morgan Cox	Attorney, Charlottesville
Bruce Russell	Attorney, Lebanon-Abingdon-Tazewell
Cassandra Hargrave	Attorney, Virginia Beach
Elizabeth Vaughan	Attorney, Leesburg
Peter Griffith	Attorney, Albemarle County
Sarah Bruns	Attorney, Loudon County

Bretta Lewis	Attorney, Virginia Beach; Member, Virginia State Bar Council
Joanna Suyes	Attorney, Richmond City; Member at Large, Virginia State Bar Council
Daniel Gray	Attorney, Fairfax; Chairman, Virginia Bar Association's Family Law Coalition
Matthew Morris	Senior Assistant City Attorney, Richmond City Department of Social Services
Brandon Butler	Senior Assistant County Attorney, Bedford County
Elizabeth Bruzzo	Assistant Commonwealth Attorney, Washington County; Member, Virginia Bar Association Commission on the Needs of Children
Julie McConnell	Director, Children's Defense Clinic, University of Richmond School of Law; Chair, Virginia Bar Association Commission on the Needs of Children
Meredith J. Harbach	Professor of Law, University of Richmond School of Law
Kate Duvall	President and CEO, Piedmont CASA
Jeanine Panzera	Director, Henrico CASA
Esther Sherrard	E. Sherrard Consulting
Gretchen Brown	Director, Henrico County Department of Social Services
Rebecca Morgan	Director, Middlesex County Department of Social Services
Rachael Deane	Chief Executive Officer, Voices for Virginia's Children
Valerie L'Herrou	Staff Attorney, Center for Family Advocacy, Virginia Poverty Law Center; Member, Virginia Bar Association Commission on the Needs of Children
Anna Daniszewski	Legal Fellow, Virginia Poverty Law Center
Frank Valdez	Youth Justice Program Community Organizer, Legal Aid Justice Center
Ann H. Kloeckner	Executive Director, Legal Aid Works (Fredericksburg)
Fallon Speaker	Legal Director, Youth Justice Program Legal Aid Justice Center
Glenda Collins	Executive Director, Lonesome Pine Office on Youth

APPENDIX B

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

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

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

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

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

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

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

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

² *Id.*

³ *Claiming Title IV-E Funds to Pay for Parents’ and Children’s Attorneys: A Brief Technical Overview*. Mark Hardin. https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january--december-2019/claiming-title-iv-e-funds-to-pay-for-parents-and-childrens-attor/. February 26, 2019.

⁴ https://www.dss.virginia.gov/geninfo/annual_report/fam_serv/index.html?pageID=3 (Tab 2 “Foster Care – Number of Children in Care”); last accessed 10/17/2022.

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

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Compensation and Standards for Court-Appointed Legal Counsel
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§ 16.1-266.1. Standards for attorneys appointed as guardians ad litem; list of qualified attorneys; ~~attorneys appointed for parents or guardians.~~

A. On or before January 1, 1995, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for attorneys appointed as guardians ad litem pursuant to § [16.1-266](#). The standards shall, insofar as practicable, take into consideration the following criteria: (i) license or permission to practice law in Virginia, (ii) current training in the roles, responsibilities and duties of guardian ad litem representation, (iii) familiarity with the court system and general background in juvenile law, and (iv) demonstrated proficiency in this area of the law.

B. The Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem based upon the standards and shall make the names available to the courts. If no attorney who is on the list is reasonably available, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

~~C. Counsel appointed for a parent or guardian pursuant to subsection D of § [16.1-266](#) shall be selected from the list of attorneys who are qualified to serve as guardians ad litem. If no attorney who is on the list is reasonably available or appropriate considering the circumstances of the parent or case, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.~~ In any matter in which the court appoints a guardian ad litem to represent a child, such guardian ad litem shall conduct an investigation in accordance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia. Prior to the commencement of the dispositional hearing of any such matter, the guardian ad litem shall file with the court, with a copy to all attorneys representing parties to such matter and all parties proceeding pro se in such matter, a certification of the guardian ad litem's compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia, specifically addressing compliance with such standards requiring face-to-face contact with the child in such certification. The guardian ad litem shall document the hours spent satisfying such face-to-face contact requirements in such certification, which shall be compensated at the same rate as that for in-court service.

§ 16.1-266.3 Standards for attorneys appointed to represent parents or guardians of children who are the subject of child dependency cases.

A. On or before January 1, 2025, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for the qualification and performance of attorneys appointed in accordance with § 16.1-266 to represent parents, guardians, legal custodians or other persons standing in loco parentis of children who are alleged

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to be abused or neglected, in foster care, or subject of an entrustment agreement or a petition seeking termination of residual parental rights. The standards shall, insofar as practicable, take into consideration the following criteria: (i) license or permission to practice law in Virginia, (ii) current training in the roles, responsibilities and duties of parent or guardian representation, (iii) familiarity with the court system and laws pertaining to cases involving children who are alleged to be abused and neglected, in foster care, or subject of an entrustment agreement or petition seeking the termination of residual parental rights, and (iv) demonstrated proficiency in this area of the law.

B. The Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to be appointed to represent parents, guardians, legal custodians or other persons standing in loco parentis of children who are alleged to be abused or neglected, in foster care, or subject of an entrustment agreement or a petition seeking termination of residual parental rights based upon the standards and shall make the names available to the courts. If no attorney who is on the list is reasonably available or appropriate considering the circumstances of the case, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

§ 16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to subsection A of § [16.1-266](#) and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the maximum amount of that awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of § [19.2-163](#) if the action is in district court.

When the court appoints counsel to represent a child pursuant to subsection B or C of § [16.1-266](#) and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1 of § [19.2-163](#) if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § [19.2-159](#).

In all other cases, except as provided in § [16.1-343](#), counsel appointed to represent a child shall be compensated for his services pursuant to § [19.2-163](#).

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § [16.1-266](#), such counsel shall be compensated for his services pursuant to § [19.2-163](#). When the

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court appoints counsel to represent a parent, guardian, or other adult in accordance with § 16.1-266 in any case involving a child for whom an emergency removal hearing in accordance with § 16.1-251, a preliminary removal hearing in accordance with § 16.1-252, a preliminary protective order in accordance with § 16.1-253, an adjudicatory hearing of a petition alleging abuse and neglect of the child, a dispositional hearing in accordance with § 16.1-278.2, a foster care review hearing in accordance with § 16.1-282, a permanency planning hearing in accordance with § 16.1-282.1, an annual foster care review hearing in accordance with § 16.1-282.2 is held, whether in the juvenile and domestic relations district court or circuit court, such counsel shall be compensated for his services pursuant to § 19.2-163 in the same manner as counsel appointed to represent defendants charged with Class III to VI felonies in the district courts. When the court appoints counsel to represent a parent in accordance with § 16.1-266 in any case involving a child who is the subject of a petition seeking termination of residual parental rights, whether heard in the juvenile and domestic relations district court or circuit court, such counsel shall be compensated for his services pursuant to § 19.2-163 in the same manner as counsel appointed to represent defendants charged with Class II felonies in the district courts.

C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § [16.1-266](#), the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § [19.2-159](#) shall be required to pay reimbursement except where the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations on the amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management actions taken to further enhance savings under this program.

2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem pursuant to § [16.1-266.1](#), the court may adjust the cost sought by the guardian ad litem of such services.

3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.

§ 16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.

A. Whenever any court directs an investigation pursuant to subdivision A of § [16.1-237](#) or § [16.1-273](#) or [9.1-153](#), or an evaluation pursuant to § [16.1-278.5](#), the probation officer, court-appointed special advocate, or other agency conducting such investigation shall file such report with the

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clerk of the court directing the investigation. The clerk shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than 72 hours, and in cases of child custody, 15 days, prior to the time set by the court for hearing the matter. If such probation officer or other agency discovers additional information or a change in circumstance after the filing of the report, an amended report shall be filed forthwith and a copy sent to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion thereof. However, the chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports referenced above.

B. Notwithstanding the provisions of §§ [16.1-69.48:2](#) and [17.1-275](#), when the court directs the appropriate local department of social services to conduct supervised visitation or directs the appropriate local department of social services or court services unit to conduct an investigation pursuant to § [16.1-273](#) or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee schedules established by the appropriate local board of social services when the service is provided by a local department of social services or by a court services unit. The fee schedules shall include (i) standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on the paying party's or parties' income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the case and shall be paid as prescribed by the court to the local department of social services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for payment for such services shall be determined by the local department of social services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

C. When a local department of social services or any court services unit is requested by another local department or court services unit in the Commonwealth or by a similar department or entity in another state to conduct an investigation involving a child's custody, visitation or support pursuant to § [16.1-273](#) or, in the case of a request from another state pursuant to a provision corresponding to § [16.1-273](#), or to provide mediation services, or for a local department of social services to provide supervised visitation, the local department or the court services unit performing the service may require payment of fees prior to conducting the investigation or providing mediation services or supervised visitation.

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~~D. In any matter in which the court appoints a guardian ad litem to represent a child, such guardian ad litem shall conduct an investigation in accordance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia. Prior to the commencement of the dispositional hearing of any such matter, the guardian ad litem shall file with the court, with a copy to all attorneys representing parties to such matter and all parties proceeding pro se in such matter, a certification of the guardian ad litem's compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia, specifically addressing compliance with such standards requiring face to face contact with the child in such certification. The guardian ad litem shall document the hours spent satisfying such face to face contact requirements in such certification, which shall be compensated at the same rate as that for in court service.~~

Proposed enactment clauses:

1. The Virginia Department of Social Services is directed to amend the State Plan for Child and Family Services to include provisions necessary to claim federal Title IV-E administrative costs for legal services provided by attorneys representing parents and children involved pursuant to 42 U.S.C. § 674(a)(3) and 45 CFR § 1356.60(c).
2. The Office of the Executive Secretary of the Supreme Court of Virginia is directed to require attorneys appointed to represent parents, guardians, or other adults in accordance with § 16.1-266 in cases involving children who are alleged to be abused or neglected, in foster care, or the subject of an entrustment agreement or a petition seeking termination of residual parental rights to accurately record and submit all time spent in and out of court by the attorney for each such case as a requirement for payment.

Proposed Budget Line Item:

Judicial Department, Item # ____, Legal Defense

Out of the amounts in this item, \$3,251,925 the first year and \$3,251,925 the second year from the general fund is provided to establish three demonstration sites for the operation of a public civil defender office providing pre-petition and multidisciplinary legal representation for parents, guardians, custodians or other persons standing in loco parentis in cases involving children who are alleged to be abused or neglected or are in foster care. In addition, out of the amounts in this item, \$250,000 the first year and \$250,000 the second year from the general fund is provided to hire two full-time positions within the Judiciary Department to oversee and evaluate the demonstration sites and to administer state and federal funds to such demonstration sites.

