VBBA-VBJDR 2018 ANNUAL CLE

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September 20, 2018
8:30a-5:30p

Advanced Technology Center

VB-TCC 1800 College Crescent

Virginia Beach, VA 23453

https://www.vbbarassoc.com/events/vsba-jdr-committee-annual-cle/

2018 VBBA VBJDR ANNUAL CLE

September 20, 2018 ~ Advanced Technology Theater- TCC VB

8:30am	Registration and Continental Breakfast
8:55am	Opening Remarks *The Hon. Phillip C. Hollowell, Chief Judge VBJDR*
9a-10a	Human Trafficking... a summary of Signs and Trauma *Ann Carey, Esq., Samaritan House*
10a-10:15a	Human Trafficking- Services and Perspective from the Bench *The Hon. Tanya J. Bullock* *Jole Leon Guerrero, Daisy Schuurman, Dawn Scaff, CHKD*
10:15a-11:15a	Trauma Focused Therapy, Victims, Reunification in Criminal and Civil Cases, and the Interplay between a child abuse program and the private therapist *Dr. Suzanne Baldwin* *Rachel Evans, Associate City Attorney*
11:15a-11:30a	Break
11:30-12:30p	Finding out your custody or criminal case is mixed up with DHS? -Nuances in timelines, discovery, and third party participants *Christianna Cunningham, Associate City Attorney* *Paul Powers, Deputy Commonwealth Attorney* *Debbie Dail, La Shonda Carson, Kristen Sweitzer, CASA*
12:30p-1:15p	Lunch (provided)
1:15p-2:15p	Adverse Childhood Experiences & Trauma Informed Practices -What "ACE" Scores tell the Bench and Bar in Delinquency (criminal) and Dependency (civil) cases *The Hon. Deborah V. Bryan* *Andrea Palmisano, Ph.D., Professor of Psychology-VBTCC* *John Paradiso, VBDHS-Child and Youth* *Trenia Richards-Pyron, VBCSU*
2:15p-2:30p	Break (refreshments provided)
2:30p-3:30p	Admission of Forensic Interviews in Delinquency/Criminal and Dependency/Civil cases *C. Andrew Rice, Assistant Commonwealth Attorney* *Elena Ilardi, Associate City Attorney*
3:30p-4:30p	A Dog in the Courtroom? Pros and Cons *Laura Kanter, CHKD* *Meki, CHKD Therapy Dog* *Sarah Nelson, Regent Law Candidate for Juris Doctorate 2019* *Asha Pandya, Esq.*
4:30p-5:30p	Ethics in Criminal and Civil Juvenile Cases *The Hon. Kevin C. Duffan* *Bretta Lewis, Esq.*

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2018 VBBA VBJDR ANNUAL CLE September 20, 2018

APPROVED FOR 7 CLE 1 ETHICS & 7 IDC AND GAL

8:30am	Registration and Continental Breakfast
9a-10:15a	**Human Trafficking... a Summary of Law, Signs and Trauma, and Perspectives from the Bench and CHKD** ***This session is aimed at reviewing the substantive state and federal laws that can come into play when faced with a victim of human sex trafficking while learning to identify the victim, the warning signs, and how to get help. The session will look at trauma focused practices aimed at adults and children who may be victims or parents of victims. State and Federal resources, funds, grants, and issues surrounding criminal charges and related civil matters will also be discussed.*
10:15a-11:15a	**Trauma Focused Therapy, Victims of Abuse, Reunification in Criminal and Civil Cases, and the Interplay Between a Child Abuse Program and the Private Therapist** ***This session will look at trauma focused therapy of victims of abuse involved in criminal and civil juvenile cases, the actual "trauma focused therapy model" used by child abuse programs verses the trauma therapy practices implemented by private practitioners, how therapy works in the reunification of families, and the interplay between child abuse programs and private therapists. The session will explore the evidentiary issues at play for attorneys involved in such cases as well as look at the how the rules of professional conduct dictate why a lawyer needs to fully understand what goes on in therapy to adequately represent a client involved in such cases.*
11:15a-11:30a	Break
11:30a-12:30p	**Finding Out Your Custody or Criminal Case is Mixed Up with DHS? -Nuances in timelines, discovery, and third party participants** ***This session will focus on the interplay between a concurrent criminal and civil dependency cases that stem from the same set of facts and circumstances. The interplay between the civil and criminal rules of discovery along with the specific statutory rules of disclosure where a child welfare agency is conducting a joint investigation with law enforcement will be discussed. The mandatory federal timeline for child welfare cases stemming from criminal acts where children are in foster care will also be discussed.*
12:30p-1:15p	Lunch (provided)
1:15p-2:15p	**Adverse Childhood Experiences & Trauma Informed Practices .** **-What "ACE" Scores tell the Bench and Bar in Delinquency (criminal) and Dependency (civil) cases** *** This session will inform on the use of the adverse childhood experience scoring tool, how it helps drive trauma informed therapeutic practices, and how the tool is used in both delinquency and dependency matters. The bench and the bar are routinely seeing such tools utilized in assessments, pre-sentence reports, foster care plans, and other reports relied upon by the bench and bar in both juvenile criminal and civil cases. It will inform counsel on how best to interpret such scores so as to best assist and advocate for both a juvenile facing detention as well as a parent involved in a child welfare care.*
2:15p-3:15p	**Admission of Forensic Interviews in Delinquency/Criminal and Dependency/Civil cases** ***A look at the laws involved in the admission of child forensic interviews in both juvenile delinquency cases and civil child protective services cases. The session will discuss the requirements, the challenges to admission before the court, and key issues counsel on both side of the cases will need to focus upon in order to truly understand the implications of the use of such interviews verses the potential need for a child witness to testify.*
3:15p-3:30p	Break
3:30p-4:30p	**A Dog in the Courtroom? Pros and Cons** *** How do we help children speak for themselves, i.e. testify, without unraveling the carefully crafted system of protections for criminal defendants? For the past thirty years, the United States Supreme Court and state legislators have been trying to solve this riddle and a solution on which defendants' rights can rest easy, is the use of courthouse dogs, or is it? This session will look at the whether the laws in Virginia allow the use of courthouse dogs, laws across the nation specifically addressing courthouse dogs, as well as constitutional considerations and how to balance and/or eliminate issues of prejudice.*
4:30p-5:30p	**Ethics in Criminal and Civil Juvenile Cases** *** Practice in the Juvenile Court is voluminous and face-paced.* *The cases are sometimes stranger than fiction. These facts are all the more reason to have your ethical obligations at the forefront of your knowledge base. Real World Hypotheticals.*

SPEAKER BIOGRAPHIES

Suzanne Meredith Baldwin
BALDWIN COUNSELING, P.L.L.C.
Virginia Beach, VA 23452
(757) 340-0275 (office)
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Education:

Virginia Commonwealth University: Doctor of Philosophy (Ph.D.)
Social Work
Graduation: December 2002

Norfolk State University: Master of Social Work (MSW)
Graduation: May 1994

University of Virginia: Bachelor of Science in Nursing (BSN)
Graduation: January 1975

Mary Washington College of the University of Virginia:
Major: Pre-nursing
Dates of Enrollment: September 1970-June 1972

Current Employment:

(1) Licensed Clinical Social Worker: Baldwin Counseling
2832 S. Lynnhaven Road, STE 102
Virginia Beach, VA 23452
Dates: September 15, 2014-present

(2) Adjunct Assistant Professor: Old Dominion University
Education Leadership and Counseling (757) 683-3326
August 1995-present

Current Licensure:

(1) LCSW State of Virginia (July 1998)

(2) RN State of Virginia (March 1975)

Judge Deborah V. Bryan
Presiding Judge, Virginia Beach Juvenile and Domestic Relations Court

Judge Bryan is a presiding judge in the Virginia Beach Juvenile and Domestic Relations Court. Prior to taking the bench, she was with the firm of Kaufman and Canoles. She is presently an active member of the Virginia State Bar and Office of the Executive Secretary's Workgroup to Review the Practice and Performance of guardians *ad litem* for children. She also is a part of the Court Improvement Program ("CIP") having acted as the Chief Judge when the court received its graduation from the CIP, and has been an integral part of the Virginia Beach Juvenile Detention Alternative Initiatives' Committee. Judge Bryan has an interest in trauma focused practices being implemented to ensure positive outcomes of juveniles before the Court. She is a graduate of Virginia Tech.

Biography
The Honorable Tanya Bullock, Judge
Virginia Beach Juvenile & Domestic Relations District Court

Judge Bullock currently serves as a presiding Judge of the Virginia Beach Juvenile and Domestic Relations District Court. She is a native of Virginia Beach, Virginia. She is a graduate of Bayside High School and North Carolina State University. She received her Juris Doctor degree from Regent University School of law in 2000. In 2016 Judge Bullock received an executive certificate in Multi-System Integration from Georgetown University's Center for Juvenile Justice Reform.

After graduating from law school, Judge Bullock worked as a prosecutor in the Norfolk and Virginia Beach Commonwealth Attorney's Offices. Subsequently, she entered into private practice and started her own law firm, Bullock & Cooper, with her identical twin sister, Wanda Cooper. As a practicing attorney, her primary practice areas were criminal defense and federal civil litigation. Judge Bullock developed a niche in litigating what has become known as foreclosure rescue scams. In fact, she was at the forefront of getting Virginia's first foreclosure rescue scam statute passed in 2008.

Judge Bullock and her firm received numerous honors and awards. She received the Hampton Road's "Top 40 Under 40" Award by Inside Business, the Partners in Education Award from the Virginia Beach Public School System, the Urban League Silver Star Legacy Award, Outstanding Professional Woman Award and her firm was named, Virginia Beach's Business of the Year by the Department of Economic Development in 2011. In 2013, Judge Bullock was given the Trailblazers Under 40 Award by the National Bar Association.

Integrally involved in her community, Judge Bullock is a member of Alpha Kappa Alpha Sorority, Inc. She has served on the Virginia Board of Correctional Education, the Virginia Beach Community Development Corporation which focused on providing workforce housing and was a member of the Virginia State Bar Association's Disciplinary Committee. In addition, she is a proud graduate of the CIVIC Leadership Institute. She often can be found coaching recreation cheerleading teams or at the gym.

In 2012, Judge Bullock was appointed by the Governor as a judge to the Virginia Beach Juvenile and Domestic Relations District Court. She presides over criminal and civil cases involving juveniles, adults involved in disputes concerning support, custody, visitation, offenses against members of their own family, foster care and protective order cases. She currently is a member of the Virginia Council of Juvenile and Domestic Relations District Court Judges, the Treasurer of the Virginia Association of District Court Judges and was appointed by the Chief Justice of the Virginia Supreme Court as a member of the Committee on District Courts. She is a member of the National Bar Association's Judicial Council; the Virginia State Bar's Judicial Division and serves on the Board of Governors Section on Criminal Law.

Ann D. Carey, Esquire

Ann is a professional with a solid career path in profit and non-profit organizations.

Professionally, she has served as the Executive Director of a non-profit crisis center, and counselor for women.

Legally, licensed to practice law in six states and four federal jurisdictions, she has been a practicing litigation attorney, mediator and arbitrator. Ann has successfully tried in the lower courts, researched, briefed and documented 2 Delaware Supreme Court cases and 1 United States Supreme Court case.

All this experience has come together in her current position as the Anti-Human Trafficking Victim Advocate at the Samaritan House. She serves as the Chairperson for the Hampton Roads Human Trafficking Taskforce Legal Subcommittee.

CHKD STAFF

Daisy Schuurman, CSEC Program Coordinator

Daisy Schuurman is the CSEC Program Coordinator for CHKD's Child Abuse Program and a Diplomat Forensic Interviewer. As an advocate for trafficking victims, Ms. Schuurman has provided briefings and education on child maltreatment, commercial sexual exploitation and best practices to federal congressional offices, senior policy staff, state officials, and national human rights organizations. Ms. Schuurman has conducted training and provided a first responder perspective and representation in federal policy development of the Justice for Victims of Trafficking Act, signed into law in 2016. Ms. Schuurman is a member of the Advisory Council on Child Trafficking (ACCT) and was a contributing author to the policy document from the symposium "Child Sex Trafficking in the United States: Identifying Gaps and Research Priorities from a Public Health Perspective." Ms. Schuurman oversees the Child Abuse Program's CSEC Team which involves creating protocols and responses with community and multi-disciplinary partners, overseeing trafficking and exploitation cases within the CAC, and coordinating the CSEC Advisory Group in Hampton Roads.

Dawn Scaff, Pediatric Forensic Nurse Examiner Coordinator

Dawn Scaff is the Pediatric Forensic Nurse Examiner Coordinator at the Children's Hospital of The King's Daughters Child Abuse Program. Dawn received her Registered Nursing degree in 2001, her Bachelor of Science in 2010 and her Masters of Science in Nursing in 2013. Dawn is currently pursuing her doctoral degree in nursing practice. She has worked at the Children's Hospital of the King's Daughters for over 15 years and at the Child Abuse Program for 11 years, providing sexual assault nursing exams to pediatric patients. She is the supervisor of a team of on-call nurses and has provided hundreds of SANE exams both acute and non-acute in her career. She is a qualified expert in pediatric SANE exams, testifying regularly in child abuse cases. Dawn is the medical member of the CAP CSEC Team and sits on the Norfolk CSEC Advisory Board. In this role she regularly provides education to multidisciplinary team members (CPS, Attorneys, Law Enforcement both local and federal) regarding pediatric sexual assault and Commercial Sexual Exploitation of Children (CSEC) in the Hampton Roads community as well as other medical professionals. Dawn was the recipient of the 2013 "Champions for Children" award in the medical category.

Jolé Leon Guerrero, CSEC Case Manager

Jolé Leon Guerrero is the CSEC (Commercial Sexual Exploitation of Children) Case Manager for the CHKD Child Abuse Program, where she assisted in the creation of response protocols for minor victims of human trafficking and exploitation in Hampton Roads. She is responsible for providing individualized case management and advocacy to identified CSEC youth and their families and facilitates CSEC Multidisciplinary Team meetings as needed. Mrs. Leon Guerrero serves on the Norfolk CSEC Advisory Board and is a member of the Hampton Roads Coalition Against Trafficking. She is also a member of the Hampton Roads Human Trafficking Task Force Community Outreach and Victim Services committees. She conducts CSEC trainings for MDT partners and other youth serving agencies in Hampton Roads. Mrs. Leon Guerrero holds a BSW and has 14 years of experience in child welfare and behavioral health. Prior to her position at the Child Abuse Program, she worked for the Arizona Department of Child Safety where she held positions as a CPS Investigator and a CPS Unit Supervisor for their Investigations, In-Home Services and Criminal Conduct Ongoing units.

Laura Kanter, LCSW, CHKD CAP

Laura Kanter is the Mental Health Services Coordinator and a Licensed Clinical Social Worker at the CHKD Child Abuse Program. She has been at CHKD for over 5 years; however, she has worked in the field of child mental health for over 21 years. Laura is also Meki's handler. Meki, who is a CHKD facility dog, was matched with Laura in May 2016 and he has worked with her for that last 2 years at the Child Abuse Program.

MEKI, CHKD Facility Dog

Meki was born on May 27, 2014 in California. He was professionally trained by Canine for Companions for Independence, Northeast Region and graduated in May 13, 2016. Meki began working at the CHKD Child Abuse Program in May 2016 with his handler, Laura Kanter, LCSW, Mental Health Services Coordinator.

Christianna Dougherty-Cunningham
Associate City Attorney
crcunnin@vbgov.com
757-385-8456

Christianna Dougherty-Cunningham is an Associate City Attorney for the City of Virginia Beach, and has been with that office since 2004. She has handled eminent domain litigation, 1983 defense, collections, housing and code enforcement, local taxation, worker's compensation, municipal liability claims, and other general civil litigation. In 2007, she was assigned to assist with child protective services, foster care, adult protective services, mental health, the CSB, and protected information. Since approximately 2011, she has handled human services matters almost exclusively. She is a member of the Virginia Beach Juvenile and Domestic Relations Court Improvement Committee, the Virginia Beach JDAI Committee, the Virginia Beach Bar Association Juvenile Court Committee, and the Executive Committee for the James Kent Inn of Court. She has been a speaker at numerous CLEs and conferences on DSS and DARS Matters, and has drafted teaching materials on a wide range of topics, including but not limited to, Adult Protective Services issue, Guardian and Conservatorships, HIPAA and 42 CFR Regulations, Abuse, Neglect and Foster Care Proceedings in Virginia, and Ethics and Family Partnership Meetings. She has conducted numerous training sessions on all aspects of trial preparation.

Prior to joining the Virginia Beach City Attorney's Office, Ms. Cunningham was an Associate Attorney at Tavss Fletcher in Norfolk, where she handled both civil and criminal litigation, residential and commercial real estate, family law, business formation, and general transactional matters.

Ms. Cunningham has a BA cum laude in Broadcasting from Arizona State University and a JD cum laude from Saint Louis University School of Law. She also completed the Advanced Trial Skills Certification through NITA in 2006 at Georgetown University School of Law.

Ms. Cunningham is chair of the Virginia Beach Bar Association JDR Committee and president-elect of the James Kent Inn of Court. She is married to Mark "McKay" Cunningham; they live in Virginia Beach with their large and very spoiled Labrador Retriever, Lily.

The Honorable Kevin C. Duffan

Judge for VBJDRC

Kevin Duffan a native of Virginia Beach, graduating from Green Run High School. He earned his bachelor's degree from James Madison University and his law degree at William & Mary School of Law. Prior to his appointment to the Juvenile & Domestic Relations District Court in 2017, he was employed as a Senior Assistant Commonwealth's Attorney in Virginia Beach, and most recently as a partner at Shapiro, Appleton & Duffan, P.C. In addition to his legal practice, Judge Duffan also served as the legal analyst for WVEC 13 News and was the President-Elect for the Virginia Beach Bar Association.

Rachel Evans
Associate City Attorney
REvans@vbgov.com
757-385-4539

Rachel Evans was born in New Brunswick, Canada and grew up in Owen Sound, Ontario on the stony, scenic shores of the Georgian Bay region of Lake Huron. She graduated from high school in Canada then immigrated to Virginia to attend university.

Rachel earned a Bachelor of Science in English with secondary school teaching licensure at Liberty University in 1997. Upon graduating, she taught English as a Foreign Language at Myongji University in bustling downtown Seoul, South Korea for over two years. She loved learning about Asia's rich culture.

Rachel returned to Virginia for law school and graduated in 2002 from Regent University. During her time in law school, she served on the Law Review and studied Human Rights Law in Strasbourg, France. After law school, she worked at a firm in Fredericksburg, Virginia. Rachel represented children as a guardian ad litem and represented parents in abuse/neglect proceedings. She was fascinated with the child welfare field and sought a position representing a human services agency full-time.

The opportunity unfolded when Hampton City Attorney's Office hired her in 2005. She currently works for the Virginia Beach City Attorney's Office and represents VBDHS before the Juvenile Court, Circuit Court, and Court of Appeals. She also handles administrative hearings before State Hearing Officers, reviews policies, and provides legal advice to the Community Policy and Management Team.

Rachel has a passion for learning through teaching others. She teaches Legal Principles to Family Services Specialists through Commonwealth's Knowledge Center and taught State and Local Government as an adjunct professor at Regent University for seven years. She has taught at Forensic Interview Clinics hosted by the American Professional Society on the Abuse of Children.

Outside of work, Rachel loves to cook, play beach volleyball, and chase after her two year old twins with her husband.

The Honorable Phillip C. Hollowell

Chief Judge VBJDRC

The Hon. Phillip C. Hollowell is presently the Chief Judge of the Virginia Beach Juvenile and Domestic Relations Court. Chief Judge Hollowell was appointed to the Virginia Beach Juvenile and Domestic Relations Court in 2014. Prior to his appointment to the bench, Chief Judge Hollowell previously served as a Deputy Commonwealth's Attorney in Virginia Beach. He is a 1998 graduate of Regent University School of Law.

Bio for Elena E. Ilardi

Elena E. Ilardi is an Associate City Attorney with the City of Virginia Beach City Attorney's Office. She joined the office in 2007 and primarily represents the Virginia Beach Department of Human Services in child abuse and neglect civil cases and Adult Protective Services matters. Prior to joining the City Attorney's Office, Ms. Ilardi worked at Hunton & Williams, LLP in Richmond, Virginia from 2001 to 2007. There she practiced commercial civil litigation and also received the E. Randolph Williams Award for Outstanding Pro Bono Service from 2002-2006 because of her work with the Richmond area Big Brothers/Big Sisters Program, the Women's Advocacy Project, a project that represents indigent victims of domestic violence, and the Chesapeake CASA Program. While in Richmond, Ms. Ilardi was a member of the Lewis F. Powell, Jr. American Inn of Court.

Ms. Ilardi graduated from the University of Chicago Law School, with honors, in 2001. She received her Bachelor of Media Arts, Magna Cum Laude, from the University of South Carolina Honors College in 1998, where she was a Carolina Scholar and a National Merit Scholar. Ms. Ilardi also attended the University of Strathclyde in Glasgow, Scotland for one year of her undergraduate study. Ms. Ilardi attended the University of Waikato in Hamilton, New Zealand on a Rotary Ambassadorial Scholarship in 1997.

Ms. Ilardi is a member of the Executive Committee of the James Kent American Inn of Court. She is also a member of the Local Government Attorneys of Virginia and the Virginia Beach Bar Association. She is admitted to practice in the Courts of Appeals for the Fourth and Sixth Circuits, the District Courts for the Eastern and Western Districts of Virginia, the Western District of Wisconsin, and the Supreme Court of Virginia. She is licensed to practice law in Virginia and South Carolina.

Bretta Zimmer Lewis, Esq.

Bretta Zimmer Lewis holds an undergraduate degree in History from the University of Virginia (1994), a Master's Degree in English and Teaching of Writing from George Mason University (1996) and a Juris Doctorate from The Marshall-Wythe School of Law at William and Mary.

Ms. Lewis has been a member of the Virginia Bar since 2000 specializing in complex family law and equitable distribution cases. Ms. Lewis has been certified as a Guardian *Ad Litem* since 2004 and has represented children in abuse, neglect and contested custody matters for over a decade.

Ms. Lewis has served as a member of the Virginia State Bar Disciplinary Board since 2013, and served the Second District Disciplinary Committee prior to being selected to serve on the Board.

Ms. Lewis has served as a faculty member for Virginia CLE as well as the Virginia Employment Law Association, the Virginia State Bar, the Virginia Beach Juvenile Court, the Virginia Beach Bar Association and the Tidewater Paralegal Association for topics relating to Family Law and Legal Ethics. In 2018, Ms. Lewis was selected as a member of the faculty of the Harry L. Carrico Professionalism Course required by the Virginia State Bar for all new attorneys.

Sarah Nelson, Regent University School of Law
2019 Candidate for Juris Doctor

Sarah Nelson is a 2019 Candidate for Juris Doctor at Regent University School of Law. She is the 2019 Law Review Symposium Editor, is presently the Regent Trial Advocacy Board Interscholastic Competition Coordinator, on the Regent University Honor Council Officer, and acts a Thomson Reuters Westlaw Representative.

Ms. Nelson has clerked for the law firm of Rice, Paige, Pandya, and Gregg and for the City Attorney's Office for the City of Virginia Beach.

Asha Pandya, Esq.

Rice, Paige, Pandya, and Gregg

Ms. Pandya is a partner with the firm Rice, Paige, Pandya, and Gregg located in Norfolk, VA. A former senior prosecutor with the Norfolk Commonwealth's Attorney's Office, she now handles criminal defense, family law, and juvenile matters. Her firm is active in many organizations that work with families, including Norfolk's CASA program. She is a graduate of University of Richmond School of Law.

C.Andrew Rice
Assistant Commonwealth Attorney
Virginia Beach
crice@vbgov.com

Andrew received his bachelors degree in Economics and Business from the Virginia Military Institute and his JD from Regent University. Andrew has worked for The Virginia Beach Commonwealth Attorneys Office for 6 years. Andrew's current assignment is the Juvenile Prosecution team. Active in the VBBA, Andrew is the current chair for the law school outreach committee. His past positions have included chair of the young lawyers association and Dick Brydges Golf Tournament Chair.

John M. Paradiso, LCSW
Clinician IV - Crisis Services Supervisor, Virginia Beach Child & Youth Behavioral Health Services, Virginia Beach Department of Human Services

John M. Paradiso, LCSW, of Virginia Beach Department of Human Services-Child & Youth Services is a Licensed Clinical Social Worker with nearly 30 years of experience in the mental health and substance abuse services field.

Mr. Paradiso provides direct outpatient individual and family mental health services at Child and Youth for the City of Virginia Beach. John also developed and implemented the Mobile Youth Crisis Intervention Services Program for The City of Virginia Beach in 2013, and remains in the role of program supervisor for Crisis Services at Child & Youth.

Mr. Paradiso is a licensed clinical social worker in the state of Virginia with extensive training and experience treating Trauma and Stress related disorders with an emphasis on early childhood neglect and abuse. Mr. Paradiso holds certifications in evidenced based trauma treatment modalities including Eye Movement Desensitization and Reprocessing (EMDR) Therapy and Trauma Focused – Cognitive Behavioral Therapy (TF-CBT). Mr. Paradiso is an EMDRIA certified Therapist, an EMDR International Association Approved Consultant and serves on the Training Faculty for the Trauma Recovery EMDR Humanitarian Assistance Programs. Mr. Paradiso also holds an international certification in TF-CBT.

Trenia Richards-Pyron
VB Court Service Unit
Trenia.Richards-Pyron@djj.virginia.gov

Trenia Richards-Pyron has been married for 17 years and she is the mother of two children. Mrs. Richards-Pyron is the Probation/Assessment/Diagnostic Supervisor with the 2nd District Court Service Unit in Virginia Beach. She has been with the agency since 2011. Mrs. Richards-Pyron specializes in cognitive behavioral interventions such as Effective Practices in Community Supervision (EPICS), and she is the EPICS Lead for the agency. She is certified in the "Why Try?" curriculum. She received the CSU's Lowest Recidivism Rate Award in 2013. She holds a degree from Old Dominion University in Communications and Criminal Justice.

Paul J. Powers

Deputy Commonwealth's Attorney
Virginia Beach

Paul joined the Virginia Beach office of the Commonwealth's Attorney in February 2005. He grew up in central New York and received his B.A. from Utica College of Syracuse University in 1996. Paul went on to law school at the University of Pittsburgh and received his J.D. in 1999. He went straight into private practice with a small firm in north western Pennsylvania for five years focusing mostly on criminal defense. In his time with Virginia Beach, he has taken an active role in the office training of attorneys and paralegals, and trains all new attorneys in juvenile. Paul has spent over nine years prosecuting child abuse, murder, and child sex cases on the office juvenile prosecution team. He has tried several criminal and civil jury trials as a prosecutor, defense attorney, and representing civil plaintiffs. He is also part of the Juvenile Impact and ChildFirst faculties. Paul is now the Deputy for the office juvenile prosecution team.

Panel 1 9/20/2018

HUMAN TRAFFICKING

The Hon. Tanya J. Bullock

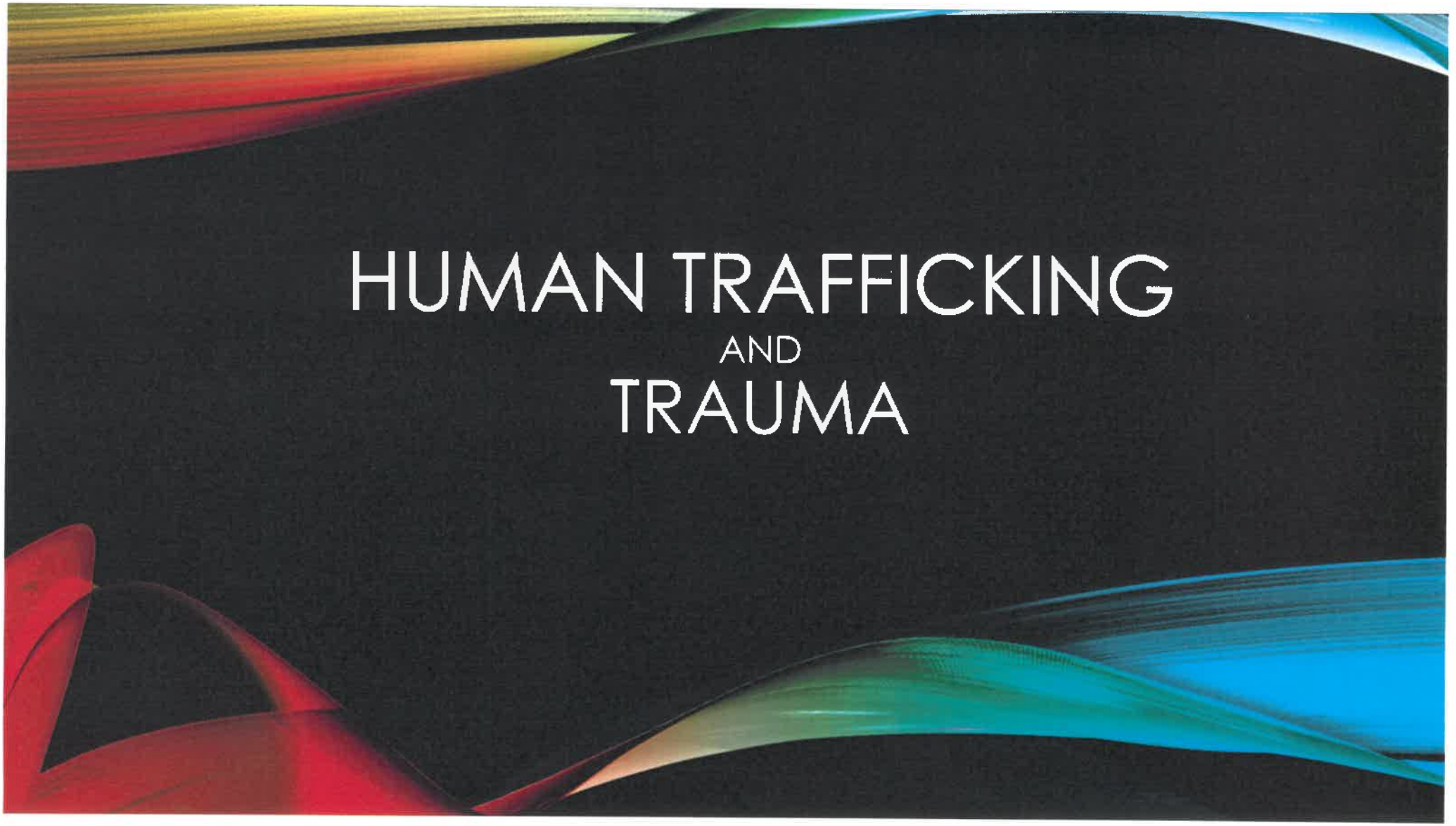
Ann Carey, Esq., Samaritan House

Jole Leon Guerrero, CSCE Case Mgr. CHKD

HUMAN TRAFFICKING

PART 1

ANN CAREY, ESQ.
SAMARITAN HOUSE


HUMAN TRAFFICKING
AND
TRAUMA

BLUE CAMPAIGN

TRAFFICKING DEFINED

RECRUIT, HARBOR, TRANSPORT, PROVIDE OR OBTAIN A PERSON FOR THE PURPOSE OF COMMERCIAL SEX ACTS AND/OR LABOR THROUGH FORCE, FRAUD OR COERDION.

MINOR SEX TRAFFICKING

- COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC) LAWS INCLUDE:
  - Abduction with Intent to Extort Money or for Immoral Purpose
  - Taking Indecent Liberties with Children
  - Taking or Detaining a Person for Prostitution
  - Receiving Money from earnings of Male or Female Prostitute
  - Receiving Money for Procuring a Person

  - NOTE: Prostitution laws do not refer to the Sex Trafficking Law
  - Racketeering law includes sex trafficking and certain CSEC offenses are predicate offences.

SEX TRAFFICKING

DEFINED § 18.2-355

COMMERCIAL SEX TRAFFICKING IS THE TAKING, DETAINING etc.

a person [against his/her will]

for prostitution or unlawful sexual [acts]

And

Receiving money from earnings of male or female prostitute

FEDERAL AND STATE TERMINOLOGY

Trafficking in sex and labor is for commercial purposes

Federal definition: requires force, fraud or coercion

Virginia definition: §18.2-355 terminology (1) persuades, encourages or causes.. (2) "intent to compel" by force, threats, persuasions, menace or duress…"

Virginia criminalizes child sex trafficking "without" proof of force, intimidation or deception

PERPS – LOW RISK, HIGH REWARD

- DRUGS: is a commodity that can only be sold one time

- HUMAN BEINGS FOR SEXUAL PURPOSES: can be sold multiple times a day or night.

- Some victims have reported being sold 15 – 20 times a night/day
- Weekends may net as much as $10,000 for an average prostitute.
- **Business model – Supply and Demand**

PERPS – LOW RISK HIGH REWARD

Reported by "Human Rights First"

- One trafficker earned $18,148 per month from four victims (for a total of $127,036) while the second trafficker earned $295,786 in the 14 months that three women were sexually exploited.
- This is an underground economy – NO TAXES!!

STATISTICS

- **Virginia ranks 15th in the United States** in reported Human Trafficking Cases
- **VA. HOT SPOT FOR HT - Reasons**:
- Interstate Highways, International Airport, Military Bases; Resort area
- **Estimates:**
- $31.6 – 50 Billion dollar industry in ANNUAL PROFITS in United States
- $91 - 150 Billion dollar industry world wide
- In a 2014 report, the **Urban Institute** estimated that the underground sex economy ranged from **$39.9 million in Denver, Colorado, to $290 million in Atlanta, Georgia.**

STATISTICS

- NATIONAL CRIME INFORMATION CENTER AND THE FBI REPORTS:
  465,676 ENTRIES OF MISSING CHILDREN IN 2016

- NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN IN VIRGINIA
  2017 RECORDS FOUND **371 MISSING CHILDREN**

- U.S. Department of Justice estimates 300,000 kids in the United States are being Trafficked on any given day!

NATION CENTER FOR MISSING & EXPLOITED CHILDREN
1-800-THE-LOST (1-800-843-5678)

CHILD SEX TRAFFICKING

1 IN 6 OF THE 18,500 RUNAWAYS REPORTED

IN 2016

WERE LIKELY SEX TRAFFICKING VICTIMS

86% OF THESE VICTIMS WERE IN THE CARE OF SOCIAL SERVICES

OR FOSTER CARE

YOUNG LIVES, INSANE PROFIT

YOLANDA SCHLABACH, DELAWARE

WARNING SIGNS

- HISTORY OF RUNNING AWAY OR CURRENT STATUS IS RUNAWAY
- LARGE AMOUNTS OF CASH, MULTIPLE CELL PHONES OR HOTEL KEYS
- TATOOS OR BRANDING RELATED TO MONEY OR OWNERSHIP AND CHILD NOT ABLE OR UNWILLING TO EXPLAIN
- SIGNS OF PHYSICAL ABUSE AND/OR SEXUALLY TRANSMITTED DISEASES
- CONTROLLING OLDER BOYFRIEND OR GIRLFRIEND
- TRAVEL TO/FROM OTHER STATES, HOTELS, OR RUN AWAY

TRAUMA

SOMEONE IS "TRAUMATIZED" WHEN THEIR

INTERNAL OR EXTERNAL COPING MECHANISMS
OR
RESOURCES FOR COPING ARE INSSUFFICIENT

TRAUMA TYPES

ACUTE TRAUMA: exposure to a single traumatic event

Examples: Rape, death, natural disaster, present during violent attack

Characteristics: Detailed Memories, hyper-vigilance, startle response, misperceptions or overreactions

COMPLEX TRAUMA: Extended exposure to traumatic events

Examples: any type of abuse, neglect, sexual harm, violence, bullying

Characteristics: Denial and psychological numbing, dissociation, rage, social withdrawal, sense of foreshortened future

CROSSOVER TRAUMA: A traumatic devastating event(s)

Examples: Mass school shooting, fatal car accident, refugee, dissociation, terrorism victim, POW

Characteristics: Perpetual mourning, depression, pain, concentration issues, sleep disturbances, irritability

VICARIOUS TRAUMA AND FATIGUE

Vicarious trauma is the process through which a person's life experience is transformed because of engaging with another individual's trauma.

Think about a time...

Signs: exhaustion, jaded, bitter, addiction, self medicating

Risk factors: personal history of trauma, burnout, long hours, large caseloads

VICTIMS OF TRAFFICKING OFTEN SUFFER MULTIPLE TRAUMAS

Drug and Alcohol Dependence
Depression, Anxiety, and/or other
Complex Stress Disorders, Suicide, PTSD
HIV, STD's, Fistulas, other health issues
Pregnancy, hypersexuality,
Trauma bonds e.g. Stockholm Syndrome
Complex low self worth, guilt, shame
Addictions and Mental Illness

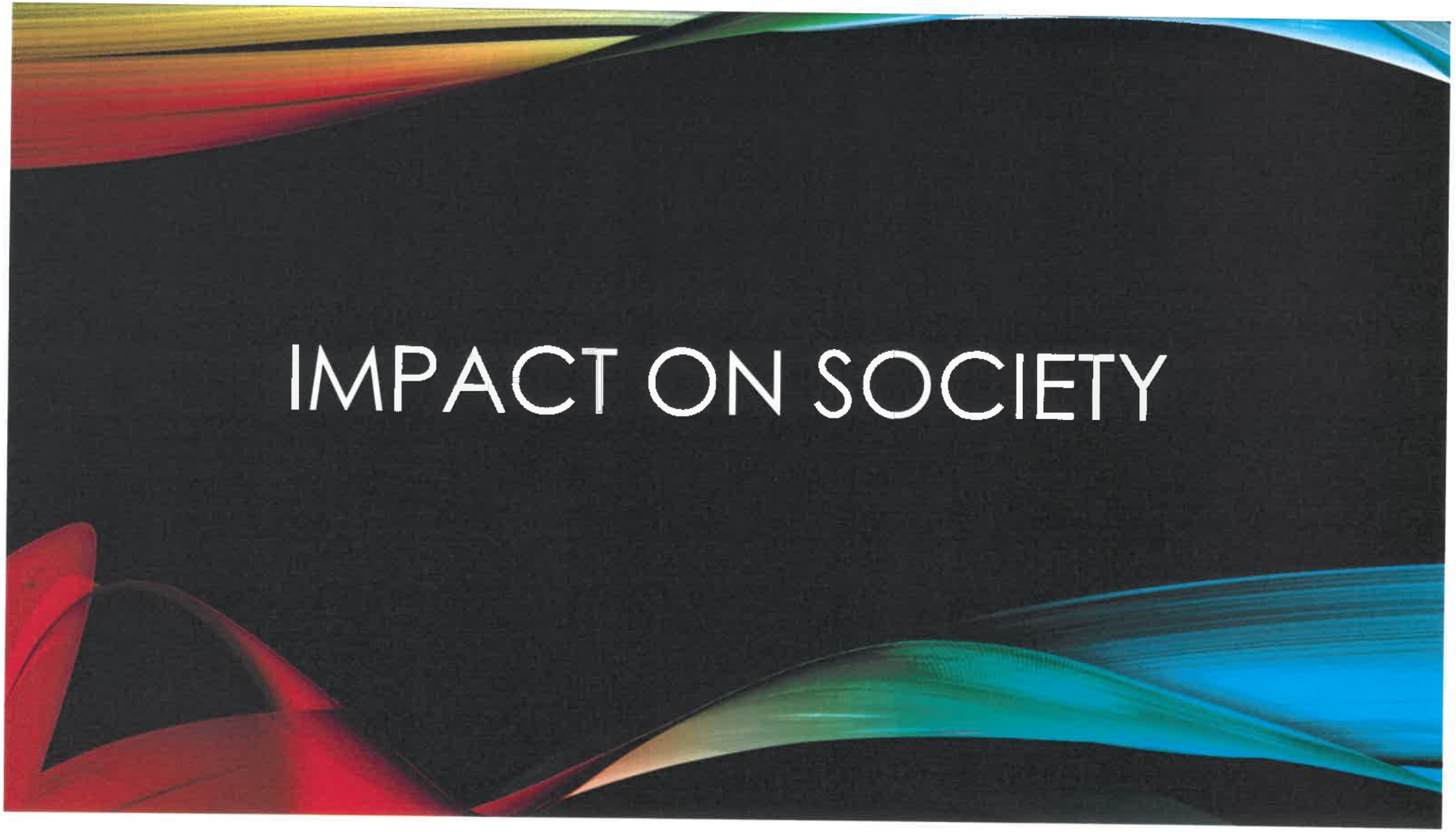
VICTIM ADVOCATE

Samaritan House

The mission: foster personal safety, growth and self-sufficiency through freedom from Human Trafficking, Sexual Assault and Domestic Violence

Victim Adovate: Assist client with all legal needs, e.g. Immigration; Family law issues: divorce, custody, paternity; Protective Orders, Criminal investigations, testimony and evidence; Personal Criminal charges, name changes, sealing or expunging records

Other Services: Physical/mental health, vocational and educational, secure shelter, food, clothing, Overall Case Management and more…


IMPACT ON SOCIETY

IMPACT

Underground Economy – fewer tax dollars to support Commonwealth needs.

Foster Care – Child Protective Services - Children missing from foster care

Undereducated and emotional deprived adolescents and adults

Lack of Insurance to meet long term treatment: mental health, drug addiction and few detox centers

Legal system – cost of incarceration, jail and court personnel, police officers

HURDLES

- HURDLES VARY FROM COUNTRY TO COUNTRY, STATE TO STATE AND IN VIRGINIA – CITY TO CITY
  - LACK OF STATISTICAL INFORMATION
  - LEGAL AND LAW ENFORCEMENT UNDERSTANDING + TRAINING
    - IDENTIFY TRUE VICTIMS vs. PROSTITUTES
    - CONSISTENT PROCESS AND PROCEDURE
  - DEMAND – SUPPY AND DEMAND INDUSTRY

LEGISLATION & INCENTIVES

- BILL 1260 HUMAN TRAFFICKING – PRESUMPTION OF NO BOND SIGNED INTO LAW 06/25/2018
- LEGISLATION TO ADD HUMAN TRAFFICKING TO FOREFEITURE LAWS. Reason: $ to Law Enforcement for operations, equipment – promote proactive
- LEGISLATION FOR SEALING/EXPUNGEMENT OF RECORDS RELATED TO HUMAN TRAFFICKING – After the charges – Stop before charges better idea.
- CONSEQUENCES OF NOLLE PROSEQUI ... REMAINS ON RECORD, IMPACTS THEIR LIVES [EMPLOYMENT, HOUSING]
- PROSECUTE "JOHN" SUPPLY AND DEMAND – less demand, reduce problem

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** Interesting Read on **"Psychological Coercion"** in the context of modern-day involuntary labor:

Revisiting *"United States v. Kozminski"* and Understanding Human Trafficking

Professor Kathleen Kim Loyola Law School
Legal Studies Paper No. 2007-40

Note: This paper can be downloaded *without charge* from the Social Science Research Network (SSRN) electronic library at:

http://ssrn.com/abstract=1021819

Ann D. Carey, Esquire

Ann is a professional with a solid career path in profit and non-profit organizations.

Professionally, she has served as the Executive Director of a non-profit crisis center, and counselor for women.

Legally, licensed to practice law in six states and four federal jurisdictions, she has been a practicing litigation attorney, mediator and arbitrator. Ann has successfully tried in the lower courts, researched, briefed and documented 2 Delaware Supreme Court cases and 1 United States Supreme Court case.

All this experience has come together in her current position as the Anti-Human Trafficking Victim Advocate at the Samaritan House. She serves as the Chairperson for the Hampton Roads Human Trafficking Taskforce Legal Subcommittee.

SAMARITAN HOUSE

Stop the violence. Start the healing.

2620 Southern Blvd.
Virginia Beach 23452
office:757-631-0710
hotline:757-251-014

Dear Counsel:

In 2016, the Hampton Roads Human Trafficking Task Force was created. The Office of the Attorney General and Samaritan House joined forces to address the crime that is "Hidden in Plain Sight" – **Human Trafficking**. And, it is the reason for this letter.

We need your help. Your profession has placed you in the unique position to identify victims of sex and labor trafficking. Samaritan House would like to offer our assistance to you and your office in making this initial assessment for your clients and determine if they are a victim of labor or sex trafficking. Once positively assessed, we stand ready to provide comprehensive, holistic services for those victims.

The mission of Samaritan house is to foster personal safety, growth and self-sufficiency through freedom from human trafficking, sexual assault, domestic violence and homelessness.

Samaritan House provides: A Victim Advocate to support your work on behalf of the clients, Case Managers, Medical Care, Mental Health Counseling, Educational and Vocational guidance, food, clothing and secure shelters. As the client moves forward in the program, we assist them with obtaining public benefits and help them stabilize so they may reach their personal potential as healthy members of society.

If you find you are working with a client that has caught prostitution, drug or theft charges, you may be working with a victim of Human Trafficking. If you notice your client is disoriented or confused, has unexplained injuries, is fearful, timid, submissive, or they appear to be coached in what to say, please call us. Working together we can help these victims.

Very truly yours,

Ann D. Carey, Esquire
Anti-Human Trafficking, Victim Advocate
Samaritan House
2620 Southern Blvd.
Virginia Beach, VA 23452
Office: 757-631-0710
Cellphone: 757-266-2498
annc@samaritanhouseva.org

24-Hour Crisis Hotline: 757-251-0144
To report a human trafficking tip:
Homeland Security Investigations Tip Line:
1-866-DHS-2-ICE (866-347-2423)
Email: HamptonRoadsHTTF@ice.dhs.gov
or submit online at www.ice.gov/tips

VIRGINIA LAWS TARGETING SEX AND LABOR TRAFFICKING

§ 18.2-355: Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking.

Any person who:

(1) For purposes of prostitution or unlawful sexual intercourse, takes any person into, or persuades, encourages or causes any person to enter, a bawdy place, or takes or causes such person to be taken to any place against his or her will for such purposes; or

(2) Takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled; or

(3) Being parent, guardian, legal custodian or one standing in loco parentis of a person, consents to such person being taken or detained by any person for the purpose of prostitution or unlawful sexual intercourse; or

(4) For purposes of prostitution, takes any minor into, or persuades, encourages, or causes any minor to enter, a bawdy place, or takes or causes such person to be taken to any place for such purposes; is guilty of pandering.

A violation of subdivision (1), (2), or (3) is punishable as a Class 4 felony. A violation of subdivision (4) is punishable as a Class 3 felony.

§ 18.2-356. Receiving money for procuring person; penalties.

Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act in violation of § 18.2-361 or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography is guilty of a Class 4 felony. Any person who violates clause (i) or (ii) with a person under the age of 18 is guilty of a Class 3 felony.

§ 18.2-357. Receiving money from earnings of male or female prostitute; penalties.

Any person who shall knowingly receive any money or other valuable thing from the earnings of any male or female engaged in prostitution, except for a consideration deemed good and valuable in law, shall be guilty of pandering, punishable as a Class 4 felony. Any person who violates this section by receiving money or other valuable thing from a person under the age of 18 is guilty of a Class 3 felony.

§ 18.2-47. Abduction and kidnapping defined; punishment.

A. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction."

B. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services shall be deemed guilty of "abduction." For purposes of this subsection, the term "intimidation" shall include destroying, concealing, confiscating,

withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States.

C. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.

D. If an offense under subsection A is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.

§ 18.2-48. Abduction with intent to extort money or for immoral purpose.

Bills amending this Section

Abduction (i) of any person with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony. If the sentence imposed for a violation of (ii), (iii), (iv), or (v) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties.

Bills amending this Section

A. Any person who, for money or its equivalent, (i) commits adultery, fornication, or any act in violation of §18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in anal intercourse or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in anal intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.

§ 18.2-348. Aiding prostitution or illicit sexual intercourse, etc.

It is unlawful for any person or any officer, employee, or agent of any firm, association, or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit,

to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation, or prostitution within the Commonwealth, or to procure or assist in procuring for the purpose of illicit sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act violative of § 18.2-361, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.

§ 40.1-28.8 et. seq. Virginia Minimum Wage Act.

§ 40.1-11.1. Employment of illegal immigrants.

It shall be unlawful and constitute a Class 1 misdemeanor for any employer or any person acting as an agent for an employer, or any person who, for a fee, refers an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States for employment to an employer, or an officer, agent or representative of a labor organization to knowingly employ, continue to employ, or refer for employment any alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States.

Permits issued by the United States Department of Justice authorizing an alien to work in the United States shall constitute proof of eligibility for employment.

All employment application forms used by State and local governments and privately owned businesses operating in the Commonwealth on and after January 1, 1978, shall ask prospective employees if they are legally eligible for employment in the United States.

The provisions of this section shall not be deemed to require any employer to use employment application forms.

§ 18.2-46.1: Predicate Crimes.

"Predicate criminal act" means (i) an act of violence; (ii) any violation of § 18.2-31, 18.2-42, 18.2-46.3, 18.2-51,18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-55, 18.2-56.1, 18.2-57,18.2-57.2, 18.2-59, 18.2-83, 18.2-89, 18.2-90, 18.2-95, 18.2-108.1, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, 18.2-147, 18.2-248.01, 18.2-248.03, 18.2-255, 18.2-255.2, 18.2-279, 18.2-282.1, 18.2-286.1, 18.2-287.4, 18.2-289, 18.2-300, 18.2-308.1, 18.2-308.2, 18.2-308.2:01, 18.2-308.4, 18.2-355, 18.2-356, 18.2-357, or18.2-357.1; (iii) a felony violation of § 18.2-60.3; (iv) a felony violation of § 18.2-248 or of 18.2-248.1 or a conspiracy to commit a felony violation of § 18.2-248 or 18.2-248.1; (v) any violation of a local ordinance adopted pursuant to § 15.2-1812.2; or (vi) any substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States.

§ 18.2-47. Abduction and kidnapping defined; punishment.

A. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction."

B. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services shall be deemed guilty of "abduction." For purposes of this subsection, the term "intimidation" shall include destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States.

C. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.

D. If an offense under subsection A is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.

§§ 18.2-512&13: Business & Street Gang Liability.

"Racketeering activity" means to commit, attempt to commit, conspire to commit, or to solicit, coerce, or intimidate another person to commit two or more of the following offenses: Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of this title, § 18.2-460; a felony offense of §§ 3.2-4212, 3.2-4219, 10.1-1455, 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, 18.2-35, Article 2.2 (§ 18.2-46.4 et seq.) of Chapter 4 of this title, §§ 18.2-47, 18.2-48, 18.2-48.1,18.2-49, 18.2-51, 18.2-51.2, 18.2-52, 18.2-53, 18.2-55, 18.2-58, 18.2-59, 18.2-77, 18.2-79, 18.2-80, 18.2-89,18.2-90, 18.2-91, 18.2-92, 18.2-93, 18.2-95, Article 4 (§ 18.2-111 et seq.) of Chapter 5 of this title, Article 1 (§18.2-168 et seq.) of Chapter 6 of this title, §§ 18.2-178, 18.2-186, Article 6 (§ 18.2-191 et seq.) of Chapter 6 of this title, Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of this title, § 18.2-246.13, Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title, §§ 18.2-279, 18.2-286.1, 18.2-289, 18.2-300, 18.2-308.2, 18.2-308.2:1, 18.2-328, 18.2-348,18.2-355, 18.2-356, 18.2-357, 18.2-357.1, 18.2-368, 18.2-369, 18.2-374.1, Article 8 (§ 18.2-433.1 et seq.) of Chapter 9 of this title, Article 1 (§ 18.2-434 et seq.) of Chapter 10 of this title, Article 2 (§ 18.2-438 et seq.) of Chapter 10 of this title, Article 3 (§ 18.2-446 et seq.) of Chapter 10 of this title, Article 1.1 (§ 18.2-498.1 et seq.) of Chapter 12 of this title, § 3.2-6571, 18.2-516, 32.1-314, 58.1-1008.2, 58.1-1017, or 58.1-1017.1; or any substantially similar offenses under the laws of any other state, the District of Columbia, the United States or its territories.

§ 18.2-348. Aiding prostitution or illicit sexual intercourse, etc.

It is unlawful for any person or any officer, employee, or agent of any firm, association, or corporation, with knowledge of, or good reason to believe, the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation, or prostitution within the Commonwealth, or

to procure or assist in procuring for the purpose of illicit sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act violative of § 18.2-361, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.

U.S. Department of Homeland Security

Human Trafficking Laws & Regulations

Below are human trafficking laws and regulations.

U.S. Code, Title 22, Chapter 78 - Trafficking Victims Protection (http://frwebgate.access.gpo.gov/cgi-bin/usc.cgi?ACTION=BROWSE&TITLE=22USCC78&PDFS=YES)

The Victims of Trafficking and Violence Prevention Act (TVPA) (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ386.106). TVPA combats trafficking in persons, especially into the sex trade, slavery, and involuntary servitude. It has been reauthorized three times since its initial passage:

- TVPRA (2003) (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ193.108.pdf) *(PDF, 13 pages - 54 KB)*
- TVPRA (2005) (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ164.109.pdf) *(PDF, 17 pages - 86 KB)*
- TVPRA (2008) (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ457.110.pdf) *(PDF, 49 pages - 275 KB)*

The Customs and Facilitations and Trade Enforcement Reauthorization Act of 2009 (https://www.congress.gov/bill/111th-congress/senate-bill/1631). Sections 307 and 308 of the Act amend the original Tariff Act of 1930 (http://www.gpo.gov/fdsys/pkg/CFR-2002-title19-vol1/content-detail.html) to include provisions to prohibit the importation of goods to the United States made by benefit of human trafficking or forced labor.

Intelligence Reform and Terrorism Prevention Act of 2004 (http://www.state.gov/m/ds/hstcenter/41449.htm). Section 7202 of the Intelligence Reform and Terrorism Prevention Act established the Human Smuggling and Trafficking Center to achieve greater integration and overall effectiveness in the U.S. government's enforcement and other response efforts, and to work with foreign governments to address the separate but related issues of alien smuggling, trafficking in persons, and criminal support of clandestine terrorist travel.

PROTECT Act of 2003 (http://www.gpo.gov/fdsys/pkg/PLAW-108publ21/pdf/PLAW-108publ21.pdf) *(PDF, 47 pages - 279 KB).* The PROTECT Act (Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today) intends to protect children from abuse and sexual exploitation, a common element of child human trafficking.

Civil Asset Forfeiture Reform Act of 2000 (CAFRA) (http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_bills&docid=f:h1658enr.txt.pdf) *(PDF, 24 pages - 158 KB).* The Department fights human smuggling and trafficking through the issuance of CAFRA, which provides notice to property owners whose properties have been identified as being used to facilitate smuggling or harboring aliens; it is an important tool because many employers turn a blind eye to the facilitation of criminal activity on their properties.

The Mann Act of 1910 (/redirect?url=http%3A%2F%2Fcodes.lp.findlaw.com%2Fuscode%2F18%2FI%2F117). The Mann Act and its subsequent amendment resolutions makes it a felony to knowingly persuade, induce, entice, or coerce an individual to travel across state lines to engage in prostitution or attempts to do so. It is an effective tool used to prosecute human traffickers.

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NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN®

Child Sex Trafficking in America: A Guide for Parents and Guardians

What is Child Sex Trafficking?

Child sex trafficking occurs when a child under 18 is involved in a commercial sex act where sex is traded for money, food, shelter, drugs or anything else of value. This crime is occurring in all types of communities throughout the United States and traffickers are making an alarming profit while victims endure countless days and nights of rape, abuse, torture and violence.

It's important to remember that even if the child believes it was his or her choice, they are a victim, and an adult or perpetrator is exploiting their vulnerabilities. A child cannot consent to sex with an adult. As such there is no such thing as child prostitution and that phrase should never be used when referring to child sex trafficking.

Know the Warning Signs

Children frequently do not reveal their victimization because they're being manipulated by a trafficker who has physical and psychological control over them, or out of the shame and guilt that may exist as a result of their exploitation. Parents and guardians should familiarize themselves with some of the indicators of child sex trafficking, including:

- A history of running away or current status as a runaway;
- Large amounts of cash, multiple cell phones or hotel keys;
- Tattoos or branding related to money or ownership and/or the child is unwilling to explain;
- Signs of current physical abuse and/or multiple sexually transmitted diseases;
- Presence of, or communication with, a controlling older boyfriend or girlfriend;
- Gang involvement, especially among girls; or
- Travel to other states or staying at hotels when he or she runs away.

How to Keep Your Child Safer

One of the most important things you can do to protect your child is to create an environment in which he or she feels comfortable talking with you. Open communication is key. Help make your children more aware by explaining the dangers of sex trafficking and by challenging myths and misconceptions that glamorize commercial sex. This includes having conversations with them about online safety and how traffickers/pimps use social networking sites and apps to mask not only their appearance but also their true intentions while recruiting new victims.

Do you trust the people with whom your child interacts? Knowing who your child is with is always crucial to protecting his or her safety. Also, it's very important to monitor what your child does and who your child is interacting with on the internet.

Lastly, if something doesn't seem right, ask questions!

IF YOU SUSPECT CHILD SEX TRAFFICKING,

CALL 1-800-THE-LOST® (1-800-843-5678) or VISIT www.cybertipline.org

How Does a Child Become a Victim?

Child sex trafficking victims could be anyone – your daughter, neighbor, or nephew. Traffickers recruit victims in schools, online through social media, at shopping malls, bus stations or even foster care or group homes.

Perpetrators of sex trafficking often target children believing their age makes them easier to manipulate and control.

Factors that make children particularly vulnerable include:

- A history of sexual abuse. Traffickers will work to identify any vulnerability in a child's life and use that to create a closer bond to the child and to maintain future control;
- A history of running away or current status as a runaway; and
- An unstable home life and/or involvement in the child welfare or foster care system.

Pimps/traffickers may entice children using physical and psychological manipulation and sometimes violence. They will create a seemingly loving or caring relationship with his or her victim to establish trust and allegiance that remains even in the face of severe victimization.

Who are the Perpetrators?

Traffickers can be anyone who profits from the selling of a child for sex to a buyer, including: family members, foster parents, friends, gangs, trusted adults, or "boyfriends".

Much of the trafficking of children has moved from street corners and truck stops to the internet, where children are sold for sex. Online classified sites allow traffickers and buyers anonymity and accessibility when exploiting children. Further, societal glamorization of "pimp culture" may make a child less likely to recognize or be wary of manipulative behavior.

In some cases, there is no identified trafficker, and it is the person buying sex from the child who is exploiting the child's vulnerabilities. For instance, if a child runs away, a buyer may exploit the child's need for food and shelter offering to provide that in exchange for sex.

A child cannot consent to being bought and sold for sex, and anyone purchasing sex from a child is committing a serious crime.

If a child is missing, the child's legal guardian should immediately call law enforcement and then the National Center for Missing & Exploited Children at 1-800-THE-LOST® (1-800-843-5678).

If you suspect a case of child sex trafficking, you can call 1-800-THE-LOST® or make a report at www.cybertipline.org.

LIVING WITH FEAR AFFECTS THE MIND AND BODY

The psychological state of fear affects us biologically. Our survival depends on the ability to respond to threat or reward, and predict the circumstance under which they are likely to occur.

"Primitive" part of brain – also called the "emotional brain" is highly attuned to signs of potential danger. Fear conditioning occurs when this part of the brain learns to perceive a mundane stimulus as a warning sign:

AMYGDALA is fear system's command center. When it perceives a threat, it triggers a body-wide emergency response which stimulates the:

HYPOTHALAMUS, which produces a hormone called *corticotropin* (CRF) which signals the:

PITUITARY AND ADRENAL GLANDS to flood the bloodstream with *Epinephrine (adrenaline), norepinephrine and cortisol.* These stress hormones then shut down nonemergency services (such as digestion and immunity), and direct the body's resources to:

FIGHT, FLIGHT, or FREEZING: heart pounds, lungs pump and muscles get an energizing dose of *glucose.*

The stress hormones also act on the brain, creating a state of heightened alertness and supercharging the circuitry involved in MEMORY FORMATION – telling the brain to make a strong memory of this event.

HIPPOCAMPUS helps evaluate threats by placing them in context of previous experiences.

SENSORY CORTEX separates threats from false alarms.

PREFRONTAL CORTEX reins in the Amygdala if an initial threat is deemed insignificant

PROLONGED STRESS can cause body dysregulation and actually change the structures of the brain:

- Constant, low-grade adrenaline baths may subtly damage the heart.
- Continuous exposure to cortisol can dampen the immune system, leaving stressed people more vulnerable to infections.
- Stress hormones can sever connections between neurons in the brain.
- Prolonged stress can shrink the hippocampus, which plays a critical role in processing and storing information.
- The prefrontal cortex may lose its ability to control the amygdale, allowing it to act unheeded and arouse fear in non-threatening situations.
- Even at low levels, anxiety can cause muscle tension, which can lead to aches (including headaches), pains and twitching eyes.
- Stress hormones can keep the body on constant alert, and the body is always accelerating (like a thermostat that is stuck); minor events then trigger major stress reactions because the brain has "over-generalized." (e.g., the bed did not rape her but now she's afraid to sleep in the bed where she was raped). This can lead to the development of PHOBIAS: where the amygdala takes over the rest of the brain every time it encounters some cue.
- Over the long term, fear can lead to impaired memory, high blood pressure, stomach ulcers, a weakened immune system, emotional numbing, constricted relationships, inability to enjoy oneself, etc.
- In children, prolonged fear can lead to developmental regression and myriad symptoms, because the child's growing brain learns everything faster than adults, and they are more vulnerable to emotional experiences. They are more likely to develop physical symptoms like stomachaches, physical malaise, acting out, etc.

See J.D. Bremner. (2002). Does stress damage the brain? N.Y.: W.W. Norton.

Stage Specific Effects of Domestic Violence

Adapted from *Domestic Violence: A National Curriculum for Child Protective Services*, Anne Ganley & Susan Schechter, Family Violence Prevention Fund, 1996.

0-1 year

How Perpetrators Use or Harm Children

- ✓ physically or sexually abusing the child
- ✓ waking child with the sound of the violence
- ✓ exposing child to assaults against mom or property
- ✓ threats of violence against child
- ✓ hitting or threatening child while in mother's arms
- ✓ taking child hostage to get mother to return

Effects on Children

- ✓ physical injury or death
- ✓ fear
- ✓ traumatization
- ✓ sleep disturbances
- ✓ eating disturbances
- ✓ colicky or sick condition
- ✓ nervous, jumpy, crying a lot
- ✓ insecure
- ✓ unresponsive or not cuddly
- ✓ premature birth

2- 4 years

How Perpetrators Use or Harm Children

- ✓ all the ways listed for age 0-1 years
- ✓ hurting child when he/she intervenes to prevent mom from being injured
- ✓ using a child as a physical weapon against victim
- ✓ interrogating child about mother's activities
- ✓ forcing child to watch assaults against mother or to participate in the abuse

Effects on Children

- ✓ all of the effects listed for age 0-1 years
- ✓ acting out violently
- ✓ withdrawal
- ✓ problems relating to other children
- ✓ delayed toileting
- ✓ insecurity
- ✓ depression

5-12 years

How Perpetrators Use or Harm Children

- ✓ physically or sexually abusing child
- ✓ being violent physically and/or sexually towards mother in front of the children
- ✓ hurting child when he/she intervenes to stop violence against mother
- ✓ using as spy against mother
- ✓ forcing child to participate in attack on mother
- ✓ interrogating child about mother's activities

Effects on Children

- ✓ physical abuse or death
- ✓ fear
- ✓ insecurity, low self-esteem
- ✓ withdrawal
- ✓ depression
- ✓ running away
- ✓ early interest in alcohol or drugs
- ✓ school problems
- ✓ becoming an overachiever
- ✓ bed-wetting or regression to earlier developmental stages
- ✓ sexual activity
- ✓ becoming caretaker of adults
- ✓ becoming violent
- ✓ developing problems to divert parents from fighting
- ✓ becoming embarrassed by his/her family

13-18 years

How Perpetrators Use or Harm Children

- ✓ physically or sexually abusing child
- ✓ coercing child to be abusive to mother
- ✓ being violent physically/sexually towards mother in front of children
- ✓ hurting child when he/she intervenes to stop violence against mother
- ✓ using child as a spy against mother
- ✓ forcing child to participate in an attack on mother

Effects on Teenagers

- ✓ physical injury or death
- ✓ school problems and truancy
- ✓ social problems
- ✓ shame and embarrassment about his/her family
- ✓ sexual activity
- ✓ tendency to get serious in relationships too early in order to escape home
- ✓ becoming super-achiever at school
- ✓ depression
- ✓ suicide
- ✓ alcohol and/or other drug abuse
- ✓ confusion about gender roles
- ✓ becoming abusive

Specific effects on young women

- ✓ fearing male violence
- ✓ learning that women do not deserve respect
- ✓ accepting violence in their own relationship
- ✓ becoming pregnant

Specific effects on young men

- ✓ fearing that males are violent; identification as the aggressor
- ✓ learning to disrespect women
- ✓ using violence in his own relationships
- ✓ confusion and/or insecurities about being a man
- ✓ attacking mother, father and/or siblings

Mitigating Factors Regarding the Effects of Witnessing Violence

Some children who witness domestic violence suffer significant effects as a result of the exposure, even though they may not be the primary victims of the violence. However, it is important to note that children react in different ways to the violence. Consequently, the effects of the violence vary, depending on a variety of factors such as:

- ➢ type and history of the abuse,
- ➢ age, gender and developmental level of the child,
- ➢ the child's interpretation of the violence,
- ➢ how the child has learned to survive and cope with stress,
- ➢ the support system available to the child and
- ➢ his/her ability to accept support and assistance from adults.

Remember, not all children who witness domestic violence suffer significant negative effects from the experience. Longitudinal studies reveal that 50-75% of children growing up in families with domestic violence, as well as exposure to other risks, defeat the odds and turn a life that appears destined for further hardship into one that illustrates resilience and triumph. ("Tapping Innate Resilience in Children Exposed to Domestic Violence", *Synergy*, Vol.7 No. 2, Summer 2003, by the National Council of Juvenile & Family Court Judges.)

Tools: Responding to Multi-abuse Trauma

Trust isn't always easy

People who have been traumatized may have trouble trusting others, even those who appear to have good intentions. Survivors may not trust advocates, counselors, therapists or other social service providers for a variety of reasons:

- *Negative past experiences.* People with multiple issues may have been passed from one agency to another for years without getting their needs met. Or they may have encountered providers who treated them in ways that felt confusing or disrespectful.
- *Fear of authority figures.* People with a history of trauma have often encountered authority figures who abused power, discounted them, or blamed them for their problems instead of helping them.
- *Fear of legal sanctions.* Survivors may fear prosecution if they disclose illegal behavior such as drug use, theft or commercial sex. Someone who has been incarcerated may fear going back to jail or prison. Someone with immigrant status may fear being deported.
- *Fear of being judged.* People with multiple issues may have heard repeatedly that their problems are caused by their own behavior, lack of personal responsibility, inappropriate decisions or bad character traits.
- *Fear of being discounted.* People who have been victimized by interpersonal violence often have a history of not being believed when they are telling the truth, especially if they have co-occurring issues such as a substance use disorder, mental illness or disabilities.
- *Fear of encountering stereotypes on the part of the provider.* Some survivors have encountered people who avoided or excluded them because of race, culture, disability, socioeconomic background, substance use history or mental health status.
- *Fear of losing children.* Some people fear that disclosure of parental substance abuse, mental health concerns, domestic violence or illegal activities will trigger an investigation by a child welfare agency. Survivors who have a substance use disorder, psychiatric symptoms, or physical or developmental disabilities, may fear being judged incompetent to provide adequate parenting.
- *Fear of being denied services.* Some survivors may fear being barred from a shelter or residential facility, denied public assistance or disqualified from other benefits if they disclose issues such as domestic violence, substance abuse, psychiatric issues, involvement in commercial sex or past incarceration. People who receive public assistance or live in subsidized housing may fear losing benefits or being evicted if they disclose that they are living with a partner.
- *Fear of losing autonomous decision-making power.* Providers who think they know an individual's needs better than she or he does may try to impose their own solutions and values.
- *Fear of reprisals.* People victimized by interpersonal violence may fear retaliation from the perpetrator if they report sexual assault to the police, seek an order of protection against a violent partner, or report any kind of abusive behavior directed toward them in an institutional setting.
- *Fear of being scapegoated.* Some individuals may fear being accused of things they didn't do. For example, someone who discloses a history of substance abuse or incarceration may be the prime suspect if something turns up missing from a shelter or residential facility.

Gaining trust

Despite valid reasons for not trusting others, people with a history of trauma need someone they trust enough to honestly tell as much of their story as they choose to share when they are ready. Here are some ways to demonstrate your trustworthiness and begin the process of gaining trust:

- Be willing to earn trust. Try not to be hurt or offended if a traumatized person who has been battered or sexually assaulted is angry or doesn't trust you right away. Allow people you serve to take as much time as they need to begin to trust you. Understand that this lack of trust has more to do with their life experience and your role than it does about you personally.
- Recognize all people need to earn trust and advocates, counselors and authority figures are no exception. Trust isn't automatic just because someone wants to help or is in a position of authority.
- Encourage individuals to participate in developing safety, service and/or treatment plans. This can help give them a sense of control.
- Explain what you are doing, and why, up front. No surprises. If people we serve suspect that information is being withheld from them or that they are being manipulated in any way, trust often evaporates.
- Understand that confidentiality is paramount in gaining trust, as well as an ethical imperative.
- Explain the limits of your confidentiality at the beginning of the intake process, before anyone begins talking. This may impact which issues an individual feels safe sharing with you.
- Walk the talk. If we have a different set of standards for ourselves than we have for the people we serve, we convey the message we feel superior to them.
- Believe people who tell you about traumatic incidents. Do this, even if someone seems confused or out of touch with reality, or says something you perceive as inaccurate. Try asking yourself, "What might be happening to make this seem true for this individual?" Consider how certain behaviors and beliefs make sense or could be a reasonable response to multi-abuse trauma. Don't ask, "Why are they acting this way?" Ask, "What happened to them to trigger this response? How can I help them find safer ways of coping that cause less grief?"
- Be willing to acknowledge when you don't have all the answers, and be willing to help the people you serve get the information they need.

Real Tools: Responding to Multi-Abuse Trauma
Alaska Network on Domestic Violence and Sexual Assault

Victims of Crime in Virginia

People impacted by crime in Virginia can apply for assistance with reasonable and necessary expenses that arise from the crime. These can include:

- Medical Expenses
- Funeral Expenses
- Lost Wages
- Prescriptions
- Crime-Scene Clean-Up
- Moving
- Temporary Housing
- Mileage
  - to medical appointments
  - to court-related appointments for child victims
- Loss of Support
  - From an Offender removed from the home in domestic violence or child sexual-assault cases
  - Dependents of Homicide Victims
- Counseling
  - For direct victims
  - For children who witness domestic violence
  - For the immediate family of a homicide victim

There are some eligibility requirements defined by Virginia law. However, there is some flexibility for child victims and other special circumstances. Contacting VVF or a local victim advocate may help in understanding these criteria.

The eligibility criteria are laid out below:

THE VICTIM

- must cooperate with law-enforcement agencies and the courts
- was not involved in illegal activity which caused the crime
- did not provoke or willingly take part in the crime

THE CRIME

- was committed in Virginia, or a country where Virginia residents are not eligible for compensation
- was reported to a law-enforcement agency within 120 hours (5 days), unless there is good reason for the delay

Advocates for Victims of Crime in Virginia

Victims in Virginia have a right to file with VVF protected by the Virginia Victim and Witnesses of Crime Act §19.2-11.01. Referring a victim to VVF, or helping them complete the VVF application, helps protect that right.

Advocates should be aware that if VVF makes an award on behalf of a victim, Virginia law requires that that VVF recollect the award from the offender(s) convicted of the crime. Safety planning with a victim should address the potential danger that can arise from recollection.

Technical support and training are available upon request to increase advocate knowledge and expertise about the Virginia Victims Fund and the benefits it offers. Contact VVF and ask to speak with the Training & Outreach Coordinator for more information.

Click here to request brochures or other materials.

Excellence in Victim Service Award

Every year, VVF presents an award to one Victim Witness Program to acknowledge their dedication to serving Virginia victims. Please congratulate the winners!

- 2016: Kate Griffin, Henrico County Victim Witness Assistance Program
- 2015: Donna Mixner, FBI Victim Specialist
- 2014: Washington County Victim Witness Program
- 2013: Richmond City Victim Witness Program
- 2012: Martinsville Victim Witness Program
- 2011: Virginia Beach Victims Witness Program
- 2010: Appomattox Victim Witness Program
- 2009: Winchester Victim Witness
- 2008: Lynchburg Victim Witness
- 2007: Norfolk Victim Witness Program
- 2006: Accomack County Victim Witness Program
- 2005: Chesapeake Sheriff's Office Victim Witness Program
- 2004: Danville Victim Witness Program

Commonwealth Attorneys

Per §19.2-368.3 (2) of the Code of Virginia, the Virginia Victims Fund requests investigative results, information, and data as will enable the Fund to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim was responsible for his own injury. A request for the police report is mailed directly to the appropriate police department or sheriff's office. The use of any information received by VVF is limited to carrying out the purposes of the Fund and this information shall be confidential and shall not be disseminated further.

§19.2-368.5 (D) establishes the relationship between Commonwealth Attorneys and the Virginia Victims Fund. The Virginia Victims Fund promptly notifies Commonwealth Attorneys when a claim is received on behalf of crime that occurs in their locality. A second notification is sent if the Fund makes an award on the claim. If a criminal prosecution occurs related to the crime, the Fund asks that the Commonwealth Attorney request the court to order restitution. Commonwealth Attorneys may notify the Fund in writing if they have objection to the investigation and determination of a claim.

Suggested Language for Sentencing Orders

§19.2-368.5 (D) requests that if a criminal prosecution occurs regarding a crime, the attorney for the Commonwealth shall request the court to order restitution. However, neither the lack of a restitution order, nor the failure of the attorney for the Commonwealth to request such an order, shall preclude the Fund from exercising its subrogation rights pursuant to § 19.2-368.15. When VVF has made an award, it is helpful if the order names the Virginia Victims Fund (or Criminal Injuries Compensation Fund).

Consider using the following language in your sentencing orders:

When VVF has made an award: "Restitution payable to VVF for crime related expenses"

When VVF has a claim pending: "Restitution ordered to payer of crime related expenses" (this will allow the clerk to direct the restitution wherever it is owed).

When VVF has made an award and there are still outstanding bills: List the specific amount owed to VVF and indicate any additional amounts should be directed to payer of crime related expenses.

Probation & Clerk's Offices

When the Virginia Victims Fund makes an award on behalf of a victim and restitution is ordered for those expenses, the restitution funds are directed to VVF. VVF also serves as the repository for unclaimed restitution in the Commonwealth of Virginia.

VVF can accept checks and money orders for restitution payments. Please be aware of the expiration dates on money orders, as VVF cannot accept money orders that have expired. Payments can also be made via credit card online.

Restitution

§19.2-368.5 (D) requests that if a criminal prosecution occurs regarding a crime, the attorney for the Commonwealth shall request the court to order restitution. However, neither the lack of a restitution order, nor the failure of the attorney for the Commonwealth to request such an order, shall preclude the Fund from exercising its subrogation rights pursuant to § 19.2-368.15. When the Virginia Victims Fund has made an award, VVF will collect against offenders who have been convicted of the crime.

When submitting restitution payments, the Restitution Payment Form should be used. Be sure to include both the victim's and the offender's name, and the CICF claim number on both the form and the payment itself.

Unclaimed Restitution

When restitution is ordered to a victim that cannot be located, is deceased, or goes out of business that restitution becomes unclaimed restitution. All unclaimed restitution should be forwarded to the Virginia Victims Fund per §19.2-305.1 (H), which specifies:

"If restitution is ordered to be paid by the defendant to the victim of a crime and the victim can no longer be located or identified, the clerk shall deposit any such restitution collected to the Criminal Injuries Compensation Fund for the benefit of crime victims".... "Before making the deposit he shall record the name, last known address, and amount of restitution due each victim..."

Unclaimed restitution should be submitted using the Report for Unclaimed Restitution-WC1. WC2 can be used if multiple accounts are submitted at one time.

VVF maintains balance records on unclaimed restitution received but does not maintain a copy of the sentencing order. As such, VVF would not have a record of the total restitution owed on a case that has become unclaimed restitution. This information would be available from the court that sentenced the defendant.

When a victim is located and looking for repayment, the office that submitted the unclaimed restitution must complete an Unclaimed Restitution and Repayment Form WC4. The repayment will be returned to that office or distributed to the victim as the WC4 directs.

WHAT WE DO TO TAKE CARE OF OURSELVES

"I do a lot of self-care," says Karen, a behaviorial health specialist and intensive case manager. "It's so vital. I practice my faith. I make sure that I put time aside to play. I have a work environment that's flexible, in that I can use comp time. If I end up in a situation that is really draining one day, I can take the next day off. I also have a lot of vacation time. I have positive co-workers that are really supportive, that I can debrief with at any given moment. The work environment, for it to be healthy, really has to be flexible. Reasonable caseloads are a huge factor too. And occasionally I access therapy."

"I have to make sure I eat," says Paula. "I have to eat my breakfast, and I can't overload on coffee. I make sure my exercise is in there. And I do my crafts."

"Self-care is important to me," says Erin, advocate at a shelter. "It might be little things like cleaning off my desk every day before I go home from work, so when I come to work in the morning, I have a fresh slate. Having lotion at my desk or having a little candle on my desk or always having a bunch of gum in my drawer or going out for lunch, getting out of the office. Going to the bookstore. And then, when you need it, take a day off. Don't wait until you're ready to quit. Take a day off and get out of the office and don't answer your cell phone."

It's not too relaxing for her to go to a national conference. She is one who will probably give more than she gets at the conference. She is just so excited to be able to attend trainings like that. If people are wanting to be mentors or wanting to become trainers, we give them the chance to grow professionally at their own rate of speed, however they feel comfortable. If they want to do trainings, or participate in the trainings we do, we bring them along. Sometimes at first, we bring them along to give them exposure, and once they feel comfortable, they start chiming in for parts of it, and before you know it, they are up there doing the bulk of that unit of training" (Moses, 2010).

□*Mentoring.* Both new and seasoned staff can benefit from mentoring relationships with people who have experience in the field. Shirley Moses says:

"Mentoring people is a big thing for me. I tell women who work with me, 'I'm 58 years old. I'd like to sit in a rocking chair on a deck that I want to build in my spare time someday. I want you guys to feel comfortable and recognize your strengths, where you can take over.' We have the SART meetings, and I really want my advocates with me on a regular basis. One of them goes to the domestic violence task force meetings with me. At first they sat, and I was the vocal one and now they are becoming the vocal ones in that venue, and they are getting recognized. People don't just look at me now. They look to whoever is with me sometimes, because they are the ones who have taken over that role or responsibility" (Moses, 2010).

□*Consultation or counseling.* Professional consultation or counseling allows advocates and other providers to acknowledge and reflect on their reactions to the intense feelings and extreme behaviors sometimes exhibited by survivors of multi-abuse trauma. Examining personal responses in a supportive, confidential, trauma-informed, professional counseling relationship can be a powerful source of support in identifying and managing vicarious trauma (Perlman & Caringi, 2009). "The healer needs to have someone for support in that area, so that they make sure they stay current with their own issues, and for processing issues that present themselves about the work," says Cindy.

□□*Realistic expectations.* Focus on process rather than outcomes. For many survivors, especially those with multiple trauma issues, healing is a long, slow process. A focus on doing what needs to be done rather than on an individual's ability to live differently, will likely result in less frustration for both providers and the people they serve. Realize that even the most competent providers cannot accomplish miracles. They can neither undo the past nor protect people from all future harm (Perlman & Caringi, 2009). Also have realistic expectations for yourself, in terms of the workload you are capable of handling.

□□*Boundary management.* Set clear boundaries between home and work. Managing boundaries appropriately includes remembering the provider's role and mandate, treating the people one serves with respect and leaving work at the office (Perlman & Caringi, 2009). Paula, Shelter Coordinator, says: "I constantly tell people, 'It's good to

feel compassion. But let the problems leave when the people leave your bubble. Don't take on everybody's stuff.' That is a healthy boundary. I don't take the women in the shelter or the staff everywhere I go."

People who last longer as advocates and helping professionals generally develop a system of closure. Long-term advocates report numerous coping strategies such as saying a prayer at the end of the day, changing clothes, placing a rock in a garden, lighting a candle, taking a walk, a bath, or a steam when they are ready to move from the work setting to their personal space. The method of closure is less important than the purpose it serves. Advocates with good boundaries are able to let go at the end of a day, acknowledge they have done what they can and let go long enough to actively engage in their own lives. This balanced approach fosters good health and makes it possible for advocates and other providers to continue doing their work just for today, one day at a time.

□□*Respite and replenishment.* Create frequent opportunities to engage in activities offering distraction and/or personal growth, to exercise, have fun, rest, relax and connect with others. Physical activities during breaks at work such as stretching, taking a walk and exercising may provide an antidote to ongoing bodily tension and may further counter the sedentary nature of many work settings (Perlman & Caringi, 2009).

□□*Spiritual renewal.* Given the central role of spirituality or meaning systems to trauma, it is essential to attend to the development of whatever is self-nourishing, whether that be traditional practices such as prayer and organized religion, or being useful to others, or enjoying nature (Perlman & Caringi, 2009). Participate in activities designed to increase your personal tolerance level. Including journaling, personal counseling, meditation, and obtaining emotional support from significant others allows reconnection to emotions (Trippany, Kress & Wilcoxon, 2004).

□*Social activism.* Advocates and other providers angry about injustices – ranging from perpetrator behavior to lack of appropriate funding levels for social service agencies, statements made by judges or defense attorneys, and societal attitudes toward victims –

may find social activism is a way to channel their feelings in a productive and constructive manner (Wasco & Campbell, 2002).

□*Balance.* Confronted with the daily reality of people in need of care, advocates and other providers are in constant danger of professional over- commitment. Providers must understand their own realistic limits and strive to take as good care of themselves as they do of others. Providers have many strengths and resources they use to help traumatized people. Helping themselves, as well, serves both their own interests and the best interests of the people they serve (Herman, 1997).

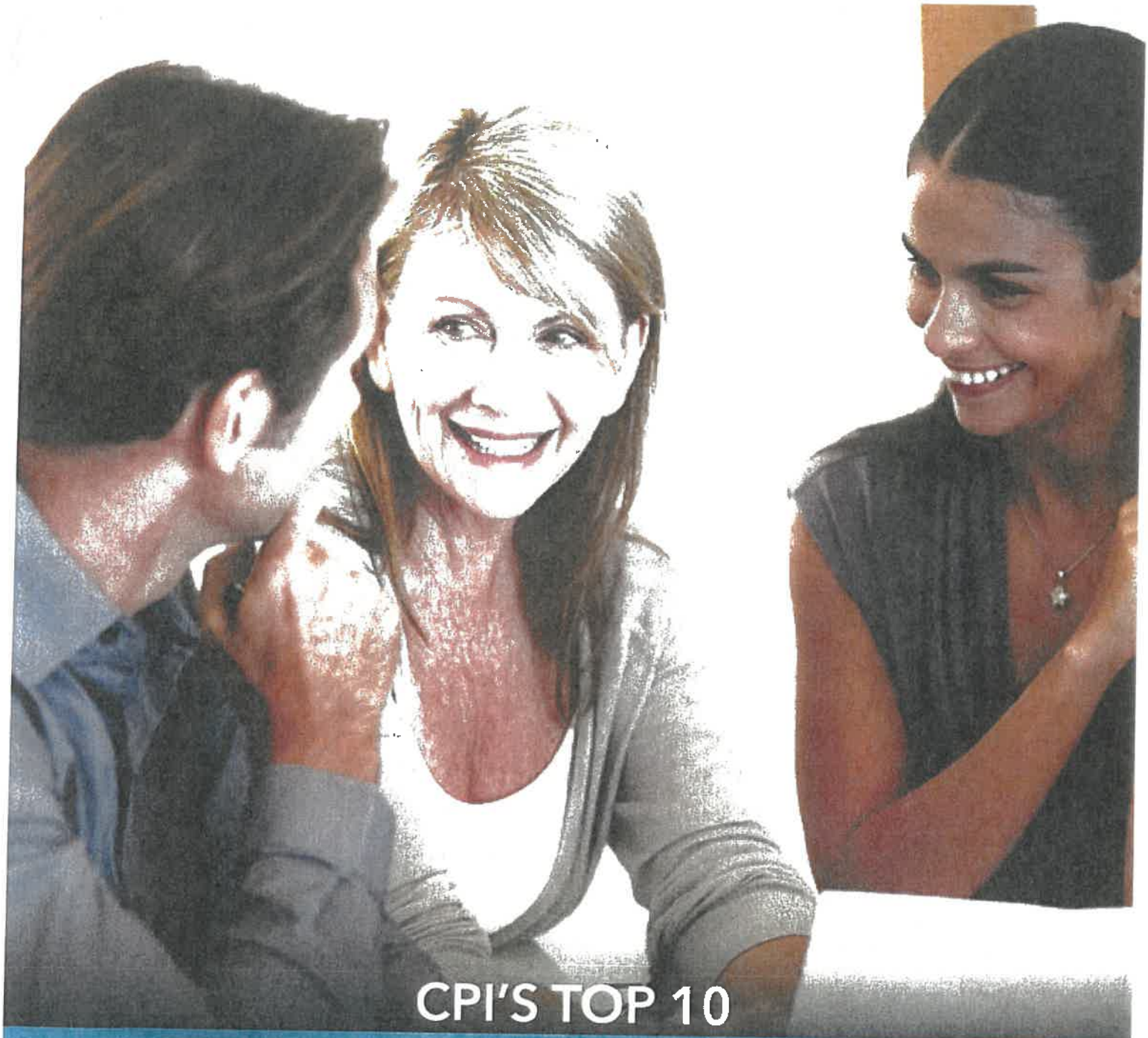
"My brain says I can do all kinds of things," says Cindy. Only half jokingly, she adds, "And my body says, 'What? Are you kidding?'" Balance also includes the development of healthy habits. Getting sleep and good nutrition can reduce the toll stress places on the body. While nicotine can act as an anti- hostility agent and alcohol and other drugs can initially provide relaxation, energy or escape, reliance on these substances can pose health dangers and other risks for advocates and other providers.

Paula, shares:*"It's good to feel compassion. But let the problems leave when the people leave your bubble. Don't take on everybody's stuff. That is a healthy boundary. I don't take the women in the shelter or the staff everywhere I go."*

The Alaska Network on Domestic Violence Training Project encourages advocates to consider alternatives to alcohol and other drug use following exposure to trauma and stressful events. We recommend debriefing following a stressful incident within 24 hours, preferably before sleep. Sharing feelings, rather than confidential details, with another trusted human being as soon as possible is critical. It is also helpful to refrain from substance use (including alcohol) for at least 72 hours (or longer) following a traumatic incident whenever possible. These choices can facilitate the internal processing of a traumatic event and serve as psychological first-aid reducing the likelihood of long- term mental health consequences.

Finally, remind yourself that you really are making a difference in people's lives. "You don't always know you're helping when you're

helping, because they don't always tell you," says Olga Trujillo, Director of Programs at Casa de Esperanza in St. Paul, MN. "So just hold onto that, that you can make a huge difference in people's lives and you do make a difference" (Trujillo, 2009).



CPI'S TOP 10

DE-ESCALATION TIPS

cpi

CAN THESE TIPS HELP ME?

Whether you work in education, healthcare, human services, business, or any field, you might deal with angry, hostile, or noncompliant behavior every day. Your response to defensive behavior is often the key to avoiding a physical confrontation with someone who has lost control of their behavior.

These Top 10 De-Escalation Tips will help you respond to difficult behavior in the safest, most effective way possible.

TIP 1

BE EMPATHIC AND NONJUDGMENTAL.

When someone says or does something you perceive as weird or irrational, *try not to judge or discount their feelings.* Whether or not you think those feelings are justified, *they're real to the other person.* Pay attention to them.

Keep in mind that whatever the person is going through, it may be the most important thing in their life at the moment.

TIP 2

RESPECT PERSONAL SPACE.

If possible, *stand 1.5 to three feet away* from a person who's escalating. Allowing personal space tends to *decrease a person's anxiety* and can help you *prevent acting-out behavior.*

If you must enter someone's personal space to provide care, explain your actions so the person feels less confused and frightened.

TIP 3

USE NONTHREATENING NONVERBALS.

The more a person loses control, *the less they hear your words*–and the more they react to your nonverbal communication. Be mindful of your *gestures, facial expressions, movements, and tone of voice.*

Keeping your tone and body language neutral will go a long way toward defusing a situation.

TIP 4

AVOID OVERREACTING.

Remain *calm, rational, and professional.* While you can't control the person's behavior, *how you respond to their behavior* will have a direct effect on whether the situation escalates or defuses.

Positive thoughts like "I can handle this" and "I know what to do" will help you maintain your own rationality and calm the person down.

TIP 5

FOCUS ON FEELINGS.

Facts are important, but *how a person feels is the heart of the matter.* Yet some people have trouble identifying how they feel about what's happening to them.

Watch and listen carefully for the person's real message.

Try saying something like "That must be scary." Supportive words like these will let the person know that you understand what's happening–and you may get a positive response.

TIP 6

IGNORE CHALLENGING QUESTIONS.

Answering challenging questions often results in a power struggle. When a person challenges your authority, *redirect their attention to the issue at hand.*

Ignore the challenge, but not the person. Bring their focus back to how you can work together to solve the problem.

TIP 7

SET LIMITS.

If a person's behavior is belligerent, defensive, or disruptive, give them *clear, simple, and enforceable limits.* Offer concise and respectful choices and consequences.

A person who's upset may not be able to focus on everything you say. Be clear, speak simply, and offer the positive choice first.

TIP 8

CHOOSE WISELY WHAT YOU INSIST UPON.

It's important to be thoughtful in deciding *which rules are negotiable and which are not.* For example, if a person doesn't want to shower in the morning, can you *allow them to choose* the time of day that feels best for them?

If you can offer a person options and flexibility, you may be able to avoid unnecessary altercations.

TIP 9

ALLOW SILENCE FOR REFLECTION.

We've all experienced awkward silences. While it may seem counterintuitive to let moments of silence occur, sometimes it's the best choice. It can *give a person a chance to reflect on what's happening,* and how he or she needs to proceed.

Believe it or not, silence can be a powerful communication tool.

TIP 10

ALLOW TIME FOR DECISIONS.

When a person is upset, they may not be able to think clearly. Give them a few moments to *think through what you've said.*

A person's stress rises when they feel rushed. Allowing time brings calm.

Thank You!

We hope you found these tips helpful. Please feel free to share this resource with a friend or colleague.

Want to see how CPI training can help you improve your de-escalation skills?

Watch this video ›

Have questions? We can help!

Give us a call at 888.426.2184 or email info@crisisprevention.com

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Emotional Needs of Children Who Have Domestic Violence in Their Families

1. Dealing with Fear

Feeling fear of those they love, in their home, where they should feel most safe.

Students need to:

- Be able to talk to someone they trust about their feelings.
- Learn ways to keep themselves safe and have a plan for what to do when there is violence.
- Have a feeling of control in the situation. (e.g. "I will go to the neighbors house if I feel unsafe").

Plan:

- Listen to their feelings.
- Let them know that it is OK to talk about the violence and ask questions.
- Develop a safety plan with the student.

2. Dealing with Anger

Feeling angry at the abusive person, or at the survivor for not leaving the situation

Students need to:

- Know that it is *normal* and *okay* to feel angry.
- Be able to talk about their feelings with someone they trust.
- Express their anger in non-destructive ways and work on being nonviolent.

Plan:

- Acknowledge the student's anger and their right to feel angry.
- Teach the student to express anger by talking about it, not by hitting, yelling, etc.
- Model appropriate expression of anger by using respectful communication.

3. Dealing with a mixture of anger and love

Feeling torn between feelings of anger and love toward the abusive person.

Students need to:

- Learn that it is okay to feel both anger and love toward someone.
- Know it is okay to love their parent even when they hate the behavior they see.
- Know that are not bad if they love the abusive parent.

Plan:

- Help the student understand that it is normal to have positive and negative feelings for someone they love.

4. Confusion about being able to love both parents

Feeling the need to choose one parent over the other, or the need to take sides.

Students need to:

- Know that it is okay to love both parents at the same time.

Plan:

- Support children who interact with both parents so that they don't feel caught in the middle.
- Encourage children to talk freely about feelings for, or activities with both parents. (If they want to).

5. Dealing with loss

Loss of a healthy, safe family; loss of one parent if they leave, or the constant threat of this; loss of comfort in the home

Students need to:

- Talk about feeling with someone they trust
- Develop a support system of extended family or friends outside of the home

Plan:

- To help the child identify another person; for example, a grandparent, aunt or uncle, teacher, counselor, etc., who they can talk to about their feelings.
- To encourage the child to spend time with supportive family members and friends.
- To speak honestly and thoughtfully about changes in life that might affect them.

6. Handling feelings of guilt and responsibility

Fear of having caused the violence, or not stopping it in some way. Feeling that they have to prevent the violence, take care of Mom, or take care of the family.

Students need to:

- Understand that the violence is not their fault, that it is an adult problem for the adults to work out.

Plan:

- Talk honestly about the violence and reassure the child that they are not to blame.
- Make sure that the child does not take full responsibility for housework, chores, child care, etc. that are the parent's responsibility.
- Take whatever steps possible to ensure that violence does not take place again.

7. Feeling life is unpredictable and never knowing when a crisis will erupt

Feeling vulnerable on a daily basis, with no power or control about what will happen

Students need to:

- Find areas in their lives where they can have control and make plans and decisions
- Create a safety plan
- Create some structure and stability wherever possible (e.g. creating a daily routine that provides a sense of control).

Plan:

- To help the child plan a predictable daily routine to help them have a sense of control.

"Children have more need of models *than* critics." –Joseph Joubert

Source: Helping Children who Witness Domestic Violence: A guide for parents. Instructor's Manual. By Meg Crager and Lily Anderson. Funded by the King County Women's Program. 1997.

Safety Planning

When you believe a student is being exposed to domestic violence you need to ensure that they have a plan that will keep them safe from harm.

STAY OUT OF THE FIGHT

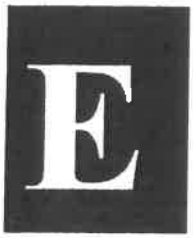
- You may want to get in the middle of the fight to protect and help, but this is not a safe thing for you to do.
- Stay out of the room where the fighting is happening

AVOID GETTING TRAPPED IN A SMALL ROOM, CLOSET, THE KITCHEN OR BATHROOM

- You may feel like hiding, but if you go into a corner or closet, it may be difficult for you to get out again safely.
- Don't get trapped in the kitchen or bathroom where there are objects and surfaces that may be dangerous.

FIND A PHONE IN A SAFE PLACE, CALL 911 FOR HELP AND STAY ON THE PHONE.

- Use a phone out of reach and out of sight of the abuser. For safety, you may go to a neighbor you trust and use their phone.
- Tell the person on the phone what is happening in your home and ask for immediate help. Give you address to the person on the phone. Stay on the line until the police arrive.



ESCAPE TO A SAFE PLACE, FIND A RELATIVE OR NEIGHBOR AND ASK FOR THEIR HELP.

- Think about grownups that you would feel safe talking to.
- Don't give up if the first person you go to won't help. Try another person and keep trying until you find someone to help you.

Always remember…the violence is not your fault!

SAFETY & SUPPORT FOR CHILDREN WHO WITNESS DOMESTIC VIOLENCE

POSITIVE INFLUENCES

- Allow children to talk about the violence
- Listen to their feelings without judging
- Make sure children understand violence is not their fault
- Be a role model. Show by example there are better ways to solve problems
- Encourage cooperation and respect in children's relationships with other children
- Discourage fighting and teasing
- Establish a daily predictable routine
- Create opportunities for age-appropriate fun
- Devise a code word for children to use with trusted adults when they need help
- Find additional support for children
- Watch and listen closely for signs that the child is being directly abused; be prepared to respond

NEVER FORCE A CHILD TO TALK OR SHARE. WAIT UNTIL THEY ARE READY.

HUMAN TRAFFICKING

PART 2

The Hon. Tanya J. Bullock
Jole Leon Guerrero, CHKD

COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: MULTIDISCIPLINARY TEAM RESPONSE

Daisy Schuurman, CSEC Program Coordinator
Dawn Scaff, MSN, RN, Operations Coordinator PFNE Program
Jolé Leon Guerrero, CSEC Case Manager

WHAT ARE WE SEEING IN OUR COMMUNITY?

Where does Virginia rank?

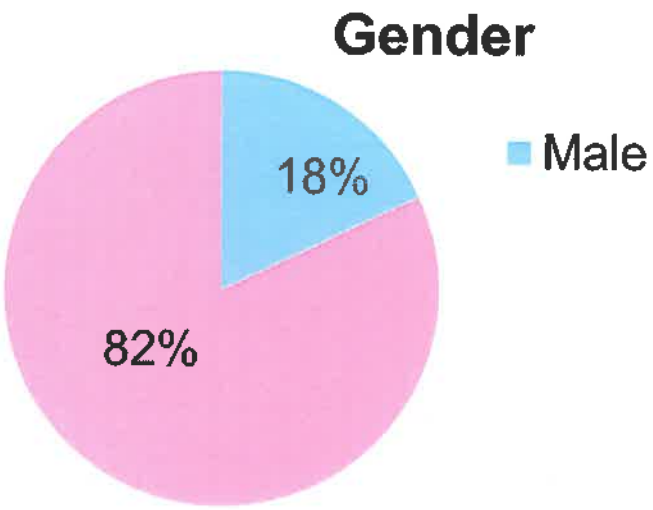
- The National Human Trafficking Hotline
  - Virginia ranks 15th in Human Trafficking Reported by State
    - 156 total cases reported in 2017
      - 47 of those cases reported were regarding minors (compared to 19 in 2015)

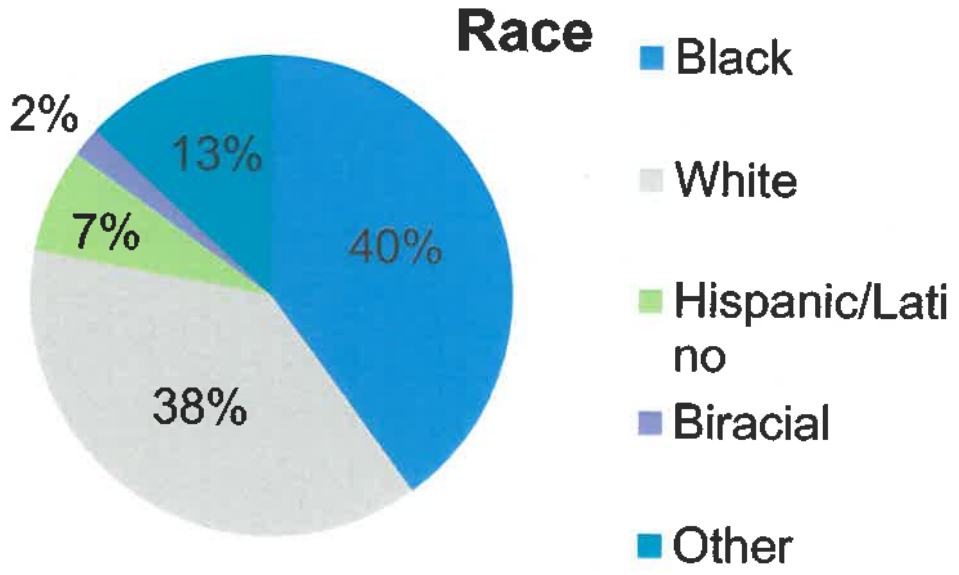
- CSEC is significantly underreported and under-identified, and youth are unlikely to be accessing services to support their safety and recovery

- Risk Factors Specific to our Area
  - Resort cities and beaches attract both runaways and perpetrators
  - On the 95 corridor
  - Military

Our CSEC Youth

Average age of entry:
12





Presentation in Court

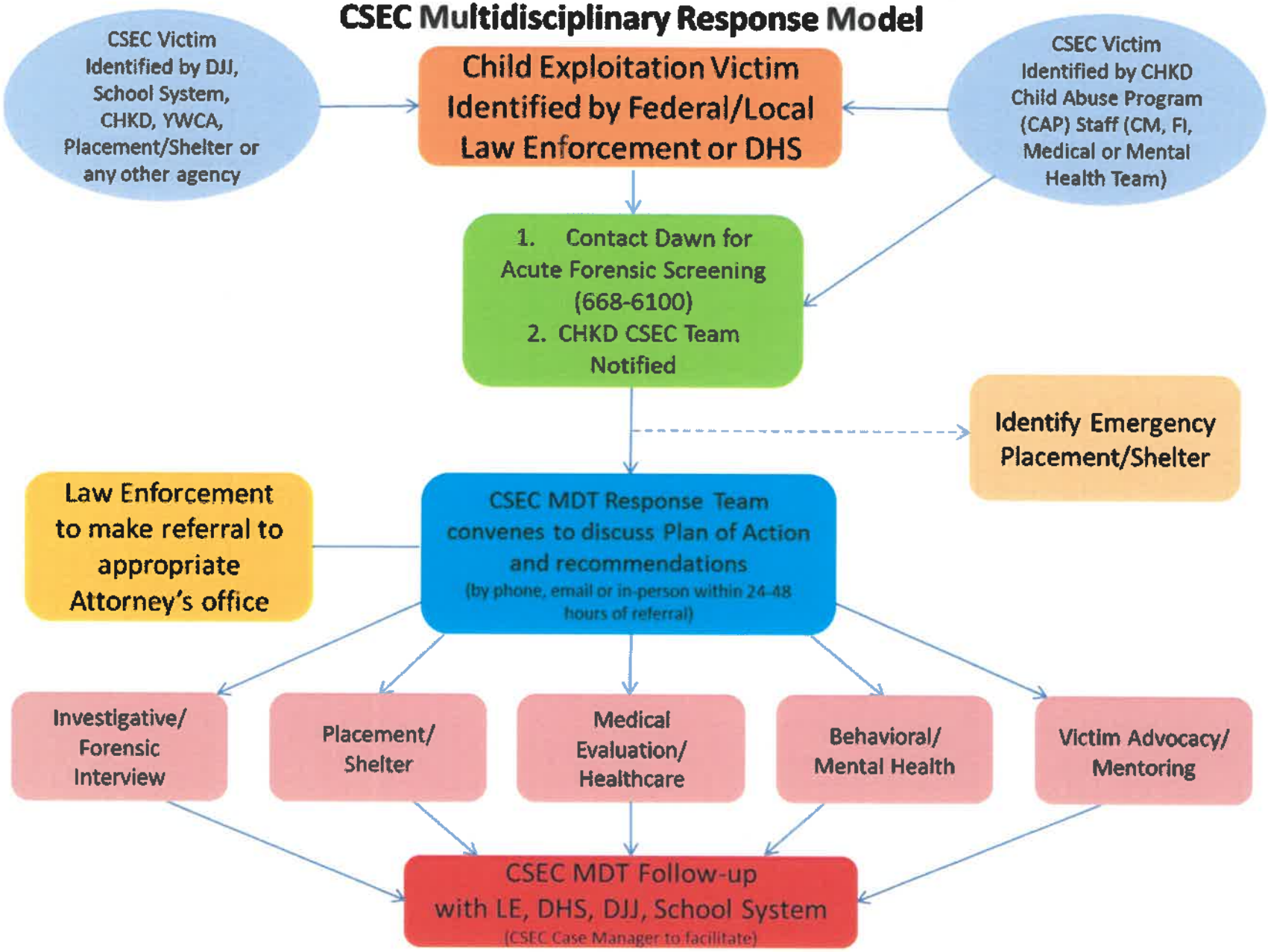
- Homeless or runaway (chronic runaway)
- Truancy
- History of Abuse/Neglect
- Child in foster care
- Substance abuse
- Current and/or previous involvement with law enforcement
- Gang activity (suspected)

OUR MDT RESPONSE

CSEC Referral Process

- Due to the nature of these cases the process may vary from case to case
  - Sting recovery
  - Runaway
  - Child discloses during FI/medical/therapy

CSEC Multidisciplinary Response Model



Immediate Needs Response

- In the event that a youth is identified as a possible trafficking victim, youth will be provided with an acute needs assessment by CSEC Team

- Assess the youth's basic needs
  - Immediate safety of the youth
  - Acute medical needs assessment
  - Emergency placement needs

- May not always occur at the CAC
  - Detention
  - Police Department
  - Hospital

Questions?

Panel 2 9/20/2018

Trauma Focused Therapy

Dr. Suzanne Baldwin

Rachel Evans, Associate City Attorney

TREATING THE FAMILY INVOLVED IN THE CHILD WELFARE SYSTEM

-C. Cunningham, Associate City Attorney, City of Virginia Beach
2018

To treat the family involved in the child welfare system, one must understand the child welfare system, the reason why the family is involved in the system (from all perspectives- not just the families' perspective), as well as the basic needs of the family. When a client arrives at a therapist's door asking for help, one may not realize the client has been "ordered into therapy." If a practitioner is not familiar with the system, he or she may inadvertently not help the client. It is important for practitioners involved with treating clients involved in the child welfare system to understand child abuse and neglect and how mental health treatment should best be provided to such families. It is also important for providers involved with such families to be willing to work with, not against, the system. This often means working with numerous other professionals, in-home workers, family services specialists, gals, CASA, and the court. This also means more work than with clients not involved in the system. It means reports, conferences, teamings, and testimony. It may mean lots of additional obligations that some providers are not willing to take on, especially if they are not consistently involved in these types of cases. Clients should ensure that the therapists they use are knowledgeable of the trauma associated with child maltreatment and comfortable with the tasks associated with such cases. Attorneys representing clients involved in these cases should make it clear to their clients that selection of the treatment providers can be crucial to their success in remedying the conditions which lead the family to become involved in the child welfare system.

THE BASICS:

There are 4 types of child "maltreatment": neglect, physical abuse, sexual abuse, and emotional or psychological abuse.[1] Child maltreatment stems from many causes, including but not limited to, human error, psychological issues, parental history, problems with the parent-child bond, economics, and environmental stresses.[2]

Children placed in foster care suffer from the trauma that placed them in care and the trauma that comes from being in care and separated from their families. The

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[1] Wekerle, C., & Wolf, D.A. (2003) Child Maltreatment. In E.J. and R.A. Barkley (Eds.), Child Psychology, 2nd Ed., (pp.632-684), New York: Guilford Press.
[2] Gonzalez, Manny J., Mental Health Care of Families Affected by the Child Welfare System, Child Welfare Vol. 93, NO. 1, Silberman School of Social Work, Hunter College.

behavior that result is often severe: depression, aggression, defiance, attachment issues, and general mistrust of adults.[3]

Physically abused children are often diagnosed with PTSD and major depressive disorder. They have a distorted view of the world in comparison to non-abused children. This distorted view leads to suppressed moods, non-verbal incongruence, and rote verbal responses. This behavior has been called "compulsive compliance."[4]

Neglected children generally show a lack of drive or motivation, anger, anxiety, depression, and often, developmental delays and cognitive issues. They often have problems retaining information and with forming positive attachments.[5]

Victims of child sex abuse harbor a host of short and long term problems: aggression, feeling of betrayal and loss, PTSD, sleep disorders, problems in concentration, anxiety disorder, depression, interpersonal problems, sexual dysfunction, and suicidal thoughts and tendencies.[6]

When maltreatment results in separation, the child experiences guilt, abandonment, fear, and anger.[7]

Resolving the trauma in a manner that either leads to successful reunification or at least, some level of permanency for the child, is the overall goal of the mental health practitioner treating the family involved in the child welfare system. To do that, one must understand and treat the mental health and trauma needs of the parents - who may have unresolved trauma themselves. And- while a caregiver may indeed have an actual mental health diagnosis that contributed to the maltreatment of the child, it is often the case that no such diagnosis exists. Instead, the maltreatment stems from a multitude of concerns involved in the caregiver's life, whether directly related to the caregiver's own past history and personal psychological characteristics, or from independent toxic environmental factors.[8]

Therapists treating offending caretakers may not understand their role in the reunification process. Practitioners that do not regularly treat patients involved in "the system" may see their role in providing therapy to advocate for their patient's wants and desires. Thus it is not uncommon for such providers to communicate with "the system" that the client is merely depressed because the system "took the child." While

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[3] Ehrenkranz S., Goldstein, E, Goodman, L., & Seinfield, J., (Eds.) (1989) Clinical Social Work Practice: An Introduction to Practice. New York: NYU Press.
[4] Wekerle & Wolfe at 639.
[5] Gonzalez, at 13.
[6] Lipovsky, Judith, & Hanson, Rochelle, Treatment of Child Victims of Abuse and Neglect, Children's Law Center.
[7] Gonzalez, at 10.
[8] Gonzalez at 19 citing Cooper, JL, Banghart, P., & Aratani, Y. (2010) Addressing the Mental Health Needs of Young Children in the Child Welfare System: What Every Policy Maker Should Know, New York: National Center for Children in Poverty.

undoubtedly, the caretaker is suffering due to the separation, a practitioner dedicated to reunification services will seek out all collateral sources of information (through the use of proper releases of information) to understand all of facts of the case from the points of view of all parties involved. This will help to develop a course of treatment that will assist the patient to remedy the behavior that led to the separation and mitigate the risk of further maltreatment.

Treating the family involved in the child welfare system will involved diagnostic assessment of all caretakers and the child, a review of socioeconomic factors affecting the outcome, and an assessment of the caretaker's own motivation to effect change. Early and front-loaded services that integrate evidence based therapeutic modalities work well in achieving long term goals. Again, the primary goal is to provide corrective and reparative therapies that encourage a sense of safety, trust, and positive interaction.[9] Thus to be successful, the treatment of these families must be integrated and availed of a multifaceted approach. Knowledge of the current evidence based modalities, such as TF-CBT, is necessary for achieving successful outcomes, to mitigate the effects of trauma, and to help families achieve a level of stability through the use of coping skills and adaptive functioning, all of which are essential for the development of life-long interpersonal skills and healthy child development.[10]

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[9] Gonzalez at 22-24.
[10] Gonzales at 50.

Trauma Focused Therapy

?? TF-CBT??

I'm a lawyer - give me the basics:

The formal term is trauma- focused cognitive behavioral therapy or TF-CBT for short. TF-CBT is an evidence based treatment model for children and adolescents who have significant trauma related problems. It focuses on behavior modification and resilience-building using a 9 component model.[1] The model is summarized using the acronym "practice," specifically psychoeducation and parenting, relaxation, affective skills, cognitive processing, trauma narration, "in vivo" mastery, conjoint parent-child sessions, and enhancing sessions.[2] The model is strictly followed by most Child Abuse Programs but also private practitioners use facets of the model to integrate a more holistic approach to therapy addressing trauma. The model has 3 phases.

Phase 1- Stabilization

1. Psychoeducation and Parenting Skills: help parents understand trauma and address responses to trauma and behaviors associated with trauma

2. Relaxation Skills: skills to mitigate or reverse the affects of trauma

3. Affective Skills: skills to address emotional dysregulation in children from trauma

4. Cognitive Processing: skills to understand the connections between feelings, thoughts, actions, and trauma

Phase 2- Trauma narration

5. Trauma Narration: the process of the child describing the trauma and the experiences the child associates with the trauma

Phase 3- Consolidation of the the Skills

6. "In Vivos" Mastery: skills to address fear and avoidance associated with trauma

7. Conjoint Therapy: parent /child sessions to foster communication about the trauma

8. Enhancing Sessions: skills to enhance safety and promote further stability as well as to address loss of trust issues associated with a child's fear that a parent will not be protective in the future[3]

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[1] Judith Cohen, Esther Deblinger, & Anthony P. Mannarino (2018) Trauma-Focused Cognitive Behavioral Therapy for Children and Families, Psychotherapy Research, 28:1, 47-57, DOI 10.1080/10503307.206.1208375.

[2] Id.

[3] Id. at 47-48.

The success of TF-CBT relies heavily on a trusting and open therapeutic relationship between the therapist, the child, and the parent. The therapist incorporates individual child and parent sessions as well as joint sessions using family therapy principles.

It is important to include the non-offending parent in therapy; this can help the parent cope and help to establish or re-establish - trust between parent and child. It also allows the parent to support the child in treatment. Practitioners of TF-CBT strive to give parents the resources and skills necessary to help their children cope with the psychological ramifications of the abuse or other trauma and to learn skills that will allow them to stabilize their emotions and behaviors in the future.[4]

[4] https://www.goodtherapy.org/learn-about-therapy/types/trauma-focused-cognitive-behavioral-therapy

The Elephant in the Room.....

Do a child's statements to the therapist get admitted and/or may the therapist disclose them at trial when discussing the foundation for their expert opinion testimony?

The Basics:

Virginia Code §8.01.401.1 provides, "(i)n any civil action any expert witness may give testimony and render an opinion or draw inferences from facts, circumstances or data made known to or perceived by such witness at or before the hearing or trial during which he is called upon to testify. The facts, circumstances or data relied upon by such witness in forming an opinion or drawing inferences, if of a type normally relied upon by others in the particular field of expertise in forming opinions and drawing inferences, *need not be admissible in evidence* (emphasis added).

In the seminole case of McMunn v. Tatum, the Virginia Supreme Court held:

> (Virginia) Code § 8.01-401.1 was based, with minor alterations, upon Federal Rules of Evidence 703 and 705. Therefore, the construction given to those rules by the federal courts is instructive. It is apparent from the language of Fed. R. Evid. 703 that its purpose was to authorize the admission into evidence of the opinions of experts testifying in court, notwithstanding the fact that the opinions were based upon inadmissible information, provided such information is of the kind reasonably relied upon by other experts in the witness' particular field of expertise. The federal rules are silent, as is our statute, with respect to the admissibility of the otherwise inadmissible information upon which the expert's opinion is based, at least upon the expert's direct examination. The federal courts have treated this as a casus omissus, and *have divided* on the question whether traditional rules of evidence require the exclusion of hearsay offered on direct examination of an expert as the basis of his opinion; the majority hold that it should be excluded. See, e.g., Marsee v. U.S. Tobacco Co., 866 F.2d 319, 323 (10th Cir. 1989) (not error to exclude hearsay as basis for opinion); Bryan v. John Bean Division of FMC Corp., 566 F.2d 541, 544-47 (5th Cir. 1978) (error to admit such hearsay basis -- lacking "guarantee of trustworthiness"); Rose Hall, Ltd. v. Chase Manhattan Overseas Banking Corp., 576 F. Supp. 107, 158 (D. Del. 1983), aff'd without opinion 740 F.2d 958 (3rd Cir. 1984), cert. denied 469 U.S. 1159 (1985) (hearsay basis for opinion excluded); cf. O'Gee v. Dobbs Houses, Inc., 570 F.2d 1084, 1089 (2nd Cir. 1978) (implication that such evidence 7 might be admissible). The text of Code § 8.01-401.1 gives it no broader scope than that of the parent federal rules, and we will not attribute to the General Assembly any purpose beyond that which motivated the federal drafters. The admission of hearsay expert opinion without the testing safeguard of cross-examination is fraught with overwhelming unfairness to the opposing party. No

> litigant in our judicial system is required to contend with the opinions of absent "experts" whose qualifications have not been established to the satisfaction of the court, whose demeanor cannot be observed by the trier of fact, and whose pronouncements are immune from cross-examination. In Gaalaas v. Morrison, 233 Va. 148, 157-58, 353 S.E.2d 898, 903 (1987), we were presented with the question whether a hearsay foundation related as a basis for an expert opinion was fact or opinion. We determined that the admission of the hearsay, if it was opinion, was harmless error under the circumstances of that case. We now hold that Code § 8.01-401.1 does not authorize the admission in evidence, upon the direct examination of an expert witness, of hearsay matters of opinion upon which the expert relied in reaching his own opinion, notwithstanding the fact that the opinion of the expert witness is itself admitted, and notwithstanding the fact that the hearsay is of a type normally relied upon by others in the witness' particular field of expertise.

McMunn v. Tatum, 237 Va. 558 (1989).

So----- is that the end of the analysis????

The "hearsay" in McMunn dealt with medical bills in the context of a dental malpractice case. On appeal from a verdict for the plaintiff, the defendant dentist contended that it was error for the court to have precluded the introduction of the records of the physicians relied upon by the defendant's expert for causation. The trial court ruled that the defendant's expert, "could state his opinion that the plaintiff's injuries were self-inflicted, and could rely on the medical records from the Mayo Clinic and Duke with respect to factual matters, but that he could not express the opinions of other physicians because they were not available for cross-examination." Using the rational set forth above, the Virginia Supreme Court agreed.

How would the Court treat the same objection to hearsay in the form of statements made by a child to a therapist?

In the recent case of Castillo v. Loudoun Cty. Dep't of Family Servs., 68 Va. App. 547 (Va. App. 2018), the Court of Appeals reviewed this very issue. In an appeal by a father of a trial court's termination of his parental rights, the father contended that the circuit court misapplied Virginia Rule of Evidence 2:703 by permitting an Agency expert to testify regarding hearsay statements by his children that formed the basis of his opinion regarding their bond with the foster parent/prospective adoptive placement. Because the expert's testimony was appropriately admitted for the limited purpose of demonstrating the basis of his opinion, and its admission was harmless even if it constituted error, the Court of Appeals affirmed the circuit court's ruling.

In so ruling, the Court of Appeals held:

Rule 2:703(a) permits expert witnesses in civil cases to base opinion testimony on any material normally relied upon by others in that field, even if that information is inadmissible in evidence. This rule, derived from Code § 8.01-401.1, does not provide *carte blanche* for litigants to introduce otherwise inadmissible material in derogation of the ordinary rules of evidence. Instead, the Supreme Court has ruled that Code § 8.01-401.1 "does not authorize the admission in evidence, upon the direct examination of an expert witness, of hearsay matters of opinion upon which the expert relied in reaching his own opinion." *Commonwealth v. Wynn*, 277 Va. 92, 98, 671 S.E.2d 137, 140 (2009) (quoting *McMunn v. Tatum*, 237 Va. 558, 566, 379 S.E.2d 908, 912, 5 Va. Law Rep. 2285 (1989)). Virginia precedent unequivocally holds that neither Rule 2:703(a) nor Code § 8.01-401.1 permits "the introduction of otherwise inadmissible hearsay evidence during the direct examination of an expert witness merely because the expert relied on the hearsay information in formulating an opinion." *Id.* at 100, 671 S.E.2d at 141 (citing *McMunn*, 237 Va. at 565, 379 S.E.2d at 912).

These limitations, however, pertain only to disclosure on direct examination. The statute recognizes that "[t]he expert may in any event be required to disclose the underlying facts or data on cross-examination." Code § 8.01-401.1. Additionally, the otherwise inadmissible hearsay statements forming the basis of an expert opinion may be admissible for a purpose other than their truth, such as to demonstrate the basis of the expert's opinion. *See Cartera v. Commonwealth*, 219 Va. 516, 518, 248 S.E.2d 784, 786 (1978) (recognizing that otherwise inadmissible hearsay statements regarding a patient's physical and emotional condition may be admitted for the limited purpose of showing the basis of a physician's expert opinion); *Campos*, 67 Va. App. at 711, 800 S.E.2d at 185 (observing that the *Cartera* rule "is not technically an exception to the hearsay rule; instead, it sets forth a nonhearsay use for such statements: to show the basis of [an expert's] opinion rather than for the statements' truth"); *see also* Charles E. Friend & Kent Sinclair, *The Law of Evidence in Virginia* § 13-8[d] (7th ed. 2012) (noting that Virginia precedent recognizes that otherwise inadmissible hearsay statements "may be admitted simply on the grounds that they are not being offered for their truth, but merely to show the basis of the expert's opinion"). In admitting Walker's testimony regarding the children's statements, the circuit court ruled: "[The testimony] will only be accepted as to the basis for the opinion that he rendered about this bond." The circuit court thus recognized that even on direct examination, otherwise inadmissible hearsay statements may enter evidence for a limited purpose other than their truth. Because its ruling was consistent with the accepted evidentiary principles articulated above, this Court holds that the circuit court did not abuse its discretion in admitting (the expert's) testimony regarding the children's statements for the sole purpose of demonstrating the basis of his expert opinion. But even if the circuit court erred in admitting the statements as a basis for (the) expert opinion, such error was harmless in light of the extensive other evidence indicating that remaining with the (foster parent) was in the children's best interests. *See Lavinder*, 12 Va. App. at 1005-06, 407 S.E.2d at 911. Walker opined that, based on his observations of the children's interactions with the (foster parent), the children had a "very strong" bond with the (foster parent) and "it would be traumatic, without a doubt" for them to be removed from the (foster parent's) home. Thus, even absent (the expert's) testimony regarding the hearsay as a basis of his opinion, the trial court nevertheless had sufficient evidence with which to conclude that the children's interests would be best served by remaining with the (foster parent.)

Castillo v. Loudoun Cty. Dep't of Family Servs., 68 Va. App. 547 (Va. App. 2018).

Panel 3 9/20/2018

Commingled Cases????

Christianna Dougherty-Cunningham, Associate City Attorney

Paul Powers, Deputy Commonwealth Attorney

Debbie Dail/LaShonda Carson/Kristen Sweitzer, CASA

FINDING OUT YOUR CUSTODY AND/OR CRIMINAL CASE IS MIXED UP WITH DHS?

NUANCES IN ETHICS, TIMELINES, DISCOVERY, THIRD PARTY PARTICIPANTS, AND MORE

SOMETIMES, CLIENTS LEAVE OUT DETAILS....LOTS OF DETAILS...

- I WAS RETAINED FOR A CUSTODY CASE AND NOW I GOT A CPS WORKER, SOMEBODY CALLED AN "ON-GOING" WORKER (*WHERE DO THEY KEEP GOING*?), A CITY ATTORNEY, THE COPS, THE COMMONWEALTH, THE PD, AND SOMEBODY NAMED A CASA ALL CALLING ME!!???

THINK FAST

- DO YOU/CAN YOU REPRESENT YOUR CLIENT ON *ALL OF THESE* MATTERS? WHAT DO YOU NEED TO KNOW TO DECIDE THIS QUESTION? *WITH WHOM* DO YOU NEED TO SPEAK AND COORDINATE?
- WHAT ISSUES ARE RAISED BY THE COMMINGLING OF THESE MATTERS? WHAT ABOUT THE FIFTH AMENDMENT?
- HOW CAN YOU GET MORE INFORMATION? IS THERE DISCOVERY IN DHS CASES?
- WHO AND WHAT IS CASA? DOES MY CLIENT HAVE TO TALK TO THEM?
- WHAT IS A FPM? WHAT IS A FTM?
- WHAT IS THIS TIMELINE EVERYONE KEEPS TALKING ABOUT AND WHEN CAN IT BE *WAIVED?*

ETHICS AND PRACTICALITY

- CAN YOU (*SHOULD YOU*) REPRESENT CLIENT ON ALL OF THE CASES PENDING?
- **** RULES ON COMPETENCY?
- **** ALREADY APPOINTED PD?
- ****IF YOUR CLIENT QUALIFIED FOR PD IN CRIMINAL CASE, QUALIFIES FOR CAC IN DHS CASE– BTW- HOW IS HE PAYING YOU?
- ****NO RIGHT TO COUNSEL IN CUSTODY CASE

BRETTA IS DOING ETHICS LATER BUT....

- **RULE 1.1 COMPETENCE**

A LAWYER SHALL PROVIDE COMPETENT REPRESENTATION TO A CLIENT. COMPETENT REPRESENTATION REQUIRES THE LEGAL KNOWLEDGE, SKILL, THOROUGHNESS AND PREPARATION REASONABLY NECESSARY FOR THE REPRESENTATION.

HAVE YOU EVER DONE DHS? IT IS VERY NUANCED AND STATUTORY- NOT A LOT OF FLEXIBILITY IN THE LAW? DO YOU HAVE TIME- LITERALLY!!???

DO YOU HANDLE CRIMINAL CASES ON A REGULAR BASIS?

SHOULD YOU TAKE ONE BUT NOT THE OTHER?

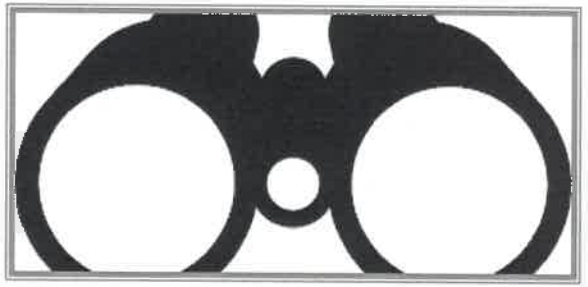
WHAT ISSUES ARE RAISED BY THE COMMINGLING OF THESE MATTERS? WHAT ABOUT THE FIFTH AMENDMENT?

5TH AMENDMENT??

MAY APPLY TO CIVIL AS WELL AS CRIMINAL CASES BUT NOT ALWAYS

CONTINUANCES??

FOSTER CARE V. PROTECTIVE ORDER



DISCOVERY?

VA SUP. CT. RULE 8:15(C)

VIRGINIA CODE §63.2-1516.1(B)

WHO AND WHAT IS CASA? DOES MY CLIENT HAVE TO TALK TO THEM?

- VIRGINIA CODE §9.1-151 *ET. SEQ.* ESTABLISHED THE VIRGINIA COURT APPOINTED SPECIAL ADVOCATE PROGRAM. IT PROVIDES FUNDING AND RESOURCES FOR VOLUNTEERS TO BE APPOINTED AS ADVOCATES FOR CHILDREN ON THE ABUSE AND NEGLECT DOCKET. THEY ARE AN EXTRA SET OF EYES FOR THE COURT AND WORK TO ENSURE THE SAFETY AND PERMANENCY OF THE CHILDREN INVOLVED. THEY ARE TYPICALLY APPOINTED UNTIL A PERMANENT GOAL IS ACHIEVED OR THE CHILD AGES OUT OF CARE. HOWEVER, A NEW PROGRAM IS BEING ESTABLISHED TO WORK WITH SELECT CHILDREN PAST THE AGE OF 18.

WHAT IS A FPM? WHAT IS A FTM?

- FPM- FAMILY PARTNERSHIP MEETING
- FTM- FAMILY TEAMING MEETING

WHAT IS THIS TIMELINE EVERYONE KEEPS TALKING ABOUT AND WHEN CAN IT BE *WAIVED?*

- THE "TIMELINE" IS THE TITLE IV-E TIMELINE SET FORTH BY FEDERAL STATUTE BY WHICH COMPLIANCE IS MANDATED FOR THE STATE TO GET REIMBURSED BY THE FEDERAL GOVERNMENT FOR CERTAIN FOSTER CARE SERVICE FEES AND COSTS.

FOSTER CASES V. CPO CASES

- IN CASES WHERE THE CHILD IS IN FOSTER CARE- THE TIMELINE CANNOT BE WAIVED, AND *NUNC PRO TUNC* ORDERS WILL NOT CURE DEFECTS IN THE REQUIREMENT OF TIMELY ENTRY OF ALL ORDERS. NO CONTINUANCES BEYOND THE TIME LIMITS ARE ALLOWED (*NOT EVEN FOR INCLEMENT WEATHER ☹*).

- IN PPO CASES, THE COURT *MAY* WAIVE STRICT ADHERENCE TO THE TIMELINE AS FUNDING IS NOT AT ISSUE. HOWEVER, THIS MAY STILL CAUSE THE CASE TO BE FLAGGED BY OES IN THE COURT'S COMPUTER SYSTEM.

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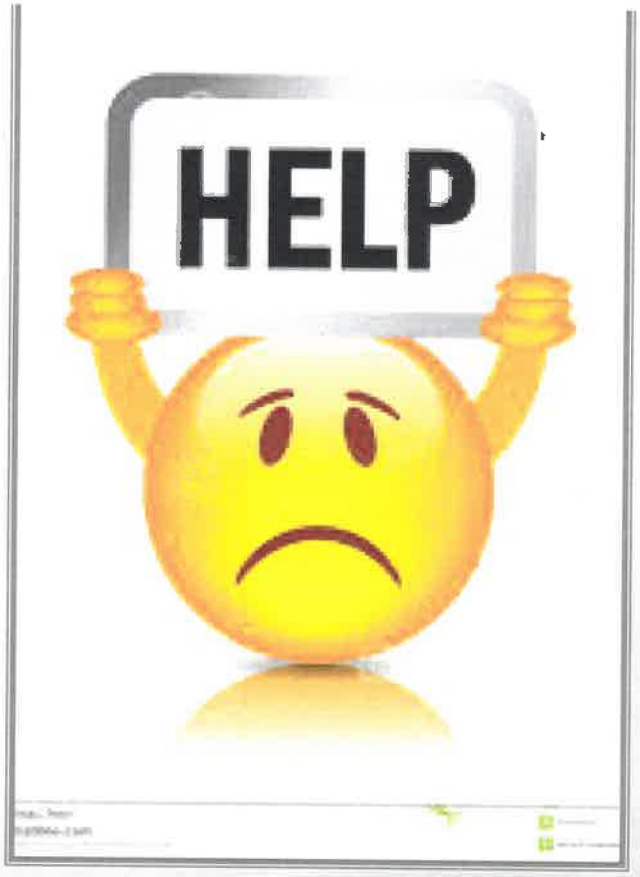

FINDING OUT YOUR CUSTODY AND/OR CRIMINAL CASE IS MIXED UP WITH DHS? NUANCES IN ETHICS, TIMELINES, DISCOVERY, THIRD PARTY PARTICIPANTS, AND MORE

Sometimes, clients leave out details....lots of details... Picture if you will, a new client interview.

You meet with Mr. John Jones, who says he wants to file for custody and visitation of his child. He says the child is a 5 year old boy (Jimmy Jones) and he and the child's mother are separated. He also says his ex, the mother (Sarah Jones), has filed a custody and visitation IN VBJDR and that she already has a court date in a few days. He says they separated a while ago and have not been living together. He further says, at first, he got regular visitation but after he and mom got into a fight over her new boyfriend who spent the night at her house, she won't let him see his son. You agree to represent him and do an engagement agreement. Your engagement agreement's scope of representation covers "representation of Mr. Jones in all aspects relating to custody and visitation of Jimmy Jones, and any appeals related thereto."

You appear at the court date with your client but when you walk in, you are confused because a city attorney is sitting at counsel table with 20 files and DHS workers are sitting 10 fold in the gallery. There are a few police officers in the mix as well. You approach and discover that while there is a pending custody petition filed by Ms. Jones, there are also preliminary protective orders("PPO") filed against both parents by DHS and this hearing is "the 5-day hearing." The clerk tells you that your petitions will be added to the docket and will track along with the DHS case and set for a later contested date. You also discover that an ex parte order has already been entered approximately 5 days ago that requires, among other things, your client to have no contact with the child. You are given a lengthy affidavit and discover that in addition to the pending PPO matter, the affidavit states that your client has been charged with misdemeanor assault and battery, felony child abuse, and possession of cocaine – all related to the incident giving rise to the DHS case. That case is set for prelim next month. Your client is out on a sizeable surety bond that requires no contact with the child or mother or her boyfriend.

The city attorney tells you that DHS is proceeding on the affidavit that morning and that an adjudication and disposition will be set. The city attorney asks if your client is now willing to attend a FPM or FTM as he previously refused to talk to the workers.

While you are walking back to find your client, a man introduces himself and says he is the CASA assign to the case and will need to meet with your client at some point.

HUH?!?

Several questions:

1.) Do you/Can you represent Mr. Jones on *all of these* matters? What do you need to KNOW to decide this question? *With whom* do you need to speak and coordinate?
2.) What issues are raised by the commingling of these matters? What about the Fifth Amendment?
3.) How can you get more information? Is there discovery in DHS cases?
4.) Who and what is CASA? Does my client have to talk to them?
5.) What is a FPM? What is a FTM?
6.) What is this TIMELINE everyone keeps talking about and when can it be *waived?*

PART 1- YOUR ETHICS AND THE PRACTICAL SENSE OF IT ALL

CAN YOU (*SHOULD YOU*) REPRESENT CLIENT ON ALL OF THE CASES PENDING?

**** Rules on Competency?
**** Already appointed PD?
****If qualified for PD in criminal case, qualifies for CAC in DHS case.
****No right to counsel in custody case

PART 2- WHAT ISSUES ARE RAISED BY THE COMMINGLING OF THESE MATTERS? WHAT ABOUT THE FIFTH AMENDMENT?

Courts have expanded the Fifth Amendment's protection to be applicable in civil cases as well as criminal. The Fifth Amendment protects against *compelled testimonial* evidence. *Moyer v. Commonwealth*, 33 Va. App. 8, 20, 531 S.E.2d 580, 586 (2000) (quoting *Fisher v. United States*, 425 U.S. 391, 400-01, 96 S. Ct. 1569, 48 L. Ed. 2d 39 (1976) "(w)e adhere to the view that the Fifth Amendment protects against 'compelled self-incrimination, not [the disclosure of] private information.'")); *Fisher*, 425 U.S. at 409-10.

However-in *North Am. Mort. v. Pomponio*, 219 Va. 914, 918, 252 S.E.2d 345, 348 (1979), the Court noted that "[t]here is no blanket Fifth Amendment right to refuse to answer questions in noncriminal proceedings." While a party to a civil case may invoke the privilege against self-incrimination, "[t]he privilege must be specifically claimed on a particular question and the matter submitted to the court for its determination of the validity of the claim." *Id.*

In deciding whether to grant a stay pending the outcome of action in another court, factors for consideration include the identity of the parties and issues in both actions, the time of filing, promotion of judicial efficiency and possible prejudice to a party if the stay is granted. *Potomac Savings Bank, FSB v. Lewis*, 25 Va. Cir. 184 (Fairfax Cir. Ct. 1991); *Great American Ins. v. Cavalier Printing Ink*, 620 F. Supp. 1082, 1083 (E.D. Va. 1985).

** IF THE CIVIL CASE IS A PPO- A CONTINUANCE *MAY* BE GRANTED TO STAY THE ADJUDICATION UNTIL AFTER A COMPANION CRIMINAL CASE IS TO A MORE COMPLETE STAGE

** IF THE CIVIL CASE INVOLVES FOSTER CARE- IT MAY NOT BE CONTINUED..... SO- BEST BET- AGREE TO THE FINDING AND DISPOSITION AND AUTOMATICALLY APPEAL.

PART 3- HOW CAN YOU GET MORE INFORMATION?

****IS THERE DISCOVERY IN DHS CASES?

Pursuant to Virginia Supreme Court Rule 8:15 (c) an order permitting discovery is required in cases of civil abuse and neglect.

WHAT ABOUT WHERE THE CASE IS COMMINGLED WITH A CRIMINAL CASE?

> Pursuant to Virginia Code §63.2-1516.1(B), in all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

Relevant Law:

Virginia Code §63.2-1516.1(B) is firmly grounded in the boundaries of the prosecution's rights and obligations with regard to the preservation of both its case and the due process rights of the potential criminal defendant. Virginia's well-settled precedent has established that employees of a local department of social services who are "involved in the investigation of the child abuse allegations (are) agents of the Commonwealth for purposes of Rule 3A:11(b)(2)." *Tuma v. Commonwealth*, 283 Va. App. 685, 725, S.E.2d. 555 (2012) citing *Ramirez v. Commonwealth*, 20 Va. App. 292, 296, 456 S.E.2d 531, 533 (1995). "Where an agency is involved in the investigation or prosecution of a particular criminal case, agency employees become agents of the Commonwealth for purposes of Rule 3A:11 and must be considered a party to the action for purposes of Rule 3A:12." Id. at 296-97, 456 S.E.2d at 533. "'The Commonwealth is charged with the responsibility to interview all government personnel involved in a case in order to comply with its discovery obligations.'" *Id.* citing *Knight v. Commonwealth*, 18 Va. App. 207, 214, 443 S.E.2d 165, 169, 10 Va. Law Rep. 1154 (1994) (quoting *Harrison v. Commonwealth*, 12 Va. App. 581, 585, 405 S.E.2d 854, 857, 7 Va. Law Rep. 2700 (1991)). In *Tuma* the Court went on to hold, "(i)t is axiomatic that if personnel of a department of social services are agents of the Commonwealth for the purposes of discovery under Rule 3A:11, they are certainly such for the purpose of providing constitutional due process for a criminal defendant." The *Tuma* Court further recognized that Virginia Code § 63.2-1516.1 specifies that when a department of social services participates in a criminal investigation, it is the law enforcement agency and the prosecutor who determine what information to release to third parties and not the department. *Id.* at 297-298.

In sum.... to get discovery in a DHS case.... You must make a motion under Rule 8:15(C). However, if your case is commingled with a criminal case, the Court may not grant discovery without the expression permission of the Commonwealth. So any motion regarding such discovery should notice and afford the Commonwealth the opportunity to appear and be heard. Of course, where your client is represented by separate counsel on the criminal case- you will want to be sure you are closely coordinating efforts. And- there is a good chance your criminal counterpart may have already received the discovery you seek from the Commonwealth in the context of the criminal case as DHS is required to turn over its file to the CWA.

PART 5- WHO AND WHAT IS CASA? DOES MY CLIENT HAVE TO TALK TO THEM?

Virginia Code §9.1-151 *et. seq.* established the Virginia Court Appointed Special Advocate program. It provides funding and resources for volunteers to be appointed as advocates for children on the abuse and neglect docket. They are an extra set of eyes for the court and work to ensure the safety and permanency of the children involved. They are typically appointed until a permanent goal is

achieved or the child ages out of care. However, a new program is being established to work with select children past the age of 18.

CASA volunteers meet with the children involved in the case as well as all family members, treatment providers, educators, social workers, and other parties involved or who have information related to the case. CASA volunteers file written reports with the court; such reports may be reviewed – but not kept- by all counsel of record to the case.

CASA is not a party to the case. However, CASA may be called as a witness to the case. See Virginia Code §9.1-153.

CASA has access to the child's educational, therapeutic, and medical records. See Virginia Code §9.1-156. All state and local agencies must cooperate with CASA. See Virginia Code §9.1-157.

Non-compliance with CASA? A Court issue. Non-compliance on the advice of counsel where a parent is facing criminal charges- likely understandable and excusable based upon 5th Amendment issues. Non-compliance where no criminal cases are pending- likely a problem.

PART 6- WHAT IS A FPM? WHAT IS A FTM?

FPM- FAMILY PARTNERSHIP MEETING

FTM- FAMILY TEAMING MEETING

** SEE ATTACHED VDSS OFFICIAL POLICY

ARE ATTORNEYS INVOLVED IN THESE MEETINGS?

** FPMs *usually do not* involve attorneys other than a GAL. Parents are welcome to bring their counsel and if they do, a City Attorney will generally attend as well.
** FTMs usually involve attorneys if possible—but they do not have to.

DHS makes every effort notify everyone for which they are aware and able. However- it is up to the parent to keep in touch with their attorney regarding attendance at such meetings.

PART 7- WHAT IS THIS TIMELINE EVERYONE KEEPS TALKING ABOUT AND WHEN CAN IT BE *WAIVED?*

The "Timeline" is the Title IV-E timeline set forth by Federal Statute by which compliance is mandated for the State to get reimbursed by the Federal Government for certain foster care service fees and costs.

In cases where the child is in foster care- the timeline **cannot** be waived, and *nunc pro tunc* orders will not cure defects in the requirement of timely entry of all orders. No continuances beyond the time limits are allowed (*not even for inclement weather ☺*).

In PPO cases, the Court *may* waive strict adherence to the timeline as funding is not at issue. However, this may still cause the case to be flagged by OES in the court's computer system. Many times PPO cases involving serious criminal offenses are stayed pending the criminal action disposition to avoid the issues raised in this material.

That being said- where a child is in care- DHS must proceed and work closely with the Commonwealth as to how to manage the fact the DHS may have to try its case before the CWA does.

Where you are being retained or appointed on a foster care case, should you find that your schedule will not fit the timeline- you may need to discuss with your client your "practical" ability to handle the matter on their behalf.

THE TIMELINE

TIMING	STATUTE	HEARING TYPE	FORMS
Immediately	§ 16.1-251 § 16.1-253	Emergency Removal Order (ERO)	Petition DC – 511 Emergency Removal Order DC-526 Preliminary Child Protective Order, if necessary, DC-527
Within 5 Days	§ 16.1-252 § 16.1-253	Preliminary Removal Order (PRO) & Adjudication	Petition DC – 511 Preliminary Removal Order DC – 528 Preliminary Child Protective Order, if necessary, DC – 527
Within 30 Days	§ 16.1-252 § 16.1-253	Adjudication, only if no adjudication at PRO	Petition DC – 511 Adjudicatory Order-561
Within 45 Days	§ 16.1-281	Submission of Foster Care Service Plan. No court hearing at this time	Foster Care Service Plan *Client Education Report from OASIS* *Client Health Report from OASIS* *Transition Plan including the Youth Rights Acknowledgement page*
Within 60 Days of Preliminary Removal Order Hearing	§ 16.1-277.01 § 16.1-277.02 § 16.1-278.2 § 16.1-278.3 § 16.1-281	Disposition – Initial Foster Care Service Plan Reviewed	Child protective Order DC-532 Foster Care Plan Transmittal DC - 552 Foster Care Plan Part A Permanency Plan Part B, if initial goal is not return home Dispositional Order for Petition DC – 553 *Client Education Report from OASIS* *Client Health Report from OASIS*

			Transition Plan including the Youth Rights Acknowledgement page
Within 4 Months of Disposition	§ 16.1-282.1	Foster Care Review Hearing	Petition for Foster Care Review Hearing DC – 554 Foster Care Plan Transmittal DC – 552 Foster Care Plan Review Foster Care Review Order DC – 555 *Client Education Report from OASIS* *Client Health Report from OASIS* *Transition Plan including the Youth Rights Acknowledgement page*
Within 5 Months of Foster Care Review Hearing	§ 16.1-282.1 § 16.1-283	Initial Permanency Planning Hearing	Petition for Permanency Planning Hearing DC – 556 Foster Care Service Plan Transmittal DC – 552 New Foster Care Plan Part A Permanency Plan Part B Foster Care Plan Review Permanency Planning Order DC – 557 *Client Education Report from OASIS* *Client Health Report from OASIS* *Transition Plan including the Youth Rights Acknowledgement page*
Within 6 Months of Initial Permanency Planning Hearing or Second Permanency Planning Hearing	§ 16.1-282.1	Subsequent Permanency Planning Hearing for goals of Return Home, Placement with Relatives, (If interim plan approved at Initial PPH)	Petition for Permanency Planning Hearing DC – 556 Foster Care Plan Transmittal New Foster Care Plan Part A Permanency Plan Part B Foster Care Plan Review Permanency Planning Order DC – 557 *Client Education Report from OASIS* *Client Health Report from OASIS*

Within 6 Months of Second Permanency Planning Hearing and Every 12 Months Thereafter	§ 63.2-907 § 16.1-282.1	Administrative Review	Foster Care Plan Review Form or Adoption Progress Report Administrative Panel Review Form *Client Education Report from OASIS* *Client Health Report from OASIS* *Transition Plan including the Youth Rights Acknowledgement page*
6 Months from Date of Approval of Another Planned Permanent Living Arrangement (APPLA) or 12 Months from Last Permanency Planning Hearing for Adoption Prior to Final Order, Permanent Foster Care, or Independent Living when assigned prior to July 1, 2011 Filed Every 6 Months from the Date of Final Order Terminating Parent Rights	§ 16.1-282.1	Foster Care Review Hearing Foster Care Review Hearing Adoption Progress Report Filed until final order of adoption is issued; the court may not hold a hearing	Petition for Foster Care Review DC – 554 Foster Care Review Order DC – 555 Foster Care Plan Transmittal DC – 552 Foster Care Plan Review Foster Care Review Order DC – 555 Client Education Report from OASIS Client Health Report from OASIS Transition Plan including the Youth Rights Acknowledgement page Adoption Progress Report

2.9.3 Scheduling Family Partnership Meetings

The service worker and supervisor should discuss the convening and timing of an *FPM.* Requested meetings should be scheduled **within two (2) weeks** of the request, or as quickly as possible if safety issues are present. In scheduling these meetings, consideration should be given to the work schedules of parents and other relatives, transportation issues, availability of an interpreter when the parents' primary language is not English, need for child care, and any other barriers that might prevent parents and relatives from participating.

2.9.4 Paying for Family Partnership Meetings

Local Community Policy and Management Team (CPMT) policies may allow the use of State Pool funds to purchase services necessary to support a structured *FPM* e.g., trained facilitation.

2.9.5 Documenting the Family Partnership Meeting

All *FPMs* shall be documented in OASIS, including participants, location, and recommendations. This information is ultimately linked to data on child and family outcomes in order to ensure continuing self-evaluation of the *FPM* process and its effectiveness. See guidance on Documenting Family Partnership Meetings.

2.10 Using Child and Family Team Meetings

FPMs are only one means to engage the family in decision making. They generally occur infrequently over the course of a case and, therefore, are not sufficient in and of themselves to ensure partnership with family. Additional strategies are needed. VDSS encourages the use of a regular CFTM as a continuation of the work of FPMs. These meetings include the youth, parents, extended family and all service providers. They provide a mechanism by which regular review of services and progress is shared among all the individuals involved in the case and where the family's needs and preferences routinely inform decision making.

In the matrix below, the FPM and CFTMs are compared and contrasted. The opportunities for family engagement, incorporation of voice and choice and teaming are addressed in both, but differences are also highlighted.

Comparison of FPM and CFTM	
Family Partnership Meetings (FPM)	**Child and Family Team Meetings (CFTM)**
Purpose: To involve birth families (parents and extended family members) in all critical case decisions and to ensure a network of support for the child and the adults who cares for him/her.	**Purpose:** To involve birth families (parents and extended family members) in on-going case planning, monitoring and adjusting; to ensure that all team members have access to all information about the case; to ensure that all team members understand the goal(s) of service provision and the current plan to protect the child and to achieve permanency; and to ensure a network of support for the child and the adults who cares for him/her.
When: At the point that a critical case decision must be made: potential child removal; potential child placement change (placement disruption or change in foster care goal); or reunification.	**When:** As often as needed. Ideally, meetings will be held at least monthly and the next one will be scheduled at the end of the current one.
Who: family and extended family; youth; social worker; supervisor; family supports as identified by the family; providers (maybe); attorneys (maybe); CASA (maybe); eligibility worker (maybe); community representative; FPM facilitator.	**Who:** family and extended family; youth; social worker; supervisor (maybe); family supports as identified by the family; foster and adoptive family or placement representative; school representative; all treatment providers ; attorneys; CASA; eligibility worker (maybe) Probation officer (if applicable), etc.
Logistics: scheduling to maximize parent and family participation; ideally held in neutral location; consider use of conference calling; and transportation and child care should be provided by LDSS.	**Logistics:** scheduling to maximize full team participation, including parents, foster and adoptive parents and critical extended family members; usually held at LDSS or service provider office; consider use of alternative meeting space and/or conference calling; and transportation and child care should be addressed (meetings are scheduled in advance, so community based or natural resources can be engaged.)

Values based upon: • *All families have strengths.* • *Families are the experts on themselves Families can make well-informed decisions about keeping their children safe when supported.* • *Outcomes improve when families are involved in decision making.* • *A team is more capable of creative and high quality decision making than an individual.*	***Values based upon:*** • *All families have strengths.* • *Families are the experts on themselves Families can make well-informed decisions about keeping their children safe when supported.* • *Outcomes improve when families are involved in decision making.* • *A team is more capable of creative and high quality decision making than an individual.*
Stages of the Meeting/ Agenda: • *Introduction: purpose and goal; introduction of participants; and meeting guidelines.* • *Identify the situation: Define the concern/ decision to be made.* • *Assess the situation: safety needs; risk concerns; strengths and supports; hx of services; participants' perception of the situation; and worker recommendation(s).* • *Develop ideas: brainstorm in three categories, placement/custody, actions to provide safety, and services to reduce risk.* • *Reach a decision: consensus based decision (if possible) and addressing agency safety concerns, action plan, and linkage to services.* • *Recap/closing: review of decision and who will do what; any questions.*	***Stages of the Meeting/ Agenda:*** • *Introduction: names and roles.* • *Review of progress: each team member (starting with parents) provides an update of progress made in the last month and which serviced have been completed and/or which treatment goal have been met.* • *Identification of concerns/services needing adjustment: each member (starting with parents) addresses areas of concern and/or what is not working well or may need to be adjusted.* • *Review of goal(s): team explores fit between progress, services and goals; team members (including family) make recommendations as to improving fit or clarifying goal(s); next steps.* • *Action plan is developed.* • *Next meeting is scheduled.*

Summary of Differences: • *Led by a facilitator.* • *Supervisor as well as service worker attend. Family participation is the most critical aspect Extensive pre-work ensures family is engaged in the meeting process.* • *Formal and informal supports are invited and are part of the team.* • *Agenda and meeting process are standardized and more formal (reflect importance of decision being made).* • *Outcome is a particular case decision required at that point in the "life of the case".*	***Summary of Differences:*** • *Led by service worker.* • *Supervisor does not always attend; Parent and youth participation is critical.* • *Extended family participates as the family wishes or as makes sense.* • *Agenda is informal.* • *Outcome is action plan for the next several months leading to permanency or safe case closure.*
Benefits of FPMs: • *Families who are treated with respect can contribute more concretely to the identification of their family and children's needs.* • *When families and extended families are part of the decision making process, they are more likely to participate in services to keep their family together or to complete tasks in order to have their children safely returned.* • *Children are protected through the development of a child-specific plan developed and committed to by a team of people who care about them.*	***Benefits of CFTMs:*** • *Provides a mechanism for insuring: ongoing family engagement and ongoing teaming.* • *Ensures timely monitoring and adjustment of services.* • *Increases parent, child and extended family buy-in.* • *Speeds progress towards permanency or case closure.* • *Team decision making results in high quality decisions regarding safety and Permanency.*

2.11 Using the Family Assessment and Planning Team (FAPT)

The FAPT plays an integral role in service planning for children involved in the child welfare system who receive services and funding through the CSA. Local CPMT policies determine how the community coordinates family engagement principles with FAPT processes. The LDSS will need to consult CPMT local policies and procedures for complying with CSA and family engagement requirements.

KEY ELEMENTS OF FAMILY PARTNERSHIP MEETINGS

➢ **Goal**	To involve birth families and community members, along with resource families, service providers and agency staff, in all placement decisions, to ensure a network of support for the child and the adults who care for them.
➢ **Values**	• Every child deserves a family • Every family needs the support of the community • Public child welfare agencies need community partners
➢ **Assumptions**	• A group can be more effective in decision making than an individual. • Families are the experts on themselves. • When families are respectfully included in the decision making process, they are capable of identifying and participating in addressing their needs. • Members of the family's own community add value to the process by serving as natural allies to the family and experts on the community's resources.
➢ **Key Elements**	1. A family partnership meeting, including birth parents and youth, is held for ALL decisions involving child removal, change of placement, and reunification/other permanency plan. 2. The family partnership meeting is held BEFORE the child's move occurs, or in cases of imminent risk, by the next working day, and always before the initial court hearing in cases of removal. 3. Neighborhood-based community representatives are invited by the public agency to participate in all family partnership meetings, especially those regarding possible child removal. 4. The meeting is led by a skilled, immediately accessible, internal facilitator, who is not a case-carrying social worker or line supervisor. 5. Information about each meeting, including participants, location, and recommendations, is collected and ultimately linked to data on child & family outcomes, in order to ensure continuing self evaluation of the family partnership process and its effectiveness. 6. Each family partnership meeting resulting in a child's removal serves as a springboard for the planning of an "icebreaker" family team meeting, ideally to be held in conjunction with the first family visit, so that the birth-foster parent relationship can be initiated.

Adapted from the Annie E. Casey Foundation
Family to Family Initiative

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I. CORE VALUES

The fundamental purpose of Family Partnership Meetings are grounded by value-driven principles that include:

- All families have strengths;
- Families are the experts on themselves;
- Families deserve to be treated with dignity and respect;
- Families can make well-informed decisions about keeping their children safe when supported;
- Outcomes improve when families are involved in decision-making; and
- A team is often more capable of creative and high-quality decision-making than an individual.

Values related to Virginia's Family Engagement Model include:

- Outcomes improve when a comprehensive assessment of children's and families' strengths and challenges provides the foundation for engagement, service planning and delivery.
- Members of the family's own community add value to the process by serving as natural allies to the family and experts on the community's resources.
- When families are respectfully included in the decision making process in a timely manner, they are capable of identifying and participating in addressing their needs and making decisions about their children.
- Permanency planning is successful when children are connected to permanent, legal families, when youth are provided the opportunity and time to plan and prepare for independence, when supports to live independently or to make a successful transition to adult services are identified and provided, and when there is communication and collaboration among LDSS programs to ensure strong team support across the age continuum (between adult services and child welfare) and regardless of the child's goal (between CPS, foster care, and adoption).
- In order to fully participate in Family Partnership Meetings parents and youth need the time and opportunity to understand the purpose of the meeting and to be fully prepared for the group process.

II. GOAL

Our goal as caring professionals is to join parents as allies in the systems of care for their children and to involve birth families and community members, along with resource

families, service providers and agency staff, in all placement decisions, and in the prevention of placement in very high risk and high risk CPS families to ensure a network of support for the child and the adults who care for them.

III. DEFINITION & PURPOSE

Family engagement is a relationship focused approach that provides structure for decision making and that empowers both the family and the community in the decision making process. It extends partnership messages to caregivers, providers and neighborhood stakeholders. Meetings are held for all decisions involving prevention of placement in very high and high risk CPS families, prior to a child's removal from a birth or adoptive family, prior to a change of placement, and prior to a change of goal.

Family Partnership Meetings can be convened at any time in the process of service provision. They may be requested by the birth, foster or adoptive family, legal guardian, or by agency staff. Establishing the team early in the process either at the prevention stage of service provision or prior to a child needing to be removed, can accomplish the following:

- Saves time by convening the team and preparing the family before a crisis occurs;
- Establishes a positive working relationship with the birth parents and youth,
- Sends a strong message of inclusion and partnership,
- Provides the opportunity for self-evaluation, and
- Provides support to the social worker and the family.

The Family Partnership Meeting should:

- Include birth parents, youth, other significant players identified by the birth parents and/or youth, and neighborhood-based community representatives, all of whom are invited by the public agency to participate in all family partnership meetings, especially those regarding possible child removal;
- Be led by a skilled, immediately accessible, facilitator, who is not the family's case-carrying social worker; and
- Be documented. Information about each meeting, including participants, location, and recommendations, is collected in OASIS and ultimately linked to data on child and family outcomes, in order to ensure continuing self evaluation of the Family Partnership Meeting process and its effectiveness.

Each Family Partnership Meeting after a child's removal should include all those invited to previous meetings and should include the foster and/or adoptive parents of the child, so that the birth-foster parent, legal guardian or foster parent-adoptive parent or birth-

foster-adoptive parent relationship can be initiated and/or strengthened and expectations of all parties can be clarified.

IV. FAMILY PARTNERSHIP MEETING PARTICIPANTS

- Facilitator: This individual is trained to lead the group through a solution focused process. The Family Partnership Meeting must be facilitated by a trained individual that is not the social worker for the child or family. The facilitator is responsible for keeping the group focused and moving through the decision-making process, allowing family members to actively participate. The facilitator should make sure the voices of parents and youth are heard. The facilitator should communicate with the case worker connected to the child or family to identify any potential emotional or physical safety concerns that may impact the quality of the meeting. When the child is present, the facilitator must remain conscious of their well-being, promote a safe and protective environment and translate for the child, when needed. At the end of the meeting, the facilitator should provide a summary report to participants outlining decision and action steps and any follow-up needed.

- Birth parents: The birth parents should be recognized as the expert on their family's needs and strengths. Their presence and involvement is integral to the meeting. Family Partnership Meetings should not occur without family unless the purpose of the meeting is to consider an emergency placement and the decision to remove the child from the home must be made by the agency within 24 hours. Every effort should be made to involve the family and the meeting should not occur unless the family is not available or chooses not to participate. If the family is not present the reason for their absence should be well documented in OASIS.

- Caseworker connected to the family: The caseworker should first talk with their supervisor to determine whether a Family Partnership Meeting is needed for the child or family. The caseworker is responsible for making the referral for a family engagement meeting. The caseworker relays all relevant information to the facilitator that includes the purpose of the meeting, any potential physical or emotional safety concerns that may impact the meeting, and ensures both the maternal and paternal family and all individuals that are involved with the family are invited to the meeting. The caseworker should be prepared to provide information to participants about the meeting purpose and provide any information and previous services received by the family. The case worker is

responsible for making a decision if absence of consensus or if safety concerns are evident. Worker should assess any safety issues that may potentially come up and communicate those issues to the facilitator. If it is determined that an individual cannot participate due to safety reasons, the caseworker should talk with the facilitator to determine strategies for participation (i.e. conference call, separate meeting.) The caseworker should prepare the family for the meeting by explaining the family engagement process. The caseworker should also talk with the family to determine whether child care arrangements have been made for the family during the Family Partnership Meeting.

- Child(ren)/Youth: In deciding whether or not a child should participate, the social worker should consider the child's developmental and chronological age, the parents' suggestions and concerns, and consult with others that have a working knowledge of the child's capacity such as a therapist or counselor. There is a presumption that older youth will always participate unless there is a sound reason for them not to. It is recommended that youth 9 and older, unless otherwise determined, participate in Family Partnership Meetings. This does not preclude involving youth below age 9 if the social worker believes they have the capacity to participate. While all youth should be consulted about meeting participants, some youth may not identify whom they would like to attend.

- Extended family and non-relative supports: Both maternal and paternal relatives as well as non-relative supports should be invited by youth, parents, and/ or the social worker as supports, to assist, and/ or to be a resource. Their participation should always be supported and encouraged. Extended family should also be asked about other individuals involved with the family that may be a potential support.

- Current caregivers (kin, foster): These individuals should also be seen as key team members that assist in providing information regarding the child's adjustment, progress, and needs, and assist with developing ideas and reaching a decision.

- Supervisor: The supervisor of the caseworker connected to the family is responsible for being knowledgeable of the case. The supervisor should utilize the meeting as an opportunity to assess the strengths of their worker and identify areas in need of improvement. The supervisor should serve as the expert about the process for accessing various services within their locality.

- Community partners: These individuals are defined by their identity as a member of the family's community whether based on neighborhood, ethnicity, religion, school or other connection. They are invited by the agency and/or the birth parents, based on existing partnership to provide support, resource expertise, and an external perspective to decision-making. Their presence in the meeting must be agreed to by parents.

- Service providers: These are persons currently or previously involved with the family that should come to the meeting prepared to discuss current or previous services provided to the child and/or family and any current or future recommended service needs.

- Guardian ad litem (GAL) and CASA volunteers: These court-appointed representatives responsible for representing the child's best interest should be invited to the Family Partnership Meeting. These individuals often have useful information that can help inform the family engagement process. GALs can also give guidance and set parameters around legal issues that may be discussed during the meeting.

- Other public agency staff: This group may include home finding, independent living, family preservation staff, adoption staff, adult services staff, benefits workers or others available to provide expertise/information depending on the purpose of the meeting and the type of the Family Partnership Meeting.

V. CONFIDENTIALITY

The confidentiality of information is emphasized and respected by all team members. However, parents should be informed that information from the meeting may be used for case planning, in subsequent court proceedings if necessary, and in the investigation of a new allegation of abuse or neglect should such information arise.

VI. PROCESS

A. TYPES OF FAMILY PARTNERSHIP MEETINGS REQUIRED

For every family involved with the child welfare agency these are the decision points at which a Family Partnership Meeting should be held:

1. Once a CPS investigation or Family assessment has been completed and

the family is identified as "very high" or "high" risk and the child is at risk of out of home placement;
2. Prior to removing a child, whether emergency or considered;
3. Prior to any change of placement for a child already in care, including an disruption in the adoptive placement;
4. Prior to a change of goal; and
5. When requested by parent (birth, foster, adoptive or legal guardian), youth, or social worker.

B. CRITICAL DECISION POINTS FOR REQUIRED MEETINGS

1. Very High or High Risk Child Assessment

This Family Partnership Meeting should be scheduled when the social worker assesses children at "very high" or "high" risk of abuse and/or neglect and the child is at risk for out of home placement in those families who will be or are receiving services. These meetings are scheduled to develop the plan and services to prevent the out of home placement and identifies the circumstances under which a removal might be considered. The team should convene within 30 days of initiating services and prior to the development of the ongoing service plan.

2. Emergency Removal or At Risk of Out of Home Placement

This Family Partnership Meeting should be scheduled when the social worker assesses the child's safety to be in jeopardy or at risk of removal or out of home placement. The meeting should be scheduled within 24 hours of safety issues being identified and occur before the 5 day court hearing in cases after the removal.

The participants in the Family Partnership Meeting should help to determine whether: (1) the agency should file for custody and facilitate placement, (2) the child can remain home safely with services, or the child return safely home with services, or (3) voluntary placement by parents with provision of services and safety plan, etc. Nevertheless, safety concerns are paramount and must be the first priority.

3. Placement Preservation/Change of Placement/Disruption or Dissolution of Adoption

The Family Partnership Meeting should be requested before the child is moved from one placement to another. The meeting should be scheduled ideally when

chronic or recurring problems in the placement are evident, but no later than when potential disruption of the foster or adoptive placement is recognized, safety issues exist, a move from the current placement is believed necessary to benefit the child, or when a child is beginning the transition to independent living, legal emancipation, aging out of foster care or adult foster care. This can be at the request of the child, birth parent, legal guardians, adoptive parents, foster parents, adoptive parents, or the agency. If the situation is urgent, the meeting should be scheduled within 48 hours of the request. If the meeting is to discuss considered change in placement, it should be scheduled within 5 business days.

4. Prior to Change of Goal

- *Reunification*: This meeting is scheduled when the risk level is reduced and parental progress and ability to protect and provide safety for the child is recognized. The team determines if the child can safely return to their own family, and a reunification meeting should be held before overnight visits begin. The team also outlines the process for visitation and the supports that the family will utilize in order to be successful.

- *Placement with relatives:* This meeting should be scheduled when the social worker determines that the plan for reunification has not been successful, efforts to revise the plan have been made and the team determines that the progress by parents has not been sufficient to reduce risk. At this meeting the need for a change in the goal for the child would be discussed. This meeting should be scheduled within 2 weeks of the request by any party for the meeting and before a change in goal occurs and before any court filing.

- *Adoption by relatives or non-relatives:* This meeting should be scheduled when the criteria in the above goals have been met and the social worker has explored possible options for placement with a relative. The meeting should be scheduled within 2 weeks of the request by any party for the meeting and before a change in goal occurs and before any court filing.

- *Permanent Foster Care:* This meeting should be scheduled when the criteria in the above goals have been met and the social worker has exhausted possible options for placement with a relative and adoption. The meeting should be scheduled within 2 weeks of the request by any party for the meeting and before a change in goal occurs and before any court filing.

- *Legal Emancipation or Aging Out of Foster Care/Independent Living:* This meeting should be scheduled at least 12 months prior to emancipation and a plan for independent living is implemented. The Family Partnership Meeting should be used to identify the supports and permanent connections the youth will utilize to be successful. The need of the child to transition to adult services should also be explored and the adult services worker included in the meeting.

5. Requested Meeting
Birth, foster and adoptive parents, legal guardians and the social worker can request a Family Partnership Meeting at any time if it is related to one of the other four decision points. These meetings should be scheduled within 2 weeks of the request, unless safety issues are present.

VI. DATA COLLECTION

Information about the purpose, initiator, location, facilitator, attendees, and meeting outcomes related to the Family Partnership Meeting must be documented in OASIS.

VII. CSA

Costs for facilitation are billable to CSA, provided that the facilitator is a trained individual that is not the case carrying social worker for the child or family.

APPENDIX

I. BENEFITS OF USING FAMILY ENGAGEMENT

Virginia's Family Engagement process is based on the Team Decision Making Model developed by the Annie E. Casey Family to Family Initiative. While there are a variety of family engagement models, Virginia Department of Social Services will provide guidance, support, and technical assistance on the Family Partnership Meeting (FPM) which is based on TDM.

It provides a well-rounded explanation of the benefits in using the family engagement model as it applies to children, youth, families, the community and the public child welfare agency.

Family Partnership Meetings improve the decision making process by including a variety of professional staff, family, extended family, and community members in the decision making process; and it gives added support to individual caseworkers and supervisors.

- Caseworkers concerned about a child's safety routinely have access to more experienced and knowledgeable fellow staff that can help them solve the problem.

- Families who are treated with respect can contribute more concretely to the identification of their family and children's needs. When families and extended families are part of the decision making process, they are more likely to participate in services to keep their family together or to complete tasks in order to have their children safely returned.

- Instead of being excluded from the process, the family, private service providers, and community representatives can participate in a discussion and partnership designed to keep the community's children safe.

- It improves internal agency cooperation, communication, and teamwork.

- It helps protect children by developing a specific safety plan for them.

Family Partnership Meetings help the agency develop and sustain more consistent and accountable practices when placement is being considered, helping to assure that only those children who need to be placed are placed, and ensuring that reasonable efforts

to prevent placement are made in every case.

- It helps make the agency's decision making process more accountable to and understandable by families and the broader community. It helps to develop a specific, individualized intervention plan that has support from a broad-based group, not just the caseworker. It also insures that all relevant parties (family, extended family, agency workers, private providers, community, etc.) know and support the basic components of the plan.

- Reunification is safer, quicker, and more lasting if foster parents and supporters from the neighborhood have been involved in decision making throughout the life of the case.

- Permanence can more readily be achieved when families and their supporters join professionals in deciding what services and interventions would best meet the child's needs.

- Where foster care is indicated, placements are more stable if foster parents participate as team members.

- Family partnership helps to improve communications among individual service providers, who often speak only their own language. Services designed with the cooperation and input of families in terms that the family understands are more effective when offered to the family.

- It facilitates the development of long-term, community-based safety nets for families at risk by linking families with natural supports within their neighborhoods.

- It helps connect parents and families more efficiently and more quickly to accessible local service and supports, facilitating reunification efforts.

Family Partnership Meetings can reframe the community's view of the public child welfare agency

- The family engagement process can help redefine the child welfare agency's role as assisting communities and families to develop interventions to keep at-risk children safe and minimize the agency's perception as either child-snatchers or public employees who return children to dangerous and dysfunctional families.

- Family engagement can thus clarify the child welfare system's role as neither unnecessary government intervention in children's and families' lives nor inept intervention that heedlessly returns children to troubled families likely to maltreat them again.

- Public child welfare agencies which use family engagement when placement is a consideration can educate the larger community about the legitimate role of child protection services.

- When the family, community agencies, and foster parents participate in decision making with child welfare workers, they learn more about the complexities of meeting children's needs. They learn first-hand that while children's safety remains the highest priority, children who are attached to their families are harmed by being separated from them.

- It makes a placement decision the responsibility of a larger group within the agency and the community at large. By regularly including the family, extended family, neighborhood advocates, community-based providers, and child welfare staff members in the most important decisions regarding the safety of the community's children, family engagement shares the agency's responsibility to keep children safe with parents, family, and the local community.

- By connecting families to natural supports within their own neighborhoods, family engagement often contributes to the development of long term community safety nets for families at risk. The process also nurtures growing partnerships between public child protection systems and the neighborhood-based entities that such systems have often overlooked in the past.

- For children whose need for safety requires separation from their families, the understandings and agreements that develop through family engagement often facilitate reunification.

Family engagement increases consistency and competency across the continuum of child welfare services

- It provides an opportunity for new or inexperienced caseworkers to learn from seasoned, skilled facilitators, as they model competent, family-friendly behavior

and apply best practice approaches, legal principles, and agency policy to challenging situations.

- It provides a consistent foundation for practice that the family can expect regardless of how they enter the system.

II. SCHEDULING THE FAMILY PARTNERSHIP MEETING (FPM)

The worker should identify time frames for each type of meeting to be scheduled from the time of request, keeping in mind the time sensitive nature of meetings after emergency placement and who will be notified once the social worker has talked with the family. There should be reserved meeting times for emergency Family Partnership Meetings available weekly. In an effort to have meetings that are convenient to the family, it should be considered if the meeting can be held in the family's community. The social worker should also contact the facilitator to discuss any special concerns and determine the plan for addressing them at the meeting. Special needs/security issues include but are not limited to domestic violence, need for language or deaf interpreter, large group size, etc.

The following information is needed to schedule a Family Partnership Meeting:

- basic demographics (names, family address, dates of birth),
- type of Family Partnership Meeting requested,
- when the meeting is needed, the location desired, and any special needs regarding safety, security, language interpretation, physical accommodations

III. PREPARATION OF THE FAMILY (parents and older youth)

Preparation of the family is key to the success of the Family Partnership Meeting and to facilitating consensus at the meeting. It is essential that the social worker talk with the family before the meeting about the family engagement process and the expectations of the meeting. The social worker should explain the meeting purpose, goal and process, encourage parents and youth to identify who to include as support persons, answer any questions the family may have, address any concerns the family raises and explain the parameters for confidentiality. These efforts should be made even when the meeting is the result of a crisis or removal. The parent should be informed of the Family Partnership Meeting before removal occurs.

IV. ASSESSMENT TOOLS

The following tools can be helpful in assessing the needs of the child and/or the family:

- SDM Safety Assessment

- SDM Risk Assessment
- SDM Family Strengths and Needs Assessment
- Service Plan
- SDM Risk Reassessment
- SDM Reunification Assessment
- Ansell-Casey Life Skill Assessment
- Child Assessment of Needs and Strengths (CANS)

V. FACILITATOR OPTIONS

Family Partnership Meetings must be facilitated by a trained individual that is not the case carrying social worker for the child or family. The following is a list of options that may be used to facilitate meetings:

- Full-time agency facilitator, that does not carry a caseload
- Part time agency facilitator, with supervisory responsibilities or that carries a caseload. It may be beneficial to have a few social workers or supervisors within the agency trained to be facilitators. These individuals must not facilitate their own cases.
- Contracted position. Services for facilitation may be contracted with a private provider. This individual must be trained to facilitate family engagement meetings.
- Regional facilitator with locally pooled resources to share a staff person

In addition to a trained facilitator, localities will also need to be sure someone in the agency is available to assist with the coordination of Family Partnership Meetings including scheduling, inviting participants, and finding a location. As these meetings may need to occur with a quick turn around time, an individual that is able to handle issues timely is recommended.

VI. STAGES OF A FPM MEETING

1. Introduction
   - Purpose and goal
   - Consensus goal/agency owned
   - Introduction of participants, roles and relationship to child/family/case
   - Guidelines for meeting, including ground rules (privacy, all participants treated with respect, one person talks at a time, everyone has an opportunity to speak, time frame for meeting, special considerations if child is present, etc.)

- Questions before beginning
- Circulate participant list for signatures

2. Identify the Situation
   - Let the family tell the story if they feel comfortable and able to do so
   - Define the concern
   - Precipitating event/why are we here?

3. Assess the Situation
   - Determine the magnitude of the situation
   - Strengths/supports
   - Risks
   - Safety needs/concerns
   - Services involved presently and utilized in the past
   - Past history/stressors
   - Participants' perception of situation
   - Worker's recommendation

4. Develop ideas

Brainstorming ideas to address concerns and provide safety and protection. Ideas will usually be in four categories:

- Plan to provide safety
- Services to reduce risk and prevention of placement
- Placement/custody options and circumstances under which they may be needed
- Permanency Planning

5. Reach a Consensus/Decision
   - Safety and protection in the least intrusive/least restrictive manner
   - Action plan developed
   - Timely linkage to services, priority services need immediate connection

NOTE: The goal is for the team to reach consensus during the decision-making process. However, the public child welfare agency maintains legal responsibility to make a decision if agreement by the full team cannot be achieved or if safety concerns persist. In pursuing consensus by the team, the facilitator will assist the group in moving toward consensus using this framework.

6. Recap/Closing
   - Summarize the decisions made and who will do what and by when
   - Thank the group

- Call for any questions or concerns
- Set or review any scheduled meeting dates (Court, FAPT, IEP)

7. Follow Up
   - Every effort to adhere to the decisions made during the FPM should be made
   - If there are changes due to safety and/or legal concerns, the FPM participants need to be notified within three business days
   - The social worker is responsible for talking with the family about the family engagement meeting and discuss their response to the process
   - The social worker should communicate any of the family's concerns about the process to the FPM facilitator.

8. Review Process

Only participating agency staff can request review of a decision made during a family engagement meeting. There is a duty to request a review if there is a belief that a decision places a child at risk or violates the law or policy. Notification of intent to request review must be made immediately or at least a timely review meeting is scheduled with the agency director or their designee. All members of the family engagement meeting are invited to participate in the review process. The decision of the director or their designee becomes the official agency position.

Panel 4 9/20/2018

ADVERSE CHILDHOOD EXPERIENCES / "ACE" Scores

The Hon. Deborah V. Bryan

Andrea Palmisano, Ph.D. Prof. Psychology, VBTCC

John Paradiso, VBDHS, Child & Youth

Trenia Richards-Pyron, VB CSU

A Review of ACE: Adverse Childhood Experiences

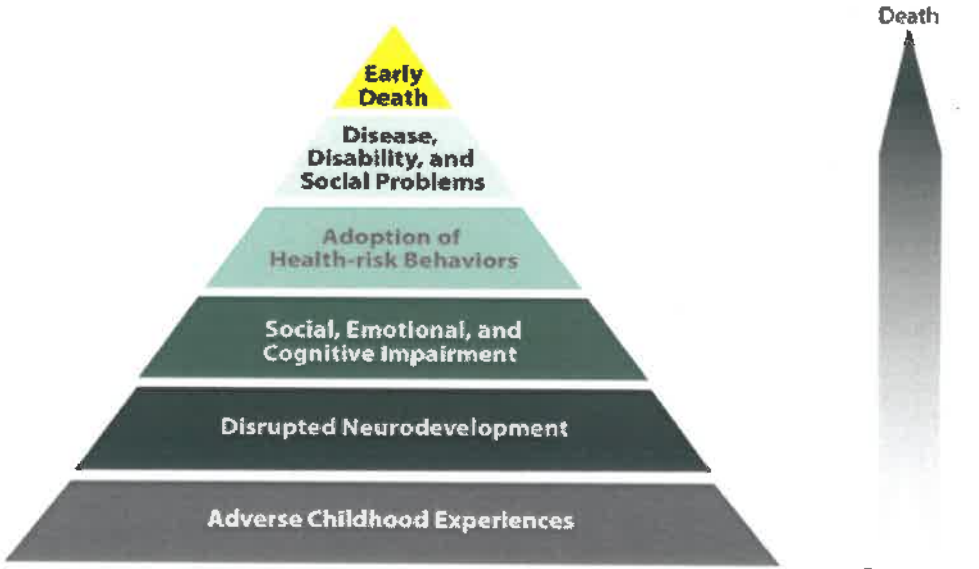
Andrea C. Palmisano, PhD
Associate Professor of Psychology
Tidewater Community College
Virginia Supreme Court Certified Mediator

The ACE Study

- The CDC-Kaiser Permanente Adverse Childhood Experiences (ACE) Study is one of the largest investigations of childhood abuse and neglect and later-life health and well-being.
- The original ACE Study was conducted at Kaiser Permanente from 1995 to 1997 with two waves of data collection. Over 17,000 Health Maintenance Organization members from Southern California receiving physical exams completed confidential surveys regarding their childhood experiences and current health status and behaviors.
- The CDC continues ongoing surveillance of ACEs by assessing the medical status of the study participants via periodic updates of morbidity and mortality data.

- Source: https://www.cdc.gov/violenceprevention/acestudy/about.html

The ACE Pyramid



Mechanism by Which Adverse Childhood Experiences Influence Health and Well-being Throughout the Lifespan

The ACE Study Questions

- All ACE study questions are related to experiences during first 18 years of participants' lives
- Questions address three major categories:
  - Abuse
  - Neglect
  - Household Challenges
- Each category further divided into subcategories

ACE Study Categories

- Abuse:
  - Emotional
  - Physical
  - Sexual
- Neglect:
  - Emotional
  - Physical
- Household Challenges
  - Mother Treated Violently
  - Substance Abuse
  - Mental Illness
  - Separation/Divorce
  - Criminal Behavior

ACE Study Findings

- Almost two-thirds of study participants reported at least one ACE, and more than one in five reported three or more ACEs.

- Study findings repeatedly reveal a graded dose-response relationship between ACEs and negative health and well-being outcomes across the life course.

- "Persons who had experienced four or more categories of childhood exposure, compared to those who had experienced none, had 4- to 12-fold increased health risks for alcoholism, drug abuse, depression, and suicide attempt; a 2- to 4-fold increase in smoking, poor self-rated health, ≥50 sexual intercourse partners, and sexually transmitted disease; and a 1.4- to 1.6-fold increase in physical inactivity and severe obesity."
  - https://www.ajpmonline.org/article/S0749-3797(98)00017-8/abstract

Behavioral Risk Factor Surveillance System

- Current survey led by many states to continue data collection related to ACE study
- Findings similar to original ACE study
- Questionnaires are not copyrighted and can be found at:
  - https://www.cdc.gov/violenceprevention/acestudy/ace_brfss.html

Practical Applications to ACE Study Findings

- Community Preventive Measures
- Resilience Oriented Interventions
- Trauma Informed Care

- Source: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5409906/

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The ACE Study & Questionnaire: Clinical Implications

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City of Virginia Beach - Child & Youth Behavioral Health Services
EMDRIA Certified Therapist – EMDRIA Approved Consultant – EMDRIA Approved Training Facilitator
National Certification in Trauma-Focused Cognitive Behavioral Therapist

ACE Study: Increased Awareness

- The ACE Study helped create a heightened awareness for:
  - Society
  - Helping professions
  - Policy makers

ACE Study: Increased Awareness

- The ACE helped us shift from:
  - What's wrong with you?

TO

  - What happened to you?

ACE Study: What about what didn't happen?

- Our next shift:
  - What happened to you is identifiable

BUT

  - What **DIDN'T** happen to you is easily overlooked and more challenging to identify

ACE Study: The 10 Questions Again

- Questions 1- 4 (40%) are what happened to you (Abuse)
- Questions 5-6 (20%) are what didn't happen to you (Neglect)
- Questions 7-10 (40%) are what happened to those in your family or those close to you (Impact from Family disruption)

Four or more, not good - Now what?

- What do you need to know when you see an ACE Score of 4 or more?

- Simply put: A score of 4 or more should trigger a referral to a mental health provider for further assessment.

Does a High ACE Score mean PTSD?

- The ACE is not a diagnostic assessment. A Score of 4 or more does not necessarily mean Post-Traumatic Stress Disorder (PTSD).
- Resiliency:

  A person scoring 4 or more may appear to be stable and asymptomatic may be seen as resilient.
- Caution: This could also be tied to neglect and left untreated might have even higher medical consequences as the person ages.
- The response to traumatic events is held in the nervous system. When a person does not "heal" in the aftermath of a traumatic event it is theorized that the event is paired with a negative core belief about self.
- Neglect results in a powerful negative core belief about self – common to have a theme of defectiveness and alexithymic response (marked dysfunction in emotional awareness, social attachment, and interpersonal relating).

Formulating a Diagnosis of PTSD

Diagnostic and Statistical Manual 5th Edition (DSM-5)

- A. **Criterion A event** or "Index Trauma" (What Happened?)
- B. **Re-experiencing**
- C. **Avoidance**
- D. **Negative Thoughts or Feelings**
- E. **Trauma related arousal and reactivity**
- F. **Duration more than one month**
- G. Symptoms create distress or functional impairment
- H. Symptoms are not due to medication, substance abuse or illness

- **Two specifications:**
- **Dissociative Specification**. In addition to meeting criteria for diagnosis, an individual may experience high levels of either of the following in reaction to trauma-related stimuli:
  - Depersonalization
  - Derealization
- **Delayed Specification**. Full diagnostic criteria are not met until at least six months after the trauma(s), although onset of symptoms may occur immediately (acute stress reaction).

Intervention

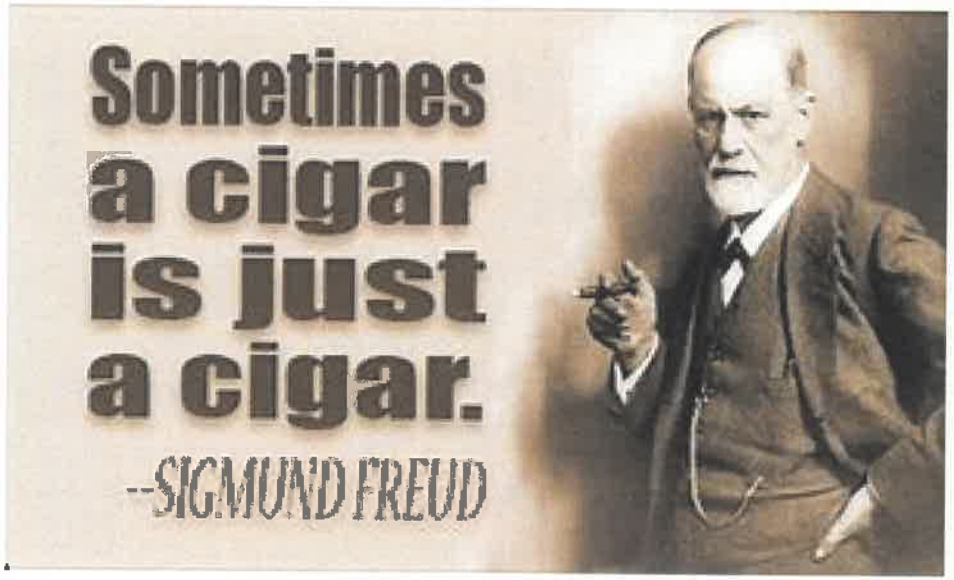
- Identify trusted professionals in the community when ACE Scores are elevated (4 or more) to properly assess and diagnose.

- When the answers to question 4 and/or 5 are "Yes" the provider should be confident in their ability to treat neglect.

Treatment Considerations

- PTSD is treatable but can be a lengthy process.
- Treating PTSD is often about symptom reduction.
- Treating neglect is about developing sense of self which brings increased sensitivity which then needs to be desensitized. Failure to desensitize deepens the traumatic experiences within the nervous system.
- Be cautious of setting your own timeline and treatment expectations.
- Risk broken attachments making treatment even more difficult for next provider.

The Body Heals



- Sometimes a car accident is just a car accident
- Post Traumatic Growth is achieved and resilience strengthens

Thank You!

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The ACE Questionnaire: Trauma-Based Services

Trenia Richards-Pyron
Probation/Assessment/Diversion Supervisor
2nd District Virginia Beach Court Service Unit

Social History Interview

Communicating care and concern for a person and their problems sets a context of you being a person they can trust. Over the course of your relationship with the youth they may open up more about trauma and how it affected them. The likelihood of them opening up depends on how you start the relationship. From the beginning, you can demonstrate that you are prepared to deal with their worst experiences and are ready to help them. The client will develop trust as the relationship progresses.

2nd District Court Service Unit (Virginia Beach)
Adverse Childhood Experiences (ACE)

While you were growing up, during your first 18 years of life:

1. Did a parent or adult in the household often or very often…swear at you, insult you, put you down, or humiliate you? Or Act in a way that made you afraid that you might be physically hurt?
2. Did a parent or adult in the household often or very often…push, grab, slap, or throw something at you? Or ever hit you so hard that you had marks or were injured?
3. Did an adult or person at least 5 years older than you ever…Touch or fondle you or have you touched their body in a sexual way? Or attempt or actually have oral, anal, or vaginal intercourse with you?
4. Did you often feel that… no one in your family loved you or thought you were important or special? Or Your family didn't look out for each other, feel close to each other, or support each other?
5. Did you often or very often feel that…you didn't have enough to eat, had to wear dirty clothes, and had no one to protect you? Or your parents were too drunk or high to take care of you or take you to the doctor if you needed it?
6. Were your parents ever separated or divorced?
7. Was your mother or stepmother…Often or very often pushed, grabbed, slapped, or had something thrown at her? Or Sometimes, often, or very often kicked, bitten, hit with a fist, or hit with something hard? Or ever repeatedly hit at least a few minutes or threatened with gun or knife?
8. Did you live with anyone who was a problem drinker or alcoholic or who used street drugs?
9. Was a household member depressed or mentally ill, or did a household member attempt suicide?
10. Did a household member go to prison?

Number of "Yes" answers:_____(This is the juvenile's ACE score)

Trauma-Based Services for clients and families

- Child and Youth Services- all trauma-based clinicians; some specializing in Eye Movement Desensitization and Reprocessing (EMDR)
- AMI Kids – Referral source for the Department of Juvenile Justice
- Regent University Psychological Services Center
- Approved Service Vendor List (Angela Perrotta, Ann O'Neill, Marisha Griffith)

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Panel 5 9/20/2018

Admission of Forensic Interviews

C. Andrew Rice, Assistant Commonwealth Attorney

Elena Ilardi, Associate City Attorney

Tender Years

C. ANDREW RICE
ASSISTANT COMMONWEALTH ATTORNEY
VIRGINIA BEACH

TENDER YEARS

- 19.2-268.3
- B. An out-of-court statement made by a child who is under 13 years of age at the time of trial or hearing who is the alleged victim of an offense against children describing any act directed against the child relating to such alleged offense shall not be excluded as hearsay under Rule 2:802 of the Rules of Supreme Court of Virginia if both of the following apply:

TENDER YEARS

- 1. The court finds, in a hearing conducted prior to a trial, that the time, content, and totality of circumstances surrounding the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors:
- a. The child's personal knowledge of the event;
- b. The age, maturity, and mental state of the child;
- c. The credibility of the person testifying about the statement;
- d. Any apparent motive the child may have to falsify or distort the event, including bias or coercion;
- e. Whether the child was suffering pain or distress when making the statement; and
- f. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act; and

TENDER YEARS

- 2. The child:
- a. Testifies; or
- b. Is declared by the court to be unavailable as a witness; when the child has been declared unavailable, such statement may be admitted pursuant to this section only if there is corroborative evidence of the act relating to an alleged offense against children.

TENDER YEARS

- Ohio v. Clark June 2015
- Campos V. Commonwealth June 2017
  - What does the case say
  - What does it really mean to us as prosecutors
  - Know your exceptions

How it is used

- Motion is filed
- The person who hears the statement has to be vetted
- Factors are gone through
- The statement comes in

How it is used

- Child Sex cases
- Child Abuse cases
- Murder
- Abduction
- Malicious Wounding
- Poison
- Porn

What statements qualify

- Any statement really
- Nurse, CPS, Parent, Older Friend

Filing Deadline

- 14 days
- Statement has to be offered for review
- WE DON'T HAVE TO LET YOU HAVE A COPY

How do you as Defense Attorneys beat it

- You don't.

Trial vs Motion

- Availability vs usability
- Child testifies, or statement then child testifies
- CHKD, or statement

Questions

- ??

Admission of Forensic Interviews

(and other child statements) For A Civil Abuse/Neglect Case

Presented by Elena E. Hardi, Esq.

I. Key Applicable Statutes:

a. Virginia Code § 63.2-1523
b. Virginia Code § 63.2-1522
c. Virginia Code § 16.1-245.1

II. § 63.2-1523 - Use of videotaped statements of complaining witnesses as evidence

a. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, (NOTE – that covers the JDR's jurisdictional statute, removals, protective orders, termination of parental rights cases, and custody/visitation) a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the requirements of subsection B are met and the court determines that:
   i. The alleged victim is the age of twelve or under at the time the statement is offered into evidence;
   ii. The recording is both visual and oral, and every person appearing in, and every voice recorded on, the tape is identified;
   iii. The recording is on videotape or was recorded by other electronic means capable of making an accurate recording;
   iv. The recording has not been altered;
   v. No attorney for any party to the proceeding was present when the statement was made;
   vi. The person conducting the interview of the alleged victim was authorized to do so by the child-protective services coordinator of the local department;
   vii. All persons present at the time the statement was taken, including the alleged victim, are present and available to testify or be cross examined at the proceeding when the recording is offered; and
   viii. The parties or their attorneys were provided with a list of all persons present at the recording and were afforded an opportunity to view the recording at least ten days prior to the scheduled proceedings.

b. Subsection B: video recordings authorized in subsection A may be admitted if:
   i. The child testifies at the proceeding (live, by videotaped deposition or by closed-circuit and is subject to cross examination)

      OR

   ii. The child is found by the court to be UNAVAILABLE on any of the following grounds:

1. The child's death
2. The child's absence from the jurisdiction provided the absence is not for the purpose of preventing the availability of the child to testify
3. The child's total failure of memory;
4. The child's physical or mental disability;
5. The existence of a privilege involving the child;
6. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason (See *Ferrell v. Alexandria Dep't of Cmty. & Human Servs, 2012 Va. App. LEXIS 40 (Va. Ct. App.) (unpublished) (holding that testimony that child feared talking about difficult subject matters in front of her mother and feared that her mother would find out that she was discussing these things was sufficient to uphold the trial court's finding that the child was unavailable to testify)* and
7. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.

AND

iii. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness and reliability. (See Subsection D)

c. A recorded statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.
   i. This provision is duplicative of subsection A.
d. Subsection D articulates what the court SHALL consider in determining whether a recorded statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2:
   i. The child's personal knowledge of the event;
   ii. The age and maturity of the child;
   iii. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
   iv. The timing of the child's statement;
   v. Whether the child was suffering pain or distress when making the statement;
   vi. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

vii. Whether the statement has a "ring of verity," has internal consistency or coherence, and uses terminology appropriate to the child's age;
viii. Whether the statement is spontaneous or directly responsive to questions;
ix. Whether the statement is responsive to suggestive or leading questions; and
x. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

e. Subsection E requires the court to support its findings on the record, *or with WRITTEN FINDINGS in a court not of record,* any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement. Take notice that these written findings must be made with respect to the factors for trustworthiness and reliability as applied to each out-of-court statement. See *Anonymous C. v. Anonymous B, 51 Va. App. 657, 2011 Va. App. LEXIS 14, 20 (Va. Ct. App. 2011)(unpublished)(holding it was error to exclude all of the child's out-of-court statements of sexual abuse when the court only appeared to analyze the factors as it applied to one particular disclosure).*

III. § 63.2-1522. Admission of evidence of sexual acts with children

a. This allows the admission into evidence of certain out-of-court statements made by the child, which are not otherwise admissible, if the requirements of subsection B are met.
   i. Only Applies To The Following Type of Statement (according to subsection A)
      1. Statements made by a Child age 12 or under at the time the evidence is being offered AND
      2. Statements describing *any act of a sexual nature performed with or on the child by another*
      3. (This is the statute that could permit the disclosure of sex abuse made to a teacher, a friend, a therapist, or a parent.)
   ii. Subsection B: statements authorized in subsection A may be admitted if:
      1. The child testifies at the proceeding (live, by videotaped deposition or by closed-circuit and is subject to cross examination)

         OR

      2. The child is found by the court to be UNAVAILABLE on the same grounds as identified in 63.2-1523.

         AND

      3. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness and reliability. (See Subsection D)
   iii. Subsection C makes clear that Subsection B statements may not be admitted unless the party hoping to use the statement notifies the adverse

party of the intention to offer the statement and the substance of the statement with sufficient advance notice to allow the adverse party a reasonable opportunity to prepare to meet the statement or subpoena witnesses. *See Mormon v. Richmond Dep't. of Soc. Servs., 2015 Va. App. LEXIS 254(Va. Ct. App. 2015) (holding that the agency provided enough notice that it planned to use videotaped statements even though the adverse party reviewed the videotape in the JDR proceedings, but it failed to give notice of its intentions to use other out-of-court statements by the child because it did not disclose what child had made the statement, what the child had said, to whom, and whether the adverse party had been given an opportunity to review the statement.)*

iv. Subsection D gives guidance on what the court SHALL consider when determining whether a statement possesses particularized guarantees of trustworthiness and reliability under subsection B2. In addition to the 10 factors listed in 63.2-1523, this statute deals with statements that are not necessarily electronically recorded, and so the court must *also* consider:
    1. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion; and
    2. Whether more than one person heard the statement;

v. Subsection E requires the court to support its findings on the record, *or with WRITTEN FINDINGS in a court not of record,* any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement. Take notice that these written findings must be made with respect to the factors for trustworthiness and reliability as applied to each out-of-court statement. See *Anonymous C. v. Anonymous B, 51 Va. App. 657, 2011 Va. App. LEXIS 14, 20 (Va. Ct. App., 2011) (unpublished)(holding it was error to exclude all of the child's out-of-court statements of sexual abuse when the court only appeared to analyze the factors as it applied to one particular disclosure).*

IV. § 16.1-245.1. Medical evidence admissible in juvenile and domestic relations district court

a. This is a statutory exception to the hearsay rule that allows two types of medical evidence to be admissible with an authenticating affidavit:
    i. Report from a treating or examining "health care provider"
        1. Note how broad the definition of "health care provider" is
    ii. Records of a hospital, medical facility or laboratory if authenticated by the custodian of records

b. To be admissible, the evidence must be circulated to the parties 10 days in advance of an adjudicatory or regular hearing and only 24 hours in advance of a 5-day hearing

c. Sample Medical Records Affidavits are in your materials

V. Applicability in the Circuit Court

a. Even though these statutes provide for the admissibility of evidence in the Juvenile and Domestic Relations District Courts, on appeals from the JDR, the Circuit Court should have the same authority that the JDR court has, and thus, evidence that is admissible in the JDR courts is also admissible in Circuit Court appeals. See Virginia Code § 16.1-296 (I): "In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter. ..."

VI. Never Forget The Intent and Purposes of the Juvenile and Domestic Relations District Court:

a. § 16.1-227. Purpose and intent.

i. "This law shall be construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family, the safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth and to the end that these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature."

§ 63.2-1523. Use of videotaped statements of complaining witnesses as evidence.

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, a recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence if the requirements of subsection B are met and the court determines that:

1. The alleged victim is the age of twelve or under at the time the statement is offered into evidence;

2. The recording is both visual and oral, and every person appearing in, and every voice recorded on, the tape is identified;

3. The recording is on videotape or was recorded by other electronic means capable of making an accurate recording;

4. The recording has not been altered;

5. No attorney for any party to the proceeding was present when the statement was made;

6. The person conducting the interview of the alleged victim was authorized to do so by the child-protective services coordinator of the local department;

7. All persons present at the time the statement was taken, including the alleged victim, are present and available to testify or be cross examined at the proceeding when the recording is offered; and

8. The parties or their attorneys were provided with a list of all persons present at the recording and were afforded an opportunity to view the recording at least ten days prior to the scheduled proceedings.

B. A recorded statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of closed-circuit television, and at the time of such testimony is subject to cross examination concerning the recorded statement or the child is found by the court to be unavailable to testify on any of these grounds:

a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason;

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of closed-circuit television; and

2. The child's recorded statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A recorded statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a recorded statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

4. The timing of the child's statement;

5. Whether the child was suffering pain or distress when making the statement;

6. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

7. Whether the statement has a "ring of verity," has internal consistency or coherence, and uses terminology appropriate to the child's age;

8. Whether the statement is spontaneous or directly responsive to questions;

9. Whether the statement is responsive to suggestive or leading questions; and

10. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the recorded statement.

§ 63.2-1522. Admission of evidence of sexual acts with children.

A. In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, an out-of-court statement made by a child the age of twelve or under at the time the statement is offered into evidence, describing any act of a sexual nature performed with or on the child by another, not otherwise admissible by statute or rule, may be admissible in evidence if the requirements of subsection B are met.

B. An out-of-court statement may be admitted into evidence as provided in subsection A if:

1. The child testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

a. The child's death;

b. The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify;

c. The child's total failure of memory;

d. The child's physical or mental disability;

e. The existence of a privilege involving the child;

f. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; and

g. The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.

2. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness and reliability.

C. A statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

D. In determining whether a statement possesses particularized guarantees of trustworthiness and reliability under subdivision B 2, the court shall consider, but is not limited to, the following factors:

1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion;

4. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

5. The timing of the child's statement;

6. Whether more than one person heard the statement;

7. Whether the child was suffering pain or distress when making the statement;

8. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

9. Whether the statement has internal consistency or coherence, and uses terminology appropriate to the child's age;

10. Whether the statement is spontaneous or directly responsive to questions;

11. Whether the statement is responsive to suggestive or leading questions; and

12. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

E. The court shall support with findings on the record, or with written findings in a court not of record, any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement.

§ 16.1-245.1. Medical evidence admissible in juvenile and domestic relations district court.

In any civil case heard in a juvenile and domestic relations district court involving allegations of child abuse or neglect or family abuse, any party may present evidence, by a report from the treating or examining health care provider as defined in § 8.01-581.1 or the records of a hospital, medical facility or laboratory at which the treatment, examination or laboratory analysis was performed, or both, as to the extent, nature, and treatment of any physical condition or injury suffered by a person and the examination of the person or the result of the laboratory analysis.

A medical report shall be admitted if the party intending to present such evidence at trial or hearing gives the opposing party or parties a copy of the evidence and written notice of intention to present it at least ten days, or in the case of a preliminary removal hearing under § 16.1-252 or § 16.1-253.1 at least twenty-four hours, prior to the trial or hearing and if attached to such evidence is a sworn statement of the treating or examining health care provider or laboratory analyst who made the report that (i) the information contained therein is true, accurate, and fully describes the nature and extent of the physical condition or injury and (ii) the patient named therein was the person treated or examined by such health care provider; or, in the case of a laboratory analysis, that the information contained therein is true and accurate.

A hospital or other medical facility record shall be admitted if attached to it is a sworn statement of the custodian thereof that the same is a true and accurate copy of the record of such hospital or other medical facility. If thereafter a party summons the health care provider or custodian making such statement to testify in proper person or by deposition taken de bene esse, the court shall determine which party shall pay the fees and costs for such appearance or depositions, or may apportion the same among the parties in such proportion as the ends of justice may require. If such health care provider or custodian is not subject to subpoena for cross-examination in court or by a deposition de bene esse, then the court shall allow a reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to obtain his testimony as the ends of justice may require.

§ 8.01-581.1. Definitions.

As used in this chapter:

"Health care" means any act, professional services in nursing homes, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement.

"Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse or a person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact, nurse practitioner, optometrist, podiatrist, physician assistant, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor, licensed marriage and family therapist, licensed dental hygienist, health maintenance organization, or emergency medical care attendant or technician who provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination; (v) a professional limited liability company comprised of members as described in subdivision A 2 of § 13.1-1102; (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily renders health care services; or (vii) a director, officer, employee, independent contractor, or agent of the persons or entities referenced herein, acting within the course and scope of his employment or engagement as related to health care or professional services.

"Health maintenance organization" means any person licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 who undertakes to provide or arrange for one or more health care plans.

"Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

"Impartial attorney" means an attorney who has not represented (i) the claimant, his family, his partners, co-proprietors or his other business interests; or (ii) the health care provider, his family, his partners, co-proprietors or his other business interests.

"Impartial health care provider" means a health care provider who (i) has not examined, treated or been consulted regarding the claimant or his family; (ii) does not anticipate examining,

treating, or being consulted regarding the claimant or his family; or (iii) has not been an employee, partner or co-proprietor of the health care provider against whom the claim is asserted.

"Malpractice" means any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient.

"Patient" means any natural person who receives or should have received health care from a licensed health care provider except those persons who are given health care in an emergency situation which exempts the health care provider from liability for his emergency services in accordance with § 8.01-225 or 44-146.23.

"Physician" means a person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"Professional services in nursing homes" means services provided in a nursing home, as that term is defined in clause (iv) of the definition of health care provider in this section, by a health care provider related to health care, staffing to provide patient care, psycho-social services, personal hygiene, hydration, nutrition, fall assessments or interventions, patient monitoring, prevention and treatment of medical conditions, diagnosis or therapy.

§ 32.1-123 Et. Seq relates to the Regulation of Medical Care Facilities and Services

§ 37.2-403 Et. Seq. relates to Licensing Providers of Behavioral Health and Developmental Services

§ 16.1-296. Jurisdiction of appeals; procedure.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter. …

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF _____

This ___ day of _____ 2018, _____, appeared before me and made oath as follows that:

1. My name is _____.

2. I am the treating or examining health care provider or laboratory analyst who made the attached report.

3. The information contained in the attached report is true, accurate, and fully describes the nature and extent of the condition or injury that I treated or analyzed or, in the case of a laboratory analysis, the information contained in the attached report is true and accurate.

4. The patient named in the report was the person treated or examined by me.

And further, this deponent saith not.

Signed: _____, _____, 2018

Examining Health Care Provider or Laboratory Analyst

Subscribed and sworn by _____.

_____

Notary Public

My commission expires: _____

AFFIDAVIT

COMMONWEALTH OF VIRGINIA

CITY OF _____

This ___ day of _____ 2018, _____, appeared before me and made oath as follows that:

1. My name is _____.

2. I am the custodian of the records of _____[identify the medical facility].

3. The attached record is a true and accurate copy of the record of _____[identify the medical facility].

And further, this deponent saith not.

Signed: _____, _____, 2018.

Records Custodian

Subscribed and sworn by _____.

_____

Notary Public

My commission expires: _____

AFFIDAVIT OF TREATING THERAPIST

Virginia Code § § 63.2-1522 & 1523

Virginia Code §16.1-245.1

COMMONWEALTH OF VIRGINIA
CITY OF _____/COUNTY OF _____

This day, the ____ of _____,
20__,_____,M.D./Psy.D./Psych/RN/LPN/LCSW/CSTOP/_____
__ (*circle or write-in*), appeared before me and made oath as follows:

I am the evaluating and treating practitioner in the above-styled cause, and have been seeing John Doe ("Child") since April 19, 2016.

I am now able to formulate an opinion as to whether the Child should be called to testify. After careful review of my therapy sessions with the Child, I do not believe the Child can communicate information about the abuse and incidents that occurred between herself and her Father in a court setting due to her fear. I further am of the opinion that she would suffer further severe emotional trauma if forced to testify in an open court or even a closed circuit television setting

The foregoing is an accurate summary of my expert opinion. A complete report and or my formal records that fully set(s) forth the information collected during evaluation(s) and/or treatment conducted by me is attached hereto and incorporated herein by reference; the same accurately sets forth my opinions and recommendations therein.

The foregoing opinions are made to a reasonable degree of therapeutic certainty.

And further the deponent saith not.

_____
Signature of Deponent

STATE OF VIRGINIA,
CITY OF _____, to-wit:
Subscribed and sworn to before me this _____ day of _____,
20__, by _____, in the city and state aforesaid.

_____
Notary Public

My Commission Expires: _____

Ferrell v. Alexandria Dep't of Cmty. & Human Servs.

Court of Appeals of Virginia

February 14, 2012, Decided

Record No. 1705-11-4

Reporter
2012 Va. App. LEXIS 40 *; 2012 WL 443523

FAYE FERRELL v. ALEXANDRIA DEPARTMENT OF COMMUNITY AND HUMAN SERVICES

Notice: PURSUANT TO THE APPLICABLE VIRGINIA CODE SECTION THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.

Prior History: [*1] FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA. Lisa B. Kemler, Judge.

Disposition: Affirmed.

Core Terms

trial court, terminated, parental rights, reliability, foster care, issues, psychological, allegations, services, skills, sexual abuse, trustworthiness, testimonial, admitting, questions, domestic, hearsay

Case Summary

Procedural Posture

A mother appealed an order terminating her parental rights to her children by the Circuit Court of the city of Alexandria (Virginia). The mother argued that the trial court erred by admitting hearsay statements of the child regarding alleged sex abuse under Va. Code Ann. § 63.2-1522, and that the testimony was not reliable. She also argued that the trial court erred in terminating her parental rights under Va. Code Ann. § 16.1-283(C)(2).

Overview

The mother had two children. The Department of Community and Human Services filed abuse and neglect petitions and removed two from mother's care. The mother acknowledged that she was involved in domestic violence incidents with the father of her unborn child. She also tested positive for marijuana. She told the Department that she was not going to stop using marijuana and that she was not going to participate in substance abuse testing or counseling. Due to her statements, the Department removed the third child. The mother's psychological evaluation revealed inadequate coping skills, low self-esteem, difficulty trusting others, and resistance to treatment. One of the children reported being sexually and physically abused. The trial court noted that there was significant testimony that the child has expressed a fear or demonstrated a fear of talking about the difficult subject matters in the presence of the mother or even fear that the mother would find out that she was talking about those things. Thus, the trial court did not err in ruling that the child was unavailable to testify. The Department presented sufficient evidence to support the termination of mother's parental rights.

Outcome

The judgment of the trial court was affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > General Overview

Family Law > Parental Duties & Rights > Termination of Rights > General Overview

HN1[] **Appeals, Standards of Review**

In regard to termination of parental rights, the appellate court views the evidence in the light most favorable to the prevailing party below and grant to it all reasonable inferences fairly deducible therefrom.

Evidence > ... > Hearsay > Exceptions > Statements

of Child Abuse

HN2[] **Exceptions, Statements of Child Abuse**

Under Va. Code Ann. § 63.2-1522(A), an out-of-court statement made by a child describing any act of a sexual nature performed with or on the child by another may be admissible in evidence if the requirements of Va. Code Ann. § 63.2-1522(B) are met. Va. Code Ann. § 63.2-1522(B) provides that the out-of-court statement may be admitted if the child is unavailable to testify, Va. Code Ann. § 63.2-1522(B)(1), and the statement is shown to possess particularized guarantees of trustworthiness and reliability, Va. Code Ann. § 63.2-1522(B)(2). In determining whether the child's statement possesses the necessary particularized guarantees of trustworthiness and reliability, the trial court must consider the twelve factors listed in Va. Code Ann. § 63.2-1522(D). Furthermore, the trial court is required to support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement. Va. Code Ann. § 63.2-1522(E).

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN3[] **Exceptions, Statements of Child Abuse**

See Va. Code Ann. § 63.2-1522(D).

Constitutional Law > ... > Fundamental Rights > Criminal Process > Right to Confrontation

HN4[] **Criminal Process, Right to Confrontation**

The Confrontation Clause applies to testimonial hearsay only.

Constitutional Law > ... > Fundamental Rights > Criminal Process > Right to Confrontation

HN5[] **Criminal Process, Right to Confrontation**

See *U.S. Const. amend. VI.*

Family Law > ... > Termination of Rights > Involuntary Termination > Unfit Parents

HN6[] **Involuntary Termination, Unfit Parents**

See Va. Code Ann. § 16.1-283(C)(2).

Family Law > ... > Termination of Rights > Involuntary Termination > Unfit Parents

HN7[] **Involuntary Termination, Unfit Parents**

Va. Code Ann. § 16.1-283(C) termination decisions hinge not so much on the magnitude of the problem that created the original danger to the child, but on the demonstrated failure of the parent to make reasonable changes. Considerably more retrospective in nature, subsection C requires the court to determine whether the parent has been unwilling or unable to remedy the problems during the period in which he has been offered rehabilitation services.

Family Law > ... > Termination of Rights > Involuntary Termination > Best Interest of Child

HN8[] **Involuntary Termination, Best Interest of Child**

In regard to termination of parental rights, it is clearly not in the best interests of a child to spend a lengthy period of time waiting to find out when, or even if, a parent will be capable of resuming his or her responsibilities.

Counsel: (Douglas A. Steinberg, on brief), for appellant.

(James Banks; Mary Elliott O'Donnell; Wahaj Memon; Ellen Dague, Guardian ad litem for the minor children; Office of the City Attorney, on brief), for appellee.

Judges: Present: Judges Humphreys, Huff and Senior Judge Clements.

Opinion

MEMORANDUM OPINION*

PER CURIAM

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*Pursuant to Code § 17.1-413, this opinion is not designated for publication.

Faye Ferrell (mother) appeals from an order terminating her parental rights to her children. Mother argues that the trial court erred by admitting hearsay statements of the child regarding alleged sex abuse under Code § 63.2-1522, and specifically that (1) the testimony did not meet the indicia of reliability and safeguards required under the statute and (2) the testimony was testimonial hearsay as defined by Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). Mother also argues that the trial court erred in terminating her parental rights under Code § 16.1-283(C)(2) when she made substantial progress towards elimination of the conditions which led to or required continuation of the foster care placement. Upon reviewing the record and briefs of the [*2] parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

BACKGROUND

HN1[↑] We view the evidence in the light most favorable to the prevailing party below and grant to it all reasonable inferences fairly deducible therefrom. See Logan v. Fairfax Cnty. Dep't of Human Dev., 13 Va. App. 123, 128, 409 S.E.2d 460, 462, 8 Va. Law Rep. 783 (1991).

Mother has three children who are the subject of this appeal.[1] The Alexandria Department of Community and Human Services (the Department) initially became involved with mother in January 2005. At the time, mother had one daughter, T.F. The Department removed T.F. from mother's care because mother was homeless and unable to care for T.F. The Department assisted mother with housing, counseling, and employment. In June 2006, S.F. was born and went home with mother. In March 2007, the Department returned T.F. to mother's custody because she was able to maintain housing, had completed individual counseling, and had no further domestic violence incidents with T.F.'s father.[2]

In November 2009, the Department filed abuse and neglect petitions related to T.F. and S.F. and removed them from mother's care. At the time, mother was sad and overwhelmed. The Department was concerned about the stability of mother's housing, the impending cut-off of utilities, and the amount of food in the house. Mother acknowledged that she was involved in domestic violence incidents with the father of her unborn child. Mother also tested positive for marijuana. In December 2009, N.F. was born and went home with mother.

A couple of weeks after N.F.'s birth, mother told the Department that she was not going to stop using marijuana and that she was not going to participate in substance abuse testing or counseling. Due to her statements, the Department removed N.F. from mother's care.

The Department provided mother with a home-based worker to assist her with maintaining the home and other daily skills, as well as parenting skills. Mother also received [*4] budgeting assistance from the Department.

The Department referred mother for a substance abuse evaluation and a psychological assessment. In April 2010, mother completed a psychological evaluation, which revealed that she had inadequate coping skills, low self-esteem, difficulty trusting others, and resistance to treatment.

The Department also referred mother to Drug Court, and mother participated in the program from spring 2010 to May 2011.

On August 2, 2010, the Department placed T.F., S.F., and N.F. back in mother's care.[3] Neither T.F.'s father nor N.F.'s father was permitted in the home. The Department continued to provide mother with services to assist her with parenting skills. T.F. and S.F. received individual therapy to address their sexualized behavior, which they began exhibiting after returning home.

During the fall of 2010, the Department became concerned with mother's ability to safely parent and provide for the children. T.F. began reporting to her teacher that she was being "whupped" with a belt at home, and S.F. reported to the CASA worker that she was hit with a belt as well. The CASA worker also reported that mother [*5] was not adequately supervising the children during this time period and

[1] Since the children are minors, we will refer to them by their initials, T.F., S.F., and N.F. Mother gave birth to a fourth child [*3] after the juvenile and domestic relations district court terminated her parental rights to T.F., S.F., and N.F. That child is not a subject of this appeal.

[2] Mother and T.F.'s father were involved in a domestic violence incident in January 2006.

[3] The Department retained legal custody of the children.

there was concern about the cleanliness of the home. In addition, there were concerns about N.F.'s growth, and mother's refusal to take the child for a follow-up appointment with the doctor.

In January 2011, complaints were made to Child Protective Services (CPS) involving allegations of sexual abuse in the home. On January 27, 2011, the Department removed T.F., S.F., and N.F. from the home. The Department had T.F. evaluated by a licensed clinical social worker who specialized in mental health assessments of abused children. T.F. reported being sexually abused and physically abused. Both T.F. and S.F. reported men staying in the home with mother.[4]

Considering the history of **[*6]** the case, the Department sought to terminate mother's parental rights, which the juvenile and domestic relations district court approved. Mother appealed, and after hearing all of the evidence and argument, the trial court terminated mother's parental rights to T.F. and S.F. under Code § 16.1-283(C)(2). The trial court terminated mother's parental rights to N.F. under Code § 16.1-283(B) and 16.1-283(C)(2). This appeal followed.

ANALYSIS

Admissibility of the child's statements under Code § 63.2-1522

Mother argues that the trial court erred in admitting T.F.'s statements about sexual abuse under Code § 63.2-1522. She contends the testimony did not meet the indicia of reliability and safeguards required under Code § 63.2-1522.

HN2[↑] Under Code § 63.2-1522(A), "an out-of-court statement made by a child . . . describing any act of a sexual nature performed with or on the child by another . . . may be admissible in evidence if the requirements of [Code § 63.2-1522(B)] are met." Code § 63.2-1522(B) provides that the out-of-court statement may be admitted if the child is unavailable to testify, Code § 63.2-1522(B)(1), and the "statement is shown to possess particularized guarantees of trustworthiness **[*7]** and reliability," Code § 63.2-1522(B)(2). In determining whether the child's statement possesses the necessary "particularized guarantees of trustworthiness and reliability," the trial court must consider the twelve factors listed in Code § 63.2-1522(D).[5] Furthermore, the trial court is required to "support with findings on the record . . . any rulings pertaining to the child's unavailability and the trustworthiness and reliability of the out-of-court statement." Code § 63.2-1522(E).

The Department offered the testimony of Marcella Rustioni, who is a licensed clinical social worker. Rustioni evaluated T.F. and testified about T.F.'s statements regarding the sexual abuse allegations against mother and N.F.'s father. The Department questioned Rustioni at length about her qualifications,[6] her forensic evaluation of T.F., her procedures, and T.F.'s development, including T.F.'s ability to recognize and tell the truth. Rustioni testified that T.F. did not have the capacity to testify in front of her mother. T.F. was

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[4] Although one of the conditions for the children being returned to mother in 2010 was that neither T.F.'s father nor N.F.'s father live with mother and the children, it appears that one or both of them were living in the home when the children were present. T.F. reported being abused by her "dad" and "Percy," as well as her mother. S.F. talked about different men living in the house and referred to them as "Daddy," "Ta," "P," and "[N.'s] Daddy."

[5] The twelve factors listed in Code § 63.2-1522(D) are:

HN3[↑] 1. The child's personal knowledge of the event;

2. The age and maturity of the child;

3. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion;

4. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;

5. The timing of the child's statement;

6. Whether more than one person heard the statement;

7. Whether the child was suffering pain or distress when making the statement;

8. Whether the child's age makes it unlikely that the child fabricated **[*8]** a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

9. Whether the statement has internal consistency or coherence, and uses terminology appropriate to the child's age;

10. Whether the statement is spontaneous or directly responsive to questions;

afraid of her mother and sometimes did not want to see her. She also was afraid of "Mr. Percy" and did not want to see him.[7]

When issuing its ruling to allow the statements, the trial court stated:

> So I think based on the testimony that I heard from Ms. Rustioni and everything that she went through in terms of the assessment that she did, the steps conducted in the extensive forensic interview and the various behavioral measures, including the child behavior checklist, the child sexual behavior inventory and the trauma symptom inventory, that the requirements and criteria of the statute . . . have been met.

Mother questions the trial court's ruling on T.F.'s availability; however, mother concedes that there was testimony regarding T.F.'s fear about testifying in front of her mother and N.F.'s father. The trial court noted that there was "significant testimony that the child has expressed a fear or demonstrated a fear of talking about these difficult subject matters in the presence of the mother or even fear that the mother would find out that she was talking about these things." The trial court did not err in ruling that T.F. was unavailable to testify.

Next, mother **[*10]** questions the trustworthiness and reliability of T.F.'s statements because of some internal inconsistency in T.F.'s statements, including her allegation of a third abuser who touched her inappropriately on the playground. Rustioni, however, testified that T.F.'s allegations regarding mother and N.F.'s father were consistent.

Accordingly, the trial court did not err in admitting T.F.'s statements under Code § 63.2-1522.[8]

> 11. Whether the statement is responsive to suggestive or leading questions; and
>
> 12. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

[6] The trial court designated Rustioni **[*9]** an expert in the fields of forensic interviewing, memory suggestibility, and child development.

[7] "Mr. Percy" was later identified as N.F.'s father.

[8] We note that the trial court did not place much weight on T.F.'s statements. In issuing its ruling, the trial court stated,

> Those [sexual abuse] allegations and the testimony pertaining to them I have to say had very little bearing on the Court's decision. In the Court's opinion the evidence that was presented, although unrebutted, was just that, allegations. And at this point I don't deem those allegations to be proved to the degree that I would use them as a basis for making this ruling.

Admissibility of the child's statements under *Crawford v. Washington*

Mother next argues that the trial court erred in admitting T.F.'s statements because Rustioni's testimony was testimonial hearsay as defined by *Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004)*.

In *Crawford*, the Supreme Court **[*11]** of the United States analyzed the *Sixth Amendment* and a criminal defendant's right to confront his accusers and held that HN4[↑] the *Confrontation Clause* applies to testimonial hearsay only. *Id. at 68-69* ("Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.").

We reject mother's argument that Rustioni's testimony was testimonial hearsay under *Crawford*. The ruling in *Crawford* applies to criminal cases, not civil cases. *Crawford* refers to the *Sixth Amendment*, which states, HN5[↑] "In all *criminal prosecutions*, the accused shall enjoy the right . . . to be confronted with the witnesses against him." (Emphasis added.)

Furthermore, we point to Code § 63.2-1522, which specifically allows the admission of a child's out-of-court statement so long as the child is unavailable and her statement "possesses particularized guarantees of trustworthiness and reliability." As noted above, the trial court did not err in admitting the child's statements.

Sufficiency of the evidence

Mother asserts that the trial court erred in finding that the evidence was sufficient to terminate her parental **[*12]** rights under Code § 16.1-283(C)(2) because she made substantial progress toward eliminating the conditions that led to or required the children's placement in foster care.

A court may terminate parental rights if:

> HN6[↑] The parent or parents, without good cause,

> have been unwilling or unable within a reasonable period of time not to exceed twelve months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end.

Code § 16.1-283(C)(2).

> [S]ubsection HN7[↑] C termination decisions hinge not so much on the magnitude of the problem that created the original danger to the child, but on the demonstrated failure of the parent to make reasonable changes. Considerably more "retrospective in nature," subsection C requires the court to determine whether the parent has been unwilling or unable to remedy the problems during the period in which he has been offered rehabilitation services.

Toms v. Hanover Dep't of Soc. Servs., 46 Va. App. 257, 271, 616 S.E.2d 765, 772 (2005) (quoting **[*13]** City of Newport News Dep't of Soc. Servs. v. Winslow, 40 Va. App. 556, 562-63, 580 S.E.2d 463, 466 (2003)).

The Department had been involved with this family since 2005. At the time of the hearing, T.F. had been in foster care for fifty-one out of her eighty-nine months; S.F. had been in foster care for fifteen out of her sixty-one months; and N.F. had been in foster care for thirteen out of her nineteen months. The Department removed T.F. from her mother's care three times.

Although mother made some progress, such as completion of the Drug Court program, she was unable to meet her children's needs. Mother did not follow up with necessary medical care for N.F. when the child had growth issues.[9] She could not adequately supervise her children. She did not recognize and understand the children's emotional and psychological needs.

The Department provided numerous **[*14]** services for mother over the years, but she still struggled with daily skills and her psychological issues. Mother had significant psychological issues, including depression, mood stability, and impulsive behaviors. She did not want to take medication for her psychological issues and stopped participating in therapy in May 2011. In addition, at the time of the trial, mother continued to struggle with budgeting issues, daily life skills, and maintaining a clean residence.

Citing the length of time that the children had been in foster care, the extensive services provided to mother, and the children's need for closure, stability, and a safe home, the trial court terminated mother's parental rights to T.F., S.F., and N.F.

HN8[↑] "It is clearly not in the best interests of a child to spend a lengthy period of time waiting to find out when, or even if, a parent will be capable of resuming his [or her] responsibilities." Kaywood v. Halifax Cnty. Dep't of Soc. Servs., 10 Va. App. 535, 540, 394 S.E.2d 492, 495, 7 Va. Law Rep. 1 (1990).

The Department presented sufficient evidence to support the termination of mother's parental rights, and the trial court did not err in doing so.

CONCLUSION

For the foregoing reasons, the **[*15]** trial court's ruling is summarily affirmed. Rule 5A:27.

Affirmed.

End of Document

[9] As an infant, N.F. was at the ninety-fifth percentile at weight and then dropped to eighty percent. After N.F. started living with her mother again, N.F.'s weight dropped to the twenty-second percentile. Upon returning to foster care, N.F. gained weight, and by the time of the trial, she was past the fiftieth percentile for weight.

Anonymous C v. Anonymous B

Court of Appeals of Virginia

January 11, 2011, Decided

Record No. 2232-09-2

Reporter
2011 Va. App. LEXIS 14 *; 2011 WL 65957

ANONYMOUS C v. ANONYMOUS B

Notice: PURSUANT TO THE APPLICABLE VIRGINIA CODE SECTION THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.

Prior History: [*1] FROM THE CIRCUIT COURT OF ALBEMARLE COUNTY. Cheryl V. Higgins, Judge.

Anonymous B v. Anonymous C, 51 Va. App. 657, 660 S.E.2d 307, 2008 Va. App. LEXIS 201 (2008)

Disposition: Affirmed in part, reversed in part and remanded.

Core Terms

trial court, disclosures, sexual abuse, protective order, nonsuit, contends, argues, abused, factors, excluding, parties, reliability, trustworthiness, guardian ad litem, exhibits, hearsay rule, allegations, neglect, costs, proceedings, indicates, questions, best interests of the child, sexual abuse of child, adjudicatory, discovery, movant, sexual, bias, trial court's ruling

Case Summary

Procedural Posture
Appellant mother and appellee father sought review of orders of the Circuit Court of Albemarle County (Virginia), which dissolved and dismissed a preliminary protective order that was implemented after a juvenile and domestic relations district court (J&DR) found that their child had been abused and neglected.

Overview

A county department of social services alleged that the father had sexually abused the child. The J&DR court concluded the child had been abused, but it was unable to identify the perpetrator. It issued a protective order against the mother and father. The department reversed its finding. The father moved to dissolve the protective order. The court of appeals held that the trial court did not err in denying the mother's request for a nonsuit under *Va. Code Ann. § 8.01-380*. The evidence supported a finding that it was in the child's best interests for the trial court to transfer the right to advocate for the protective order to the father and the guardian ad litem. Because the mother was a respondent to the preliminary protective order, her right to nonsuit the case against her was subordinate to the child's welfare. The trial court erred in excluding the child's disclosures of sexual abuse without making required findings. It identified each of the twelve factors of trustworthiness and reliability enumerated in *Va. Code Ann. § 63.2-1522(D)* and explained how it considered each factor, but it did not reference disclosures of sexual abuse the child made to a doctor or anyone else.

Outcome
The court of appeals affirmed the judgment in part, reversed it in part, and remanded the matter to the trial court for further proceedings.

LexisNexis® Headnotes

Civil Procedure > ... > Pretrial Judgments > Nonsuits > Involuntary Nonsuits

HN1[] **Nonsuits, Involuntary Nonsuits**

See *Va. Code Ann. § 8.01-380(A)*.

Civil Procedure > ... > Pretrial
Judgments > Nonsuits > Involuntary Nonsuits

HN2[] Nonsuits, Involuntary Nonsuits

The plain language of Va. Code Ann. § 8.01-380(A) establishes that a nonsuit may be taken only as to a cause of action, claim, or other party. A "cause of action" is defined as a set of operative facts which, under the substantive law, may give rise to a right of action. A right of action belongs to some definite person. It is the remedial right accorded that person to enforce a cause of action. It arises only when that person's rights are infringed. A claim, on the other hand, is defined as the aggregate of operative facts giving rise to a right enforceable by a court. A "claim" is an authoritative or challenging request, a demand of a right or supposed right, or a calling on another for something due or supposed to be due.

Family Law > Family Protection & Welfare > Children > Proceedings

HN3[] Children, Proceedings

Va. Code Ann. § 16.1-253 clearly states that a preliminary protective order may be issued upon the motion of any person or upon the court's own motion if necessary to protect a child's life, health, safety or normal development. Thus, under most circumstances, an action under § 16.1-253 does not involve the infringement of a right personal to the movant. Rather, it involves the protection of a third party: the child. The fact that the court has authority to seek a preliminary protective order sua sponte indicates that no personal right of the movant is involved.

Family Law > Family Protection & Welfare > Children > Abuse, Endangerment & Neglect

Family Law > Child Custody > Child Custody Procedures

HN4[] Children, Abuse, Endangerment & Neglect

A custody action is based on the movant's rights as a parent. Such a claim is personal to the parent, not the child. Actions brought under Va. Code Ann. § 16.1-253, on the other hand, are based on protecting the child from abuse. Such actions are not personal to the movant, but are undertaken on behalf of the child. The movant need not have any personal stake in the outcome of an action brought under § 16.1-253.

Civil Procedure > ... > Pretrial
Judgments > Nonsuits > Involuntary Nonsuits

HN5[] Nonsuits, Involuntary Nonsuits

The General Assembly included in Va. Code Ann. § 8.01-380 a third basis to nonsuit an action: taking a nonsuit as to any other party to the proceeding.

Civil Procedure > ... > Pretrial
Judgments > Nonsuits > General Overview

HN6[] Pretrial Judgments, Nonsuits

The ability to take a nonsuit is distinctly a weapon in the arsenal of a plaintiff.

Family Law > Family Protection & Welfare > Children > Proceedings

HN7[] Children, Proceedings

the parties to an action under Va. Code Ann. § 16.1-253 are not in the same positions as plaintiffs and defendants in a traditional action.

Evidence > Burdens of Proof > Preponderance of Evidence

Family Law > Family Protection & Welfare > Children > Proceedings

HN8[] Burdens of Proof, Preponderance of Evidence

See Va. Code Ann. § 16.1-253(F).

Family Law > Family Protection & Welfare > Children > General Overview

HN9[] Family Protection & Welfare, Children

The stated intention of the Virginia Juvenile Code, Va. Code Ann. §§ 16.1-226 to 16.1-334, is that in all proceedings the welfare of the child and the family and the protection of the rights of victims are the paramount concerns of the Commonwealth. Va. Code Ann. § 16.1-227. The court's paramount concern is always the best interests of the child. This standard applies especially in a case of alleged child sexual abuse and in such cases the court may subordinate the legal rights of the parents to the welfare of the child. The welfare of the child is to be regarded more highly than the technical legal rights of the parent. Where the interest of the child demands it, the rights of the father and mother may be disregarded.

Civil Procedure > ... > Pretrial Judgments > Nonsuits > Involuntary Nonsuits

Family Law > Family Protection & Welfare > Children > Proceedings

HN10 **Nonsuits, Involuntary Nonsuits**

In cases where allegations of child sexual abuse have been presented to the trial court and a preliminary protective order has been issued pursuant to those allegations, an alleged abuser's "right" to nonsuit must be subordinate to the welfare of the child.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN11 **Reviewability of Lower Court Decisions, Preservation for Review**

See Va. Sup. Ct. R. 5A:18.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN12 **Reviewability of Lower Court Decisions, Preservation for Review**

The purpose of Va. Sup. Ct. R. 5A:18 is to provide the trial court with the opportunity to remedy any errors so that an appeal is not necessary.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Governments > Legislation > Interpretation

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN13 **Standards of Review, De Novo Review**

Statutory interpretation presents a pure question of law, which an appellate court reviews de novo.

Governments > Legislation > Interpretation

HN14 **Legislation, Interpretation**

When interpreting statutes, courts ascertain and give effect to the intention of the legislature. That intent is usually self-evident from the words used in the statute. Consequently, courts apply the plain language of a statute unless the terms are ambiguous or applying the plain language would lead to an absurd result.

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN15 **Exceptions, Statements of Child Abuse**

Under Va. Code Ann. § 63.2-1522(A), an out-of-court statement made by a child describing any act of a sexual nature performed with or on the child by another may be admissible in evidence if the requirements of § 63.2-1522(B) are met. Section 63.2-1522(B) provides that the out-of-court statement may be admitted if the child is unavailable to testify, § 63.2-1522(B)(1), and the statement is shown to possess particularized guarantees of trustworthiness and reliability, § 63.2-1522(B)(2). In determining whether the child's statement possesses the necessary particularized guarantees of trustworthiness and reliability, the trial court must consider the twelve factors listed in § 63.2-1522(D). Furthermore, the trial court is required to support with findings on the record any rulings pertaining to the trustworthiness and reliability of the out-of-court statement. Va. Code Ann. § 63.2-1522(E).

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN16[] Exceptions, Statements of Child Abuse

See Va. Code Ann. § 63.2-1522(D).

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN17[] Exceptions, Statements of Child Abuse

The consistent use of the term "statement" in the singular form in Va. Code Ann. § 63.2-1522 clearly indicates the General Assembly's intent that each disclosure of sexual abuse must be analyzed individually.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

Civil Procedure > ... > Standards of Review > Plain Error > General Overview

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

HN18[] Standards of Review, Abuse of Discretion

In determining whether a statement possesses particularized guarantees of trustworthiness and reliability, the trial court shall consider the twelve enumerated factors and make findings on the record. Va. Code Ann. § 63.2-1522(D), (E). The trial court is not required to quantify or elaborate exactly what weight or consideration it has given to each of the statutory factors. If the circuit court considers all the factors and bases its findings on credible evidence, the appellate court will not disturb its decision on appeal. As such, the decision of the trial court will be reversed only when its decision is plainly wrong or without evidence to support it. Va. Code Ann. § 8.01-680. When the record discloses that the trial court considered all of the statutory factors, the court's ruling will not be disturbed on appeal unless there has been a clear abuse of discretion.

Civil Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

HN19[] Substantial Evidence, Sufficiency of Evidence

An appellate court considers the evidence in the light most favorable to the party prevailing in the trial court.

Civil Procedure > Appeals > Appellate Briefs

HN20[] Appeals, Appellate Briefs

See Va. Sup. Ct. R. 5A:20(c).

Civil Procedure > Appeals > Appellate Briefs

Civil Procedure > Appeals > Record on Appeal

HN21[] Appeals, Appellate Briefs

An appellate court will not search the record for errors in order to interpret the appellant's contention and correct deficiencies in a brief.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

Evidence > ... > Procedural Matters > Objections & Offers of Proof > Objections

HN22[] Reviewability of Lower Court Decisions, Preservation for Review

When an objection identifies the rule of evidence on which admission or exclusion depends, the proponent ordinarily need not do more to preserve error than offer the evidence. But when the objection does not focus on the specific issue presented on review, error is not preserved when the evidence is excluded unless the proponent of the evidence alerts the trial court to that issue. To preserve error in a ruling on evidence a party must notify the trial court of his or her position and the specific rule of evidence on which the party relies.

Civil Procedure > Settlements > Settlement Agreements > General Overview

HN23[] Settlements, Settlement Agreements

A stipulation is an agreement between counsel respecting business before a court. A stipulation of counsel, particularly when relied upon by a court, cannot later be unilaterally withdrawn. The trial judges must be able to rely on counsel to make tactical concessions during trial, especially those designed to narrow the issues and expedite the trial or settlement of litigation without the risk of such reliance being undermined later.

Civil Procedure > Settlements > Effect of Agreements

Family Law > Family Protection & Welfare > Children > Proceedings

HN24 **Settlements, Effect of Agreements**

The efficacy of stipulations is not unlimited. Stipulations are subject to several restrictions, including the requirement that the court review the provisions of the stipulations for their consistency with the best interests of the child or children whose welfare the stipulation addresses. However, once a valid stipulation has been agreed to, there can be no objection to it.

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

HN25 **Preclusion of Judgments, Estoppel**

A party is forbidden to assume successive positions in the course of a suit, or series of suits, in reference to the same fact or state of facts, which are inconsistent with each other, or mutually contradictory. A litigant is estopped from taking a position which is inconsistent with one previously assumed, either in the course of litigation for the same cause of action, or in dealings in pais.

Civil Procedure > ... > Preclusion of Judgments > Estoppel > General Overview

HN26 **Preclusion of Judgments, Estoppel**

A man shall not be allowed to approbate and reprobate at the same time.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > Admissibility > Expert Witnesses

HN27 **Standards of Review, Abuse of Discretion**

In civil cases, expert testimony generally is admissible if it will assist the trier of fact in understanding the evidence. However, the admission of expert testimony is subject to certain basic requirements, including the requirement that the evidence be based on an adequate foundation. The decision whether to admit such testimony is a matter committed to the trial judge's sound discretion, and an appellate court will reverse a trial court's determination in this regard only when the trial court has abused its discretion.

Evidence > ... > Lay Witnesses > Opinion Testimony > General Overview

HN28 **Lay Witnesses, Opinion Testimony**

Under the "opinion rule," opinion testimony of lay witnesses is incompetent because the jury is in as good a position as a witness to form opinions from the facts. There are, however, numerous exceptions to the "opinion rule." The principal exception to the "opinion rule" is the common sense understanding that the terms "fact" and "opinion" are relative. Some statements are not mere opinions but are impressions drawn from collected, observed facts, and are admitted under the "collective facts rule." Thus, an "opinion" formed by a witness at a given time, may be a "fact" that explains why the witness acted in a particular way. Making this distinction is a question best left to the discretion of the trial judge.

Evidence > Admissibility > Procedural Matters > General Overview

HN29 **Admissibility, Procedural Matters**

There is no rule of evidence which provides that testimony admissible for one purpose and inadmissible for another purpose is thereby rendered inadmissible. Quite the contrary is the case. Frequently, evidence that is inadmissible under a general rule of evidence is admissible under an exception to the general rule or under another rule.

Evidence > ... > Lay Witnesses > Opinion Testimony > General Overview

HN30[] Lay Witnesses, Opinion Testimony

In the very nature of things there can be no limitation placed on the number of witnesses who are called upon to testify as to facts, but there is a wide discretion vested in the trial court as to the number of opinion witnesses it will hear on a given subject.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > Relevance > Exclusion of Relevant Evidence > Confusion, Prejudice & Waste of Time

HN31[] Standards of Review, Abuse of Discretion

Cumulative testimony is repetitive testimony that restates what has been said already and adds nothing to it. It is testimony of the same kind and character as that already given. Where evidence is merely cumulative its introduction may be limited by the court. The exclusion of evidence favorable to a party in a civil action on the ground that it is repetitious and cumulative is a matter within the sound discretion of the trial court, and its ruling is entitled on review to a presumption of correctness.

Evidence > ... > Hearsay > Rule Components > General Overview

HN32[] Hearsay, Rule Components

Hearsay evidence is defined as a spoken or written out-of-court declaration or nonverbal assertion offered in court to prove the truth of the matter asserted therein. The primary justification for the exclusion of hearsay is the lack of any opportunity for the adversary to cross-examine the absent declarant whose out-of-court statement is introduced into evidence. Thus, the basis for excluding hearsay is that it is not subject to the tests which ordinarily exist to ascertain the testimony's truth. However, the hearsay rule does not operate to exclude evidence of a statement, request, or message offered for the mere purpose of explaining or throwing light on the conduct of the person to whom it was made.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Discovery & Disclosure > Discovery > Misconduct During Discovery

HN33[] Standards of Review, Abuse of Discretion

Va. Sup. Ct. R. 4:12 gives the trial court broad discretion in determining what sanctions, if any, will be imposed upon a litigant who fails to respond timely to discovery. Consequently, an appellate court accords deference to the decision of the trial court and will reverse that decision only if the trial court abused its discretion.

Civil Procedure > Trials > Bench Trials

Evidence > ... > Presumptions > Particular Presumptions > Regularity

HN34[] Trials, Bench Trials

In a bench trial, the trial judge is presumed to disregard prejudicial or inadmissible evidence, and this presumption will control in the absence of clear evidence to the contrary.

Civil Procedure > Appeals > Standards of Review > Reversible Errors

HN35[] Standards of Review, Reversible Errors

Error which does not injuriously affect the interest of the party complaining is not reversible.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Evidence > Burdens of Proof > Burden Shifting

Family Law > Marital Termination & Spousal Support > Costs & Attorney Fees

HN36[] Basis of Recovery, Statutory Awards

Va. Code Ann. § 16.1-278.19 merely allows the trial

court to shift the burden of attorney's fees and costs from one party to another.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Family Law > Marital Termination & Spousal Support > Costs & Attorney Fees

HN37[] Basis of Recovery, Statutory Awards

See Va. Code Ann. § 16.1-278.19.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

Evidence > Burdens of Proof > Burden Shifting

Family Law > Marital Termination & Spousal Support > Costs & Attorney Fees

HN38[] Basis of Recovery, Statutory Awards

The legislature's use of the word "may" indicates that Va. Code Ann. § 16.1-278.19 is non-compulsory, as the trial court may award attorney's fees and costs. Similarly, the phrase "on behalf of any party" clearly indicates that fees and costs must first be incurred by the party before the trial court may make the award. Thus, § 16.1-278.19 is clearly designed to give the trial court authority to shift the burden of attorney's fees and costs from one party to another and does not set out a requirement that a guardian ad litem's fees must be divided among the parties based on their relative financial abilities.

Family Law > Child Custody > Guardians Ad Litem

Family Law > Family Protection & Welfare > Children > Proceedings

HN39[] Child Custody, Guardians Ad Litem

Under Va. Code Ann. § 16.1-267(A), the trial court is required to assess the total costs of the guardian ad litem's representation of the child against both parents. However, the statute is silent as to how the trial court may apportion those costs between the parents. The power to apportion the fees and expenses of the guardian ad litem is indivisible from the power to appoint the guardian ad litem. The trial court may allocate the costs of the guardian ad litem's services based upon the final result. As such, the decision to apportion guardian fees between both parties involves a matter within the trial court's discretion.

Family Law > Child Custody > Guardians Ad Litem

Family Law > Family Protection & Welfare > Children > Proceedings

HN40[] Child Custody, Guardians Ad Litem

See Va. Code Ann. § 16.1-267(A).

Governments > Legislation > Interpretation

HN41[] Legislation, Interpretation

When the language of a statute is unambiguous, an appellate court is bound by the plain meaning of that language.

Family Law > Family Protection & Welfare > Children > Abuse, Endangerment & Neglect

HN42[] Children, Abuse, Endangerment & Neglect

An "abused or neglected child" is defined as any child under the age of eighteen, whose parents or other person responsible for his or her care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means. Va. Code Ann. § 63.2-100. The statutory definitions of an abused or neglected child do not require proof of actual harm or impairment having been experienced by the child.

Family Law > Family Protection & Welfare > Children > Abuse, Endangerment & Neglect

HN43[] Children, Abuse, Endangerment & Neglect

The Commonwealth's policy is to protect abused

children and to prevent further abuse of those children.

Family Law > Family Protection & Welfare > Children > Abuse, Endangerment & Neglect

HN44[] **Children, Abuse, Endangerment & Neglect**

All that is required under Va. Code Ann. § 63.2-100 is the creation of an environment that threatens to inflict physical or mental injury to the child.

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN45[] **Exceptions, Statements of Child Abuse**

Va. Code Ann. § 63.2-1522 applies only to statements made by a child describing any act of a sexual nature performed with or on the child by another.

Counsel: Gregory F. Jacob (Winston & Strawn LLP, on briefs), for appellant.

Thomas M. Wolf (LeClairRyan, A Professional Corporation, on brief), for appellee.

C. James Summers (Summers & Anderson, on brief), Guardian ad litem for the infant child.

Judges: Present: Judges Elder, Frank and Powell. MEMORANDUM OPINION BY JUDGE CLEO E. POWELL.

Opinion by: CLEO E. POWELL

Opinion

MEMORANDUM OPINION * BY JUDGE CLEO E. POWELL

Anonymous C ("mother") and Anonymous B ("father"), the parents of a minor child, Anonymous A ("the child"), appeal the rulings of the Albemarle County Circuit Court related to its decision to dissolve and dismiss the preliminary protective order implemented following a finding by the Albemarle County Juvenile and Domestic Relations District Court ("J&DR court") that the child had been abused and neglected. This Court previously remanded this case to the trial court "to hear evidence and make findings on the issue of which parent or parents committed the abuse and what type of abuse was involved in order to allow it to enter **[*2]** a protective order containing terms designed to meet the best interests of the child while taking into consideration the rights of her parents, as well." *Anonymous B v. Anonymous C, 51 Va. App. 657, 678, 660 S.E.2d 307, 317 (2008)*.

On appeal, mother contends that the trial court erred in (1) denying her motion for nonsuit; (2) excluding the child's disclosures of sexual abuse; (3) refusing to allow one of her experts to testify about a medical test; (4) allowing one of father's witnesses to testify on issues beyond the scope of her expertise; (5) admitting the substance of prior administrative proceedings into evidence; (6) limiting her expert testimony as cumulative; (7) refusing to allow her to introduce out-of-court statements for the purpose of showing that her actions were reasonable; (8) refusing to allow her to introduce numerous exhibits into evidence as a sanction for discovery violations; (9) overruling her objections to father's argumentative opening statement; and (10) failing to conduct a "relative financial ability" analysis before requiring her to pay fees to the guardian *ad litem*. Father cross-appeals, arguing the trial court erred by holding that the evidence was insufficient **[*3]** to find mother abused the child and by excluding evidence of mother's coaching of the child. Finding that the trial court erred in several respects, we affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

ANALYSIS[1]

I. Mother's Motion to Nonsuit

Mother argues that the trial court erred in denying her motion to nonsuit, as she had an absolute right to a first nonsuit under Code § 8.01-380. Mother contends that the trial court had no choice but to grant her motion to nonsuit because the case had not been submitted to the trial court for consideration, no previous motion for

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

[1] As the parties are familiar with the record below, we cite only those facts necessary to the disposition of the appeal.

nonsuit had been filed, no motion to strike had been sustained, and no adverse party had filed a counterclaim.

Father argues that mother had no standing to unilaterally nonsuit the case, as she was subject to the preliminary protective order at issue in this case. In the alternative, father contends that any error on the part of the trial court was harmless, as the trial court had inherent jurisdiction to dispose of the protective order. Meanwhile, the guardian **[*4]** *ad litem* argues that whenever a petition alleging abuse has been filed, the plain language of *Code § 16.1-253(F)* requires the trial court to conduct a hearing to determine whether the allegations set forth in the petition have been proven. The guardian *ad litem* contends that *Code § 8.01-380* is inapplicable to actions filed under *Code § 16.1-253*. As we hold that allowing a party subject to a preliminary protective order to nonsuit the case would subvert the purposes of *Code § 16.1-253*, we affirm the decision of the trial court.

The unique posture of this case is important in understanding this Court's ultimate determination on the nonsuit issue. On February 9, 2005, Albemarle County Department of Social Services ("ACDSS") filed a petition pursuant to *Code § 16.1-253* alleging father had sexually abused the child. After hearing evidence on the matter, the J&DR court concluded the child had been abused but that it was unable to identify the perpetrator of the abuse. [2] As a result, the J&DR court entered a preliminary protective order naming both parents as persons subject to the order.

On March 15, 2005, the J&DR court held an adjudicatory hearing and again found that the child was abused and named both parents as subject to the preliminary protective order. On April 29, 2005, following a dispositional hearing, the J&DR court issued a protective order naming both parents. The J&DR court issued two more protective orders on November 1, 2005, and May 3, 2006, each naming both parents as subject to the order.

Following the issuance of the May 3, 2006 protective order, father noted a de novo appeal of the dispositional hearing. [3] While his appeal was pending, ACDSS reversed its administrative finding that father had sexually abused the child. As a result, father moved the trial court to dissolve the protective order. In response, mother filed a cross-claim against father, noting that "[t]he administrative reversal does affect [ACDSS]'s ability to act effectively as Plaintiff in this civil action." In her cross-claim, mother requested the trial court construe the March 15, 2005 adjudicatory order to provide that father sexually abused the child and enter such orders as necessary to protect the child from additional abuse, **[*6]** or, in the alternative, find that father abused the child and enter such orders as necessary to protect the child from additional abuse. In his answer to mother's cross-claim, father moved the trial court to find that mother abused the child and to enter such orders as necessary to protect the child from additional abuse.

At trial, the court ruled that it was bound by the J&DR court's findings of fact as contained in the J&DR court's adjudicatory order and proceeded to hold a dispositional hearing based on the J&DR court's adjudicatory findings. In the subsequent appeal to this Court, we held the trial court erred in making this ruling and remanded the case to the trial court with instructions that the trial court hold a *de novo* adjudicatory hearing. *Anonymous B, 51 Va. App. at 677, 660 S.E.2d at 316*.

As a result, the case before the trial court was father's de novo appeal of the J&DR court's adjudicatory finding that the child had been abused by either mother or father, both of **[*7]** whom were subject to the resulting protective order. ACDSS was the petitioner, and, as mother and father were each subject to the resulting protective order, they were both respondents.

Father subsequently moved to dismiss ACDSS from the case and strike its petition. ACDSS offered no objection to father's motion, as long as the trial court found the ruling to be in the best interests of the child. On March 3, 2009, the trial court granted father's motion, dismissing ACDSS as a party and dismissing its petition. At the same time, the trial court also determined that mother's cross-claim covered the allegations made in ACDSS's petition and that the same remedies necessary to protect the child from additional abuse were still available to the court. As a result, the trial court effectively substituted mother for ACDSS as the advocate of the protective order. It is important to

[2] The J&DR court found that either father sexually abused the child or mother emotionally abused the child **[*5]** by coaching her to make a false report about father.

[3] This Court subsequently determined that an appeal of the dispositional hearing necessarily includes an appeal of the corresponding adjudicatory hearing. *Anonymous B, 51 Va. App. at 674-75, 660 S.E.2d at 315*.

note, however, that nothing in the trial court's order indicated that mother was no longer subject to the protective order. Indeed, in its order dismissing ACDSS, the trial court specifically stated "[t]hat the Child Protective Order previously entered by this Court *shall remain in full force and effect* pending the [*8] full hearing scheduled for this matter." (Emphasis added). As a result, mother was now in the position of advocating a protective order to which she was also subject as a potential abuser.

Against this backdrop, we examine Code § 8.01-380(A), which provides in relevant part:

> HN1[] A party shall not be allowed to suffer a nonsuit as to any cause of action or claim or any other party to the proceeding, unless he does so before a motion to strike the evidence has been sustained or before the jury retires from the bar or before the action has been submitted to the court for decision.

HN2[] The plain language of the statute establishes that a nonsuit may be taken only as to a cause of action, claim, or other party. Our Supreme Court has defined a "cause of action" as "a set of operative facts which, under the substantive law, may give rise to a right of action." Roller v. Basic Constr. Co., 238 Va. 321, 328, 384 S.E.2d 323, 326, 6 Va. Law Rep. 447 (1989). "A right of action belongs to some definite person; it is the remedial right accorded that person to enforce a cause of action. It arises only when *that person's* rights are infringed." Id. (emphasis added). A claim, on the other hand, is defined as "[t]he aggregate of operative [*9] facts giving rise to a right enforceable by a court." Black's Law Dictionary 281 (9th ed. 2009); see also Stamie E. Lyttle Co. v. County of Hanover, 231 Va. 21, 26 n.4, 341 S.E.2d 174, 178 n.4 (1986) (defining a "claim" as "'an authoritative or challenging request,' 'a demand of a right or supposed right,' or 'a calling on another for something due or supposed to be due'" (quoting Webster's Third New International Dictionary 414 (1981))).

Based upon these definitions, most actions brought under Code § 16.1-253 are neither causes of action nor claims. HN3[] The statute clearly states that a preliminary protective order may be issued "[u]pon the motion of any person or upon the court's own motion . . . if necessary to protect a child's life, health, safety or normal development." Thus, under most circumstances, an action under Code § 16.1-253 does not involve the infringement of a right personal to the movant; rather, it involves the protection of a third party: the child. [4] Indeed, the fact that the court has authority to seek a preliminary protective order *sua sponte* indicates that no personal right of the movant is involved. [5]

Recognizing that a number of actions are neither causes of action nor claims, HN5[] the General Assembly included in Code § 8.01-380 a third basis to nonsuit an action: taking a nonsuit as to "any other party to the proceeding." We note, however, that in the present case, *both* father [*11] and mother are technically respondents. Thus, mother's decision to nonsuit the action as to the only "other party," i.e., father, would have no bearing on her position as a respondent. As the trial court would still be in a position to consider all of the evidence presented to determine whether any abuse occurred and, if so, who committed it, mother's nonsuit as to the other party would have no practical effect on the outcome of the proceeding.

Furthermore, it is well settled that HN6[] the ability to take a nonsuit is "distinctly a weapon in the arsenal of a plaintiff." Trout v. Commonwealth Transp. Comm'r, 241 Va. 69, 73, 400 S.E.2d 172, 174, 7 Va. Law Rep. 1305 (1991). However, in the present case, it would be improper to label mother as the "plaintiff" because HN7[] the parties to an action under Code § 16.1-253 are not in the same positions as plaintiffs and defendants in a traditional action. Code § 16.1-253(F) states that, HN8[] "[i]f a petition alleging abuse or neglect of a child has been filed . . . the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence." Notably,

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[4] We recognize that, on rare occasions, the child may seek a protective [*10] order on his/her own behalf. In such situations, the action under Code § 16.1-253 would obviously involve a right personal to the movant, and therefore a right of action would exist.

[5] Mother's argument relies heavily on the fact that a nonsuit may be taken in other cases where the child is the subject of the litigation, such as in custody actions. Her reliance, which at first blush appears to have merit, is misplaced. Custody actions are readily distinguishable from the present case, as HN4[] a custody action is based on the movant's rights as a parent; such a claim is personal to the parent, not the child. Actions brought under Code § 16.1-253, on the other hand, are based on protecting the child from abuse; such actions are not personal to the movant, but are undertaken on behalf of the child. Indeed, it is clear that the movant need not have any personal stake in the outcome of an action brought under Code § 16.1-253.

the statute is silent as to *who* must prove the allegations of neglect and abuse. While **[*12]** at first it appears logical that the movant or petitioner would be the one required to prove the allegations of neglect and abuse, such is not always the case. There are situations in which the movant or petitioner is not in a position to properly advocate for the preliminary protective order, such as where the trial court has moved for the preliminary protective order or where, as in this case, the petitioner is subject to the preliminary protective order. Similarly, there are situations in which the advocate of a preliminary protective order may no longer wish to pursue the matter, such as where the evidence indicates that the advocate may actually be the abuser.

In its final order, the trial court correctly recognized that "while the petition is brought in the name of the mother, it is for the benefit of the child. Therefore, the right to advocate a protective order on behalf of the child can be transferred to a party of interest." This observation is consistent with HN9[↑] the stated intention of the Virginia Juvenile Code, Code §§ 16.1-226 to -334, that "in all proceedings the welfare of the child and the family . . . and the protection of the rights of victims are the paramount concerns **[*13]** of the Commonwealth." Code § 16.1-227. Indeed, we have previously recognized that

> the court's paramount concern is always the best interests of the child. *This standard applies especially in a case of alleged child sexual abuse . . . and in such cases the court may subordinate the legal rights of the parents to the welfare of the child.*

Farley v. Farley, 9 Va. App. 326, 327-28, 387 S.E.2d 794, 795, 6 Va. Law Rep. 1205 (1990) (emphasis added); see also Forbes v. Haney, 204 Va. 712, 716, 133 S.E.2d 533, 536 (1963) ("[T]he welfare of the child is to be regarded more highly than the technical legal rights of the parent. Where the interest of the child demands it, the rights of the father and mother may be disregarded.").

Similarly, Code § 16.1-253 is intended to provide for the protection of abused and neglected children, and it would be highly illogical to allow a person who may, in fact, be responsible for the abuse and neglect to be in a position to nonsuit the action against herself. Accordingly, HN10[↑] in cases such as this, where allegations of child sexual abuse have been presented to the trial court and a preliminary protective order has been issued pursuant to those allegations, it is axiomatic that an alleged **[*14]** abuser's "right" to nonsuit must be subordinate to the welfare of the child.

Here, because mother was a respondent to the preliminary protective order, her right to nonsuit the case against her was necessarily subordinate to the welfare of the child. Therefore, for all the foregoing reasons, we hold that the trial court did not err in denying mother's request for a nonsuit, because the evidence supports a finding that it was in the best interests of the child for the trial court to transfer the right to advocate for the protective order to father and the guardian *ad litem*. [6]

II. Exclusion of the Child's Disclosures of Sexual Abuse

Mother next argues that the trial court erred in excluding the child's disclosures of sexual abuse. According to mother, the trial court **[*15]** erred by: (1) excluding the child's disclosures of sexual abuse that had been allowed into evidence in previous hearings; (2) excluding all of the child's disclosures of sexual abuse without making specific findings related to each disclosure; (3) misapplying the trustworthiness and reliability factors enumerated in Code § 63.2-1522(D) in excluding the child's disclosures of sexual abuse to Dr. Viola Vaughan-Eden ("Dr. Vaughan-Eden") and Lori Green ("Green"); (4) refusing to allow the child's disclosures of sexual abuse into evidence to demonstrate the child's state of mind; and (5) finding the child was unavailable to testify. For the reasons set forth below, we agree that the trial court erred in excluding some of the child's disclosures of sexual abuse and remand the matter to the trial court to make the necessary trustworthiness and reliability findings for all of the child's disclosures of sexual abuse.

A. Disclosures of Sexual Abuse Admitted in Prior Proceedings

Mother argues that the trial court erred in excluding the

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[6] In its final order, the trial court specifically transferred the right to advocate for the protective order to father and the guardian *ad litem*, stating

> Whereas counsel for the father objected, and the guardian *ad litem* for the child objected, the court finds that they are permitted to continue the advocacy of this petition on behalf of the child and further finds that it is in the best interest of the child to do so . . . .

child's disclosures of sexual abuse because the disclosures had previously been allowed into evidence during the adjudicatory hearing held in the J&DR court. Mother **[*16]** contends that the law of the case doctrine required the trial court to allow the disclosures into evidence.

Rule 5A:18 [7] provides that *HN11*[↑] "No ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated together with the grounds therefor at the time of the ruling, except for good cause shown or to enable the Court of Appeals to attain the ends of justice." *HN12*[↑] "The purpose of *Rule 5A:18* is to provide the trial court with the opportunity to remedy any errors so that an appeal is not necessary." *Knight v. Commonwealth, 18 Va. App. 207, 216, 443 S.E.2d 165, 170, 10 Va. Law Rep. 1154 (1994)*.

At no point during the trial did mother argue that the child's **[*17]** disclosures should be admitted on the grounds that they had been admitted during a previous stage of the litigation. [8] Accordingly, *Rule 5A:18* bars our consideration of this issue on appeal.

B. Exclusion of the Child's Disclosures of Sexual Abuse in a Single Ruling

Mother next argues that the trial court erred in excluding the child's disclosures of sexual abuse in "a blanket ruling," as opposed to addressing each disclosure individually. Mother notes that, when the trial court applied the trustworthiness and reliability factors enumerated in *Code § 63.2-1522(D)*, it used facts applicable to a few of the child's disclosures of sexual abuse to discredit all of the child's disclosures of sexual abuse. Mother contends that the language **[*18]** of *Code § 63.2-1522* uses the word "statement" in the singular form, indicating "the legislature's intent that each disclosure be analyzed separately." Father does not dispute mother's interpretation of the statute; rather, he argues that the trial court did not err in its application of *Code § 63.2-1522*, as the record supports the findings of the trial court. Furthermore, father contends that mother mischaracterizes the letter opinion as a "single, blanket ruling" under *Code § 63.2-1522*. According to father, the letter opinion merely represents the trial court's ruling on his motion *in limine*, which specifically targeted the disclosures of sexual abuse made to Dr. Vaughan-Eden, Green, and Dr. Sheila Furey ("Dr. Furey"). To the extent that the trial court excluded the child's disclosures of sexual abuse without making the required findings, we agree with mother that the trial court erred.

HN13[↑] Statutory interpretation presents a pure question of law, which we review *de novo*. *Ainslie v. Inman, 265 Va. 347, 352, 577 S.E.2d 246, 248 (2003)*.

> *HN14*[↑] When interpreting statutes, courts "ascertain and give effect to the intention of the legislature." *Chase v. DaimlerChrysler Corp., 266 Va. 544, 547, 587 S.E.2d 521, 522 (2003)*. **[*19]** That intent is usually self-evident from the words used in the statute. Id. Consequently, courts apply the plain language of a statute unless the terms are ambiguous, *Tiller v. Commonwealth, 193 Va. 418, 420, 69 S.E.2d 441, 442 (1952)*, or applying the plain language would lead to an absurd result. *Cummings v. Fulghum, 261 Va. 73, 77, 540 S.E.2d 494, 496 (2001)*.

Boynton v. Kilgore, 271 Va. 220, 227, 623 S.E.2d 922, 925 (2006).

HN15[↑] Under *Code § 63.2-1522(A)*, "an out-of-court *statement* made by a child . . . describing any act of a sexual nature performed with or on the child by another . . . may be admissible in evidence if the requirements of [*Code § 63.2-1522(B)*] are met." (Emphasis added). *Code § 63.2-1522(B)* provides that the out-of-court statement may be admitted if the child is unavailable to testify, *Code § 63.2-1522(B)(1)*, and the "statement is shown to possess particularized guarantees of trustworthiness and reliability," *Code § 63.2-1522(B)(2)*. In determining whether the child's statement possesses the necessary particularized guarantees of

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[7] Effective July 1, 2010, *Rule 5A:18* was revised to state that "[n]o ruling of the trial court . . . will be considered as a basis for reversal unless an objection was stated with reasonable certainty at the time of the ruling . . . ." As the proceedings below were completed prior to this revision taking effect, we will rely on the language of *Rule 5A:18* that was then in effect. See *Fails v. Va. State Bar, 265 Va. 3, 5 n.1, 574 S.E.2d 530, 531 n.1 (2003)* (applying the Rule of Court in effect at the time of the proceedings below).

[8] Although mother made an argument based on the law of the case doctrine, the argument was not regarding any disclosures of sexual abuse made by the child. Rather, mother argued that the law of the case doctrine applied to the trial court's previous finding that the child was abused and, therefore, all that needed to be determined was the type of abuse and the identity of the abuser. At no time did she reference the disclosures of sexual abuse made by the child.

trustworthiness and reliability, the trial court must consider the twelve factors listed in Code § 63.2-1522(D). [9] Furthermore, the trial court **[*20]** is required to "support with findings on the record . . . any rulings pertaining to . . . the trustworthiness and reliability of the out-of-court statement." Code § 63.2-1522(E).

HN17[↑] The consistent use of the term "statement" in the singular form clearly indicates the General Assembly's intent that each disclosure of sexual abuse must be analyzed individually. Furthermore, a majority of the factors the trial court must consider in determining the trustworthiness and reliability of a child's statement are statement specific. [10] Indeed, only three factors are *not* statement specific. [11] In its August 6, 2009 letter opinion, the trial court identified each of the twelve factors of trustworthiness and reliability enumerated in Code § 63.2-1522(D), and explained how it considered each factor. Throughout its explanation, the trial court referred only to the disclosures made to Dr. Vaughan-Eden and Green. At no point did the trial court reference disclosures of sexual abuse made by the child to Dr. Furey or anyone else. [12] Absent the requisite findings on the record, the trial court's exclusion of all of the child's out-of-court statements describing sexual abuse was error. **[*22]** [13]

C. Exclusion of the Disclosures Made to Dr. Vaughan-Eden and Green

As previously noted, the trial court's August 6, 2009 letter opinion specifically referenced the disclosures of sexual abuse the child made to Dr. Vaughan-Eden and Green. As such, unlike the disclosures of sexual abuse made to Dr. Furey and others, the trial court's rulings

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[9] The twelve factors are as follows:

> HN16[↑] 1. The child's personal knowledge of the event;
>
> 2. The age and maturity of the child;
>
> 3. Certainty that the statement was made, including the credibility of the person testifying about the statement and any apparent motive such person may have to falsify or distort the event including bias, corruption or coercion;
>
> 4. Any apparent motive the child may have to falsify or distort the event, including bias, corruption, or coercion;
>
> 5. The timing of the child's statement;
>
> 6. Whether more than one person heard the statement;
>
> 7. Whether the child was suffering pain or distress when making the statement;
>
> 8. Whether the child's age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;
>
> 9. Whether the statement has internal consistency or coherence, and uses terminology appropriate to the child's age;
>
> 10. Whether the statement is spontaneous or directly responsive to questions;
>
> 11. Whether the statement **[*21]** is responsive to suggestive or leading questions; and
>
> 12. Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

Code § 63.2-1522(D).

[10] Nine of the twelve factors (2, 3, 5, 6, 7, 8, 9, 10, and 11) relate either to the content of the specific statement made by the child, the context in which that statement was made, or the credibility of the person testifying about the statement.

[11] Factors 1 and 4 focus on the basis of the child's knowledge about the event and any potential motive the child may have to lie. Meanwhile, factor 12 involves evidence independent of the child's statement.

[12] We recognize that a finding that the child lacks the proper basis of knowledge (factor 1) or has a motive to lie (factor 4) could affect all of the disclosures made by a child and therefore serve as a non-statement-specific basis for excluding all of the child's statements. Nevertheless, the trial court would still be required to make a finding that the child's statements lacked the necessary trustworthiness and reliability as a result. Code § 63.2-1522(E). Here, the record clearly demonstrates that the trial court was concerned that the child's statements were tainted by the fact that she had "no memory of a time when there has not been a focus on whether she has been sexually abused." Indeed, the trial court specifically found that **[*23]** such experiences "would have some influence on the statements of the child." However, rather than finding that the taint was so pervasive as to render all of the child's statements untrustworthy, the trial court determined that it would simply "mak[e] it more difficult to find the particularized guarantees of trustworthiness and reliability."

[13] Mother's question presented was limited specifically to the trial court's exclusion of the child's disclosures of sexual abuse under Code § 63.2-1522. As such, our holding is limited to only those statements made by the child "describing any act of a sexual nature performed with or on the child by another." Code § 63.2-1522(A). The issue of the trial court's exclusion of hearsay statements made by the child that do not relate to sexual abuse is raised in father's cross-appeal and is therefore discussed below.

[*24] on these statements are supported with findings on the record, as required by Code § 63.2-1522(E). Mother, however, argues that the trial court misapplied the trustworthiness and reliability factors enumerated in Code § 63.2-1522(D). Specifically, mother contends that the trial court erred in finding that the disclosures were the product of leading questions as opposed to spontaneous statements by the child.

HN18[↑] "In determining whether a statement possesses particularized guarantees of trustworthiness and reliability . . . the court shall consider" the twelve enumerated factors and "make findings on the record." Code § 63.2-1522(D), (E). As we have repeatedly recognized in interpreting similar statutes that require the trial court to consider certain enumerated factors, the trial court "'is not required to quantify or elaborate exactly what weight or consideration it has given to each of the statutory factors.'" Sargent v. Sargent, 20 Va. App. 694, 702, 460 S.E.2d 596, 599, 12 Va. Law Rep. 89 (1995) (quoting Woolley v. Woolley, 3 Va. App. 337, 345, 349 S.E.2d 422, 426, 3 Va. Law Rep. 1063 (1986)). "If [*25] the circuit court considers all the factors and bases its findings on credible evidence, we will not disturb its decision on appeal." Fadness v. Fadness, 52 Va. App. 833, 842, 667 S.E.2d 857, 862 (2008). As such, the decision of the trial court will be reversed only when its decision is plainly wrong or without evidence to support it. Code § 8.01-680; see Gamble v. Gamble, 14 Va. App. 558, 574, 421 S.E.2d 635, 644, 8 Va. Law Rep. 3072 (1992) ("When the record discloses that the trial court considered all of the statutory factors, the court's ruling will not be disturbed on appeal unless there has been a clear abuse of discretion.").

Upon familiar principles, HN19[↑] "we consider the evidence in the light most favorable to the party prevailing in the trial court." Schoenwetter v. Schoenwetter, 8 Va. App. 601, 605, 383 S.E.2d 28, 30, 6 Va. Law Rep. 168 (1989). Mother's specific argument focuses on the trial court's findings regarding factors 6, 10, and 11. With regard to those factors, the trial court made these specific findings in its August 6, 2009 letter opinion:

> [Regarding factor 6], [w]hile more than one person heard the statement, the court does not find that it indicates a particularized guarantee of trustworthiness or reliability. [*26] The statement was heard by Lori Green and Terry Walls, but the statement was repeated after prompting by Dr. Vaughan-Eden through leading questions such as "who hurt your butt."
> * * * *
> The court next examines the tenth and eleventh factors. . . . It is difficult for the court to assess these factors because Dr. Vaughan-Eden's sessions with the child were not recorded and her notes do not indicate with any degree of specificity what questions were asked of the child. The questions that are pointed out in the notes, such as "who hurt your butt," seem to be leading in nature.

Nothing in either of these statements is plainly wrong or lacking evidence to support it. Indeed, Dr. Vaughan-Eden's notes make it clear that the child's statement in front of Green and Terry Walls was prompted by specific questioning on the part of Dr. Vaughan-Eden.

Furthermore, we note, as a general matter, that the trial court found that Dr. Vaughan-Eden violated the protocol of the forensic model she purported to follow and that her evaluation of the child was tainted by mother's inflammatory description of father's alleged actions. These findings alone would be sufficient to support the trial court's ruling. Accordingly, [*27] we cannot say that the ruling of the trial court is "plainly wrong or without evidence to support it."

D. Disclosures as Evidence of the Child's State of Mind

Mother argues that the trial court erred in refusing to allow the disclosures of sexual abuse as evidence of the child's state of mind. Mother contends that the disclosures of sexual abuse demonstrated that the child had been exposed to some kind of sexualized contact not normal for a child her age or that the child had been exposed to a traumatic experience that caused her to feel pain or to be afraid. However, as previously noted, we "will not consider an argument on appeal which was not presented to the trial court." Ohree v. Commonwealth, 26 Va. App. 299, 308, 494 S.E.2d 484, 488 (1998); see also Rule 5A:18.

Mother's brief does not direct us to the place in the record where she preserved this specific issue for appeal, see Rule 5A:20(c) (stating that HN20[↑] "[t]he opening brief of appellant shall contain . . . [a] statement of the questions presented with *a clear and exact reference* to the page(s) of the transcript, written statement, record, or appendix where each assignment of error was preserved in the trial court (emphasis added)), [*28] and we have found no evidence in the record indicating that mother informed the trial court of

the error she now presents to us. [14] HN21[↑] "We will not search the record for errors in order to interpret the appellant's contention and correct deficiencies in a brief." Buchanan v. Buchanan, 14 Va. App. 53, 56, 415 S.E.2d 237, 239, 8 Va. Law Rep. 2336 (1992). As it does not appear that this objection was ever presented to the trial court, Rule 5A:18 bars our consideration of this question presented on appeal. [15]

E. Refusal to Allow the Child to Testify

In her final argument relating to the child's disclosures, mother argues that the trial court erred in refusing to allow her to call the child to testify once the disclosures of sexual abuse had been excluded. Mother contends her stipulation that the child was unavailable to testify was void *ab initio*, as it lacked the necessary expert [*31] opinion testimony required under Code § 63.2-1522(B)(1)(g), and, therefore, she should have been allowed to call the child to testify. We disagree.

HN23[↑] A stipulation is "an agreement between counsel respecting business before a court." Burke v. Gale, 193 Va. 130, 137, 67 S.E.2d 917, 920 (1951).

> A stipulation of counsel, particularly when relied upon by a court, cannot later be unilaterally withdrawn. Trial judges must be able to rely on counsel to make tactical concessions during trial, especially those "designed to narrow the issues and expedite the trial or settlement of litigation," McLaughlin v. Gholson, 210 Va. 498, 500, 171 S.E.2d 816, 817 (1970), without the risk of such reliance being undermined later.

Rahnema v. Rahnema, 47 Va. App. 645, 658, 626 S.E.2d 448, 455 (2006).

We have recognized that HN24[↑] the efficacy of stipulations is not unlimited. Indeed, stipulations like the one at issue here "are subject to several restrictions, including the requirement that the court 'review the provisions of the [stipulations] for their consistency with the best interests of the child or children whose welfare the [stipulation] addresses.'" Anonymous B, 51 Va. App. at 676, 660 S.E.2d at 316 (quoting [*32] Shoup v. Shoup, 37 Va. App. 240, 250, 556 S.E.2d 783, 788 (2001)). However, once a valid stipulation has been agreed to, "there can be no objection to it." Burke, 193

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[14] In her brief, mother indicates this issue was preserved in two different places in the record. She first cites to an objection she made regarding the redaction of alleged hearsay in plaintiff's exhibit 6. The material redacted from plaintiff's exhibit 6 consisted of statements made by mother to the University of Virginia medical staff relating to the symptoms mother observed in the child prior to bringing the child to the hospital. None of the redacted material involved any disclosures of sexual abuse made by the child.

Mother next cites to her "Objections to Order Excluding Hearsay Statements," where she stated:

> The trial court should address each hearsay statement individually with the parties and counsel, [*29] and [mother] should be allowed the opportunity to argue each statement individually and to seek the introduction of each statement on alternative grounds, e.g. state of mind, recent complaint exception, excited utterance, spontaneous response to an event of which the child had first-hand knowledge, and/or Code of Virginia § 8.01-401.1.

On this occasion, mother did not argue that the disclosures should come in under any specific exception to the hearsay rule, such as state of mind. Rather, she sought the opportunity to argue for the admission of each disclosure on an individual basis.

[15] To the extent that mother's objections arguably served to put the trial court on notice of her argument that the disclosures should be admitted based on an exception to the hearsay rule, we note that mother failed to specify which exception is applicable to the child's disclosures of sexual abuse; rather, she merely listed a number of exceptions to the hearsay rule that she would like to argue.

> HN22[↑] "When an objection identifies the rule of evidence on which admission or exclusion depends, the proponent ordinarily need not do more to preserve error than offer the evidence. But when the objection, hearsay in [*30] this case, does not focus on the specific issue presented on review, here the applicability of [a specific] exception, error is not preserved [when the evidence is excluded] unless the proponent [of the evidence] alerts the trial court to that issue. This is in accord with the general principle that to preserve error in a ruling on evidence a party must notify the trial court of his position and the specific rule of evidence on which [the party] relies."

Neal v. Commonwealth, 15 Va. App. 416, 422, 425 S.E.2d 521, 524-25, 9 Va. Law Rep. 614 (1992) (quoting Huff v. White Motor Corp., 609 F.2d 286, 290 n.2 (7th Cir. 1979)) (substitutions in original).

Furthermore, mother failed to obtain a ruling on this matter from the trial court, therefore, "there is no ruling for us to review on appeal." Ohree, 26 Va. App. at 308, 494 S.E.2d at 489.

Va. at 137, 67 S.E.2d at 920.

Here, in accepting the stipulation that the child was unavailable, the trial court specifically addressed the issue of whether the stipulation was in the child's best interests, stating:

> [I]t appears to the Court that even if a therapist evaluated the child and said, "no, the child is just fine and could testify," that both parties would still agree that the therapist was wrong.
>
> And in looking at the history of this case and the allegations that have been made, and the evaluations the child has already been through, and the relationship between the parties, the Court finds that based upon those factors, as well as the recognition of the parties, that there is a substantial likelihood the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or a closed-circuit television. And further finding that the child is already going to be seeing a therapist, and then to add another evaluation on top of having a therapist does not appear would **[*33]** be in the best interests of this child, the Court is going to find . . . that the child is not available, pursuant to 63.2-1522, and not require the expert evaluation at the time.

It is important to note that mother made no objection to the trial court's findings. As our Supreme Court explained decades ago,

> In Virginia, we have also approved the general rule that *HN25*[↑] a party is forbidden to assume successive positions in the course of a suit, or series of suits, in reference to the same fact or state of facts, which are inconsistent with each other, or mutually contradictory. A litigant is estopped from taking a position which is inconsistent with one previously assumed, either in the course of litigation for the same cause of action, or in dealings *in pais*. This wise and salutary policy has been repeatedly followed.

Burch v. Grace St. Bldg. Corp., 168 Va. 329, 340, 191 S.E. 672, 677 (1937). "Or, as some cases put it, *HN26*[↑] 'A man shall not be allowed to approbate and reprobate at the same time.'" *Leech v. Beasley, 203 Va. 955, 962, 128 S.E.2d 293, 298 (1962)*.

Considering that the parties agreed to the stipulation and the trial court found the stipulation was in the best interests of the child, **[*34]** for all intents and purposes the child was no longer available to testify. The trial court, therefore, did not err in refusing to allow mother to call the child to testify.

III. Qualification of Dr. Benton to Testify About the ABEL Assessment

Mother argues that the trial court erred in refusing to allow Dr. Benton to testify concerning the reliability of the ABEL Assessment of Sexual Interest ("ABEL Assessment"). [16] According to mother, Dr. Benton was qualified to testify as an expert on the ABEL Assessment due to his years of experience in evaluating sexually abused children coupled with the fact that he had read "extensively" about the ABEL Assessment. As such, mother contends the trial court abused its discretion in not qualifying Dr. Benton as an expert in that area. We disagree.

> *HN27*[↑] In civil cases, expert testimony generally is admissible if it will assist the trier of fact in understanding the evidence. However, the admission of expert testimony is subject to certain basic requirements, including the requirement that the evidence be based on an adequate foundation. The decision whether to admit such testimony is a matter committed to the trial judge's sound discretion, and we will reverse **[*35]** a trial court's determination in this regard only when the court has abused its discretion.

John v. Im, 263 Va. 315, 319-20, 559 S.E.2d 694, 696 (2002) (citations omitted).

At trial, Dr. Benton admitted that, although he was familiar with the ABEL Assessment, he had never received any training on administering the exam. Indeed, he testified that Dr. Abel, the creator of the ABEL Assessment, had not publicly released all of the parameters of the exam. In light of Dr. Benton's candid admissions, we cannot say that the trial court abused its discretion in refusing to allow Dr. Benton to testify as an expert on a subject which he was, admittedly, not an expert. [17]

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[16] The ABEL Assessment of Sexual Interest purports to identify sexual disorders and measure deviant sexual interest.

[17] It is of further note that mother failed to establish any prejudice, as, on rebuttal, she called Dr. Stephen Granderson, an expert qualified to testify about the ABEL Assessment and its applicability in cases such as this one.

IV. Qualification of Wendy Carroll to Testify About Child Sexual Abuse

Mother also argues that the trial court erred in allowing Wendy Carroll ("Carroll") to offer opinion testimony concerning **[*36]** child sexual abuse. Mother contends that Carroll was not qualified as an expert in child sexual abuse and, therefore, her testimony allowed father to cast doubts on mother's case through unqualified expert testimony. We disagree.

Carroll, a licensed professional counselor and family therapist, provided testimony about the ten months that she evaluated the child as part of a separate custody/visitation case between mother and father. Carroll testified as a fact witness and never qualified as an expert of any sort. Indeed, mother offered into evidence a letter written by Carroll in which Carroll admitted that the accusations of child sexual abuse "involve[d] issues that are beyond [her] scope of expertise and practice." The testimony at issue occurred when counsel for father asked Carroll: "In the ten months that you observed [the child], did you see anything that gave you any concern about [the child] being sexually abused?" Mother objected on the grounds that Carroll had not qualified as an expert in the field of child sexual abuse. The trial court overruled mother's objection, stating that:

> the Court does not put this on the same level as a forensic sexual evaluation, but finds that **[*37]** [Carroll] is a licensed therapist and therefore can observe behavior and have concern without it being classified as part of a forensic sexual evaluation.

The trial court explained further that the question "as asked" was no different from other questions asked of lay witnesses with regard to their observations of the child's behavior.

HN28[↑] Under the "opinion rule," "opinion testimony of lay witnesses is incompetent because the jury is in as good a position as a witness to form opinions from the facts." *Lafon v. Commonwealth, 17 Va. App. 411, 420, 438 S.E.2d 279, 285, 10 Va. Law Rep. 622 (1993)*. There are, however, numerous exceptions to the "opinion rule."

> The principal exception to the "opinion rule" is the common sense understanding that the terms "fact" and "opinion" are relative. Some statements are not mere opinions but are impressions drawn from collected, observed facts, and are admitted under the "collective facts rule." Thus, an "opinion" formed by a witness at a given time, may be a "fact" that explains why the witness acted in a particular way. Making this distinction is a question best left to the discretion of the trial judge.

Id. at 420-21, 438 S.E.2d at 285 (citations omitted).

Here, it is clear **[*38]** that Carroll's testimony fell within the collective facts exception to the opinion rule. Carroll did not testify as an expert; she testified as a fact witness. The question, as posed, merely asked Carroll about her observations and her reaction to those observations, and the trial court's comments indicate it did not consider Carroll's response as anything other than fact-based testimony. Accordingly, we affirm the decision of the trial court.

V. Admission of Prior Administrative Proceedings Into Evidence

Mother argues that the trial court erred in allowing testimony regarding ACDSS's administrative opinion reversing its initial Level 1 finding of child sexual abuse. Specifically, mother contends that this Court had previously upheld the trial court's exclusion of the evidence and therefore the trial court clearly abused its discretion. Mother also argues that the trial court's rationale for allowing the findings into evidence was flawed. The trial court allowed father to use the administrative hearing to show Green was biased against him, which mother contends was irrelevant to the issues before the trial court.

HN29[↑] "There is no rule of evidence which provides that testimony admissible for **[*39]** one purpose and inadmissible for another purpose is thereby rendered inadmissible; quite the contrary is the case." *United States v. Abel, 469 U.S. 45, 56, 105 S. Ct. 465, 83 L. Ed. 2d 450 (1984)*. "Frequently, evidence that is inadmissible under a general rule of evidence is admissible under an exception to the general rule or under another rule." *Satterfield v. Commonwealth, 14 Va. App. 630, 635, 420 S.E.2d 228, 231, 8 Va. Law Rep. 3459 (1992)*.

In the previous trial on this matter, father sought to enter the findings of the administrative hearing as admissions of a party opponent, namely ACDSS. The trial court rejected the evidence on the basis that it was cumulative, as the trial court was already aware of the findings. On that basis, we upheld the trial court's

decision to exclude the evidence. Here, the findings of the administrative hearing officer were offered for an entirely separate purpose: to demonstrate Green's bias toward father.

> The bias of a witness, like prejudice and relationship, is not a collateral matter. The bias of a witness is always a relevant subject of inquiry when confined to ascertaining previous relationship, feeling and conduct of the witness . . . . [O]n cross-examination great latitude is allowed and . . . **[*40]** the general rule is that anything tending to show the bias on the part of a witness may be drawn out.

Henson v. Commonwealth, 165 Va. 821, 825-26, 183 S.E. 435, 437 (1936).

Green was one of the primary witnesses against father. In addition to hearing one of the child's disclosures of sexual abuse, Green played a significant role in supervising father's visitation with the child. As a key witness against father, Green's credibility, as well as any bias she may have had toward him, was necessarily at issue. As such, we find no error in the trial court's decision to allow testimony regarding the findings of the administrative hearing officer to ascertain what bias, if any, Green may have had toward father.

VI. Cumulative Expert Testimony

Mother next argues that the trial court erred in limiting her use of expert testimony. Mother contends that, because Dr. Vaughan-Eden was an expert witness and a fact witness and the credibility of the disclosures of sexual abuse the child made to Dr. Vaughan-Eden were the central issue of the trial, mother should have been allowed to put on experts who would testify that the disclosures were credible. Mother specifically notes that this ruling prevented **[*41]** her from calling one of her expert witnesses and severely limited the scope of the testimony of another.

> *HN30*[↑] In the very nature of things there can be no limitation placed on the number of witnesses who are called upon to testify as to facts, but there is a wide discretion vested in the trial court as to the number of opinion witnesses it will hear on a given subject.

Maupin v. Maupin, 158 Va. 663, 673, 164 S.E. 557, 560 (1932).

HN31[↑] "Cumulative testimony is repetitive testimony that restates what has been said already and adds nothing to it. It is testimony of the same kind and character as that already given." *Massey v. Commonwealth, 230 Va. 436, 442, 337 S.E.2d 754, 758 (1985)*. "[W]here evidence is merely cumulative its introduction may be limited by the court." Id. Furthermore, "the exclusion of evidence favorable to a party in a civil action on the ground that it is repetitious and cumulative is a matter within the sound discretion of the trial court[,] and . . . its ruling is entitled on review to a presumption of correctness." *Harrison v. Commonwealth, 244 Va. 576, 585, 423 S.E.2d 160, 165, 9 Va. Law Rep. 556 (1992)*.

In the present case, the trial court did not, as mother contends, prevent her from calling **[*42]** one of her expert witnesses or limit the scope of the testimony of other expert witnesses. Rather, the trial court ruled that mother could not bolster Dr. Vaughan-Eden's testimony *during her case-in-chief*. Indeed, the trial court specifically noted that "it would be appropriate to have the defense actually present evidence" before allowing mother to bolster Dr. Vaughan-Eden's testimony. Moreover, the trial court permitted mother, in her case-in-chief, to elicit extensive testimony from Dr. Benton, ruling that his testimony was not cumulative of Dr. Vaughan-Eden's. Dr. Benton testified that the child's statements were clear and detailed and that the medical records were "consistent with sexual abuse." Dr. Benton also gave detailed testimony about the sexualized behaviors the child allegedly exhibited in front of others and his opinion regarding the significance of those behaviors to the assessment of whether the child had been sexually abused. Finally, the trial court specifically stated that mother could call additional experts as rebuttal witnesses. [18] The fact that mother chose not to call the expert witness in question on rebuttal cannot be found to be error on the part of the trial **[*43]** court.

VII. Evidence Showing the Reasonableness of Mother's Actions

Mother also argues that the trial court erred in not allowing her to present evidence that demonstrated her actions were reasonable. Specifically, mother contends the trial court misapplied the hearsay rule in a way that prevented her from demonstrating that her actions were reasonable reactions to what other people told her. We

[18] Indeed, as previously noted, on rebuttal mother did call at least one expert witness, Dr. Ganderson.

agree.

HN32[↑] "Hearsay evidence is defined as a spoken or written out-of-court declaration or nonverbal assertion offered in court to prove the truth of the matter asserted therein." Arnold v. Commonwealth, 4 Va. App. 275, 279-80, 356 S.E.2d 847, 850, 3 Va. Law Rep. 2625 (1987). "The primary justification for the exclusion of hearsay is the lack of any opportunity for the adversary to cross-examine the absent declarant whose out-of-court statement is introduced into evidence." Anderson v. United States, 417 U.S. 211, 220, 94 S. Ct. 2253, 41 L. Ed. 2d 20 (1974). Thus, "the basis for excluding hearsay is that it is not subject to the tests which ordinarily exist to ascertain the testimony's truth." Penny v. Commonwealth, 6 Va. App. 494, 498, 370 S.E.2d 314, 317, 5 Va. Law Rep. 30 (1988). **[*44]** However, "[t]he hearsay rule does not operate to exclude evidence of a statement, request, or message offered for the mere purpose of explaining or throwing light on the conduct of the person to whom it was made." Fuller v. Commonwealth, 201 Va. 724, 729, 113 S.E.2d 667, 670 (1960).

In the present case, mother sought to explain a number of her actions by offering the statement of a third party that prompted her actions. The statements were not offered for the truth of the matter asserted but, rather, as an explanation as to what caused mother to act in the way she did. The trial court refused to allow such statements into evidence, ruling that they were hearsay. In one such instance, the trial court offered the following example to explain its application of the hearsay rule:

> So here is the Court's analysis. If the statement was going to be, and I'm going to use something absurd, that Dr. Davidson told [mother] to start participating in arson, and [mother] terminated [Dr. Davidson's] services, the Court would have to find that it was true, that that's the statement that Dr. Davidson made. So therefore, even though it's being said that it's not offered for the truth of the matter, the **[*45]** Court would have to believe the truth to find that it served as a basis for [mother] terminating [Dr. Davidson's] services.

It is clear that mother was not offering Dr. Davidson's statement for the truth of the matter asserted by Dr. Davidson; rather, she was offering the statement as evidence that Dr. Davidson made a statement that prompted mother's actions, i.e., to explain why mother did what she did. Thus, Dr. Davidson's statement was not hearsay and should have been allowed into evidence.

Furthermore, the trial court's misapplication of the hearsay rule with regard to mother's testimony was not isolated to the statements by Dr. Davidson. As the trial court specifically faulted mother for failing to offer evidence to explain her actions, when in fact the trial court's misapplication of the hearsay rule prevented mother from offering that evidence, we cannot say the error was harmless and therefore must reverse the decision of the trial court.

VIII. Mother's Discovery Violations

Mother further argues that the trial court abused its discretion by not allowing her to introduce into evidence the "exhibits" [19] referenced in the March 2006 letter as a sanction for failing to disclose them **[*46]** in discovery. Mother contends that the exhibits served to demonstrate her state of mind (which was the reason that father introduced the letter in the first place), completed the record, and were in accord with the pretrial order allowing exhibits not listed to be entered as rebuttal evidence.

HN33[↑] "Rule 4:12 gives the trial court broad discretion in determining what sanctions, if any, will be imposed upon a litigant who fails to respond timely to discovery." Woodbury v. Courtney, 239 Va. 651, 654, 391 S.E.2d 293, 295, 6 Va. Law Rep. 2226 (1990). "Consequently, we accord deference to the decision of the trial court in this case and will reverse that decision only if the court abused its discretion." Walsh v. Bennett, 260 Va. 171, 175, 530 S.E.2d 904, 907 (2000).

The record demonstrates that, during discovery, father was provided with a copy of the March 2006 letter, but the exhibits that were enclosed with the letter were not **[*47]** included. There is evidence in the record that father had access to some of the referenced exhibits through other discovery. However, the fact remains that father was not provided with the exhibits in the form that they were in when they were attached to the letter. Indeed, the record indicates that at least one of the referenced exhibits was not actually included with the letter when it was originally sent. Father, however,

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[19] Throughout the March 2006 letter, mother refers to twenty "exhibits," labeled "A" thru "T," that allegedly supported her allegations of sexual abuse against father. Although the letter refers to the various exhibits, there is no indication as to the exact form and content of each exhibit.

would have no way of knowing this based on what he received in discovery. In providing the letter in an incomplete form, mother failed to comply fully with the discovery order in this case. As such, it cannot be said that the trial court abused its discretion in sanctioning mother.

IX. Father's Argumentative Opening Statement

Mother argues that the trial court erred in allowing father to make argumentative comments during his opening statement. Mother contends that this "stripped [her] of her right as the plaintiff to be the first to present her case and tainted the trial court's view of Mother's evidence from the very outset."

Assuming, *arguendo*, that mother is correct and the trial court allowed father to make argumentative statements during opening argument, such **[*48]** error was harmless. *HN34*[↑] "[I]n a bench trial, the trial judge is presumed to disregard prejudicial or inadmissible evidence, and this presumption will control in the absence of clear evidence to the contrary." *Hall v. Commonwealth, 14 Va. App. 892, 902, 421 S.E.2d 455, 462, 9 Va. Law Rep. 54 (1992)*. Mother has presented no evidence demonstrating that the trial court failed to disregard any prejudicial or inadmissible evidence that father allegedly presented during opening argument, thus we must assume that any such evidence was disregarded. Furthermore, even if the trial court erred in allowing father to make argumentative statements during his opening statement, we hold that the error did not "injuriously affect" the mother's interest and is therefore harmless. See *Jenkins v. Dep't of Soc. Servs., 12 Va. App. 1178, 1186, 409 S.E.2d 16, 21, 8 Va. Law Rep. 646 (1991)* (*HN35*[↑] "[E]rror which does not injuriously affect the interest of the party complaining is not reversible.").

X. Parties' Relative Financial Abilities

Mother's final argument is that the trial court erred in dividing the guardian *ad litem's* fees equally between the parties without considering the "relative financial abilities of the parties." According to mother, any award **[*49]** of guardian *ad litem* fees must be based on *Code § 16.1-278.19*, which requires the court to assess the relative financial abilities of the parties in awarding attorney's fees. We disagree.

As an initial matter, we note that *HN36*[↑] *Code § 16.1-278.19* merely allows the court to shift the burden of attorney's fees and costs from one party to another. *Code § 16.1-278.19* states that *HN37*[↑] "[i]n any matter properly before the court, the court *may* award attorneys' fees and costs *on behalf of any party* as the court deems appropriate based on the relative financial ability of the parties." (Emphasis added). *HN38*[↑] The legislature's use of the word "may" indicates that *Code § 16.1-278.19* is non-compulsory, as the trial court *may* award attorney's fees and costs. Similarly, the phrase "on behalf of any party" clearly indicates that fees and costs must first be incurred by the party *before* the trial court may make the award. Thus, *Code § 16.1-278.19* is clearly designed to give the trial court authority to shift the burden of attorney's fees and costs from one party to another and does not set out a requirement that a guardian *ad litem's* **[*50]** fees must be divided among the parties based on their relative financial abilities.

Code § 16.1-267(A), [20] on the other hand, clearly governs guardian *ad litem* fees. *HN39*[↑] Under *Code § 16.1-267(A)*, the court is required to assess the total costs of the guardian *ad litem's* representation of the child against *both* parents. [21] Notably, however, the statute is silent as to how the court may apportion those costs between the parents. We have recognized that the power to apportion the fees and expenses of the guardian *ad litem* is indivisible from the power to appoint the guardian *ad litem*. *Verrocchio v. Verrocchio, 16 Va. App. 314, 322, 429 S.E.2d 482, 487, 9 Va. Law Rep. 1300 (1993)*. Our Supreme Court has recognized that the trial court may allocate the costs of the guardian *ad litem's* services "based upon the final result." *Infant C. v. Boy Scouts of America, 239 Va. 572, 584, 391 S.E.2d 322, 329, 6 Va. Law Rep. 2137 (1990)*. As such, "[t]he

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[20] *Code § 16.1-267(A)* states:

> *HN40*[↑] 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.

(Emphasis added).

[21] As mother's argument is based solely on the applicability of *Code § 16.1-278.19*, we do not examine the trial court's application of *Code § 16.1-267(A)*. See *Rule 5A:18*.

decision to apportion guardian fees between both parties . . . involves a matter within the [trial court's] discretion." *Kane v. Szymczak, 41 Va. App. 365, 375, 585 S.E.2d 349, 354 (2003)*. As nothing in our jurisprudence indicates that allocating guardian *ad litem* costs equally amongst the parties **[*51]** is error, we hold that the trial court did not abuse its discretion.

XI. Evidence of Abuse and Neglect

In his cross-appeal, father argues that the trial court erred in finding that mother did not abuse the child. Father contends that, contrary to the trial court's ruling, *Code § 63.2-100* does not require proof of actual mental or physical injury; rather, the evidence need only show "an identifiable pattern of harmful behavior by the parent that threatens **[*52]** to inflict injury to the mental functioning of the child." *Jackson v. W., 14 Va. App. 391, 397, 419 S.E.2d 385, 388, 8 Va. Law Rep. 2880 (1992)*.

As previously stated, statutory interpretation presents a pure question of law, which we review *de novo*. *Ainslie, 265 Va. at 352, 577 S.E.2d at 248*. ***HN41***[↑] "When the language of a statute is unambiguous, we are bound by the plain meaning of that language." *Conyers v. Martial Arts World of Richmond, Inc., 273 Va. 96, 104, 639 S.E.2d 174, 178 (2007)*.

In its September 1, 2009 letter opinion, the trial court stated that

> [*Code § 63.2-100*] requires that the Court find that [mother's] actions *created or inflicted upon the child a physical or mental injury* . . . . While the mother's actions at time[s] were extreme, *I cannot find that she inflicted mental injury*. The court find[s] there is a legal difference in intentional[ly] interfering with the father's access and relationship with the daughter and what would be required to show a mental injury to the child.

(Emphasis added).

HN42[↑] An "abused or neglected child" is defined as any child under the age of eighteen, "[w]hose parents or other person responsible for his care creates or inflicts, *threatens to create or inflict*, or allows to **[*53]** be created or inflicted upon such child a physical or mental injury by other than accidental means . . . ." *Code § 63.2-100* (emphasis added). In interpreting *Code § 63.2-100*, we have held that "the statutory definitions of an abused or neglected child do not require proof of actual harm or impairment having been experienced by the child." *Jenkins, 12 Va. App. at 1183, 409 S.E.2d at 19*.

Furthermore,

> [t]he Commonwealth's ***HN43***[↑] policy is to protect abused children and to prevent further abuse of those children. This policy would be meaningless if a child must suffer an actual injury from the behavior of his or her parent before receiving the Commonwealth's protection.

Jackson, 14 Va. App. at 402, 419 S.E.2d at 391.

It is readily apparent that the trial court interpreted *Code § 63.2-100* to require that the child suffer an actual mental injury. In actuality, ***HN44***[↑] all that is required under the statute is the creation of an environment that threatens to inflict physical or mental injury to the child. See *id. at 397, 419 S.E.2d at 388*. Accordingly, we must reverse the judgment of the trial court.

XII. Exclusion of the Remainder of the Child's Statements

Father next argues that the trial court erred in excluding **[*54]** one specific hearsay statement made by the child that did not relate to the allegations of sexual abuse. According to father, the statement was an excited utterance and therefore should have been allowed into evidence as an exception to the hearsay rule.

In excluding the statement, the trial relied on its previous ruling that the child's statements were unreliable under *Code § 63.2-1522*. We note, however, that ***HN45***[↑] *Code § 63.2-1522* applies only to statements made by a child "describing any act of a sexual nature performed with or on the child by another." The child's statement in this instance did not describe an act of a sexual nature; therefore *Code § 63.2-1522* was inapplicable. As there was no objection to the admission of the child's statement into evidence, the trial court erred in subsequently excluding the statement based on its application of *Code § 63.2-1522*.

CONCLUSION

The trial court erred in (1) failing to support "with findings on the record" its rulings pertaining to the child's disclosures of sexual abuse under *Code § 63.2-1522*; (2) misapplying the hearsay rule with regard to mother's state of mind; (3) misinterpreting *Code § 63.2-100*; and

(4) excluding the child's hearsay statements [*55] not describing an act of a sexual nature under Code § 63.2-1522.

> It would serve no useful purpose for us to examine the evidence bit by bit to determine what was relevant and what was not. Suffice it to say that we are convinced from the record that the most appropriate action is for the trial court to reexamine all the evidence in light of this opinion.

Keel v. Keel, 225 Va. 606, 613, 303 S.E.2d 917, 922 (1983).

Accordingly, we affirm in part, reverse in part, and remand the matter to the trial court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part and remanded.

End of Document

Morman v. Richmond Dep't of Soc. Servs.

Court of Appeals of Virginia

September 8, 2015, Decided

Record No. 0545-15-2

Reporter
2015 Va. App. LEXIS 254 *; 2015 WL 5210666

ANDRE MORMAN, SR. v. RICHMOND DEPARTMENT OF SOCIAL SERVICES

Notice: PURSUANT TO THE APPLICABLE VIRGINIA CODE SECTION THIS OPINION IS NOT DESIGNATED FOR PUBLICATION.

Prior History: [*1] FROM THE CIRCUIT COURT OF THE CITY OF RICHMOND. Clarence N. Jenkins, Jr., Judge.

Disposition: Affirmed.

Core Terms

circuit court, videotaped statement, therapist, continuance, notice, parental rights, terminated, videotape, objected, argues, sexual

Case Summary

Overview
HOLDINGS: [1]-The trial court did not abuse its discretion in denying the father's initial request for a continuance, as he objected when the Department of Social Services requested a continuance and thus, waived the issue; [2]-Any error in the admission of the child's statements made to a therapist was harmless, because the trial court heard the same evidence through the videotaped statements of the child; [3]-Contrary to the father's claim, the evidence presented regarding allegations of sexual abuse provided clear and convincing evidence to support the termination of the father's parental rights.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > General Overview

HN1[] **Appeals, Standards of Review**

An appellate court views the evidence in the light most favorable to the prevailing party below and grants to it all reasonable inferences fairly deducible therefrom.

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Civil Procedure > Appeals > Standards of Review > General Overview

HN2[] **Standards of Review, Clearly Erroneous Review**

Where the trial court heard the evidence ore tenus, its finding is entitled to great weight and will not be disturbed on appeal unless plainly wrong or without evidence to support it.

Family Law > ... > Termination of Rights > Involuntary Termination > Best Interest of Child

HN3[] **Involuntary Termination, Best Interest of Child**

When considering termination of parental rights, the paramount consideration of a trial court is the child's best interests.

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN4[] Exceptions, Statements of Child Abuse

Under Va. Code Ann. § 63.2-1522(A), an out-of-court statement made by a child describing any act of a sexual nature performed with or on the child by another may be admissible in evidence if the requirements of Va. Code Ann. § 63.2-1522(B) are met. Va. Code Ann. § 63.2-1522(B) provides that the out-of-court statement may be admitted if the child is unavailable to testify, Va. Code Ann. § 63.2-1522(B)(1), and the statement is shown to possess particularized guarantees of trustworthiness and reliability, Va. Code Ann. § 63.2-1522(B)(2).

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN5[] Exceptions, Statements of Child Abuse

See Va. Code Ann. § 63.2-1522(C).

Evidence > ... > Hearsay > Exceptions > Statements of Child Abuse

HN6[] Exceptions, Statements of Child Abuse

See Va. Code Ann. § 63.2-1523(C).

Civil Procedure > Pretrial Matters > Continuances

HN7[] Pretrial Matters, Continuances

The decision to grant a motion for a continuance is within the sound discretion of the circuit court and must be considered in view of the circumstances unique to each case. The circuit court's ruling on a motion for a continuance will be rejected on appeal only upon a showing of abuse of discretion and resulting prejudice to the movant.

Civil Procedure > Appeals > Standards of Review > General Overview

HN8[] Appeals, Standards of Review

The standard for non-constitutional error is established in Va. Code Ann. § 8.01-678, which provides, in pertinent part: When it plainly appears from the record and the evidence given at the trial that the parties have had a fair trial on the merits and substantial justice has been reached, no judgment shall be arrested or reversed for any defect, imperfection, or omission in the record, or for any error committed on the trial.

Evidence > ... > Testimony > Credibility of Witnesses > General Overview

Evidence > Weight & Sufficiency

HN9[] Testimony, Credibility of Witnesses

The credibility of the witnesses and the weight accorded the evidence are matters solely for the fact finder who has the opportunity to see and hear that evidence as it is presented.

Counsel: (James M. Nachman, on brief), for appellant.

(Kate O'Leary, Deputy City Attorney; Stephen M. Hall, Deputy City Attorney; Paul Kellinger, Guardian ad litem for the minor children, on brief), for appellee.

Judges: Present: Judges McCullough, Decker and Senior Judge Felton.

Opinion

MEMORANDUM OPINION* PER CURIAM

Andre Morman, Sr. (father) appeals the order terminating his parental rights to his six children. Father argues that the circuit court erred by (1) denying his motion to continue and his "motion objecting to the admission of statement(s) and/or video-taped statement(s) into evidence pursuant to Virginia Code §§ 63.2-1522 and 1523;" (2) overruling his objections and considering evidence from the proceedings in Richmond Juvenile and Domestic Relations District Court (the JDR court); (3) allowing A.M.'s[1] statements to come into evidence through Amy Beddo Thomas; (4) allowing

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* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

[1] The Court will refer to the minor children by their initials.

A.M.'s videotaped statement to come into evidence; and (5) concluding that the Richmond Department of Social Services (the Department) proved by clear and convincing evidence that father's parental rights should be [*2] terminated. Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the circuit court. *See* Rule 5A:27.

BACKGROUND

HN1[↑] We view the evidence in the light most favorable to the prevailing party below and grant to it all reasonable inferences fairly deducible therefrom. *See Logan v. Fairfax Cnty. Dep't of Human Dev., 13 Va. App. 123, 128, 409 S.E.2d 460, 462, 8 Va. Law Rep. 783 (1991)*.

Father and Jennifer Morman (mother) have six children who are the subject of this appeal. Between 2008 and 2013, child protective services received nine complaints regarding the children. On June 6, 2013, the children came into the Department's custody based on allegations of sexual abuse. The JDR court sustained abuse and neglect petitions filed by the Department.

The goal of the initial foster care plan was for the children to return home. The Department started to provide services to the parents. Father refused any treatment offered by the Department and never acknowledged any inappropriate behavior with the children. The goal of the foster care plan was changed to adoption once the Department learned of the children's statements regarding abuse in the home.

On May 2, 2014, the [*3] JDR court terminated father's parental rights to his six children.[2] He appealed to the circuit court. The circuit court heard evidence on December 10, 2014 and March 3, 2015. Father objected to the admission of videotaped testimony from one of his children, but the circuit court admitted the tape pursuant to *Code § 63.2-1523*. Father also objected to some out-of-court statements made by the child. The circuit court excluded the child's statements; however, some of the statements were later admitted on redirect after cross-examination of the child's sexual therapist.

On March 5, 2015, the circuit court entered a final order that terminated father's parental rights to his six children pursuant to *Code § 16.1-283(E)(iv)*. This appeal followed.

ANALYSIS

HN2[↑] Where the trial court heard the evidence *ore tenus*, "its finding is entitled to great weight and will not be disturbed on appeal unless plainly wrong or without evidence to support it." *Martin v. Pittsylvania Cnty. Dep't of Soc. Servs., 3 Va. App. 15, 20, 348 S.E.2d 13, 16, 3 Va. Law Rep. 359 (1986)* (citations omitted). HN3[↑] When considering termination of parental rights, "the paramount consideration [*4] of a trial court is the child's best interests." *Logan, 13 Va. App. at 128, 409 S.E.2d at 463*.

Assignments of error #1, 2, 3, and 4

Father argues that the circuit court erred by denying his motion to continue and his motion objecting to the admission of evidence pursuant to *Code §§ 63.2-1522* and -1523. Father further contends the circuit court erred in allowing the child's videotaped statements into evidence and the child's statements to her therapist into evidence.

On November 21, 2014, the Department filed a notice pursuant to *Code § 63.2-1522* that it intended to offer into evidence "statements of one or more of the . . . children" and that the "substance of the statements regard allegations of sexual abuse by father, Andre Morman, Sr." On the same date, the Department also filed a notice pursuant to *Code § 63.2-1523* that it intended to offer into evidence "a videotaped statement of one or more of the . . . children" and that the "substance of the statement regards allegations of sexual abuse and neglect." The Department further represented that appellant's counsel had viewed the videotaped statements.

On December 5, 2014, father filed a "Motion Objecting to the Admission of Statement(s) and/or Videotaped Statement(s) into Evidence pursuant to *Virginia Code §§ 63.2-1522* and 1523." Father argued that the [*5] Department failed to provide adequate notice because it did not specify which child's statement(s) were going to be offered and why the child was not available to testify. Father asked the circuit court to continue the hearing and order the Department to provide "a notice with the proper specificity."

HN4[↑] Under *Code § 63.2-1522(A)*, "an out-of-court

[2]The JDR court also terminated mother's parental rights. She appealed to the circuit court, and the circuit court denied the Department's request to terminate mother's parental rights pursuant to *Code § 16.1-283(B)* and *(E)(iv)*.

statement made by a child . . . describing any act of a sexual nature performed with or on the child by another . . . may be admissible in evidence if the requirements of [Code § 63.2-1522(B)] are met." Code § 63.2-1522(B) provides that the out-of-court statement may be admitted if the child is unavailable to testify, Code § 63.2-1522(B)(1), and the "statement is shown to possess particularized guarantees of trustworthiness and reliability," Code § 63.2-1522(B)(2).

> HN5[↑] A statement may not be admitted under [Code § 63.2-1522] unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

Code § 63.2-1522(C).

Similarly, Code § 63.2-1523 applies to videotaped statements made by a child alleging abuse or neglect. As with Code § 63.2-1522, Code § 63.2-1523(C) provides:

> HN6[↑] A recorded [*6] statement may not be admitted under this section unless the proponent of the statement notifies the adverse party of his intention to offer the statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to prepare to meet the statement, including the opportunity to subpoena witnesses.

At the hearing on December 10, 2014, the circuit court denied father's motion for a continuance. It held that the Department gave adequate notice under subsection C of Code § 63.2-1523, but did not give adequate notice under subsection C of Code § 63.2-1522. For the videotaped statement, the circuit court held that the notice was adequate because it stated that it was a videotape statement and that counsel had previously viewed it. However, for the child's statements, the circuit court held that the notice did not specify which child made the statements and to whom the statements were made, and it did not indicate whether counsel had previously heard the statements.

First, father argues that the circuit court erred in denying his motion for a continuance.

> HN7[↑] The decision to grant a motion for a continuance is within the sound discretion of the circuit [*7] court and must be considered in view of the circumstances unique to each case. The circuit court's ruling on a motion for a continuance will be rejected on appeal only upon a showing of abuse of discretion *and* resulting prejudice to the movant.

Haugen v. Shenandoah Valley Dep't of Soc. Servs., 274 Va. 27, 34, 645 S.E.2d 261, 265 (2007).

When father first requested a continuance, the circuit court denied his request. However, once the circuit court ruled that the child's statements were not admissible under Code § 63.2-1522, the Department requested a continuance and father objected to the continuance. As a result, he waived his argument that the circuit court erred in denying a continuance. Furthermore, a continuance was eventually necessary due to time constraints, and the circuit court heard evidence on a second day several months later. Father had the opportunity to question witnesses and present evidence and argument. The circuit court did not abuse its discretion by denying father's initial request for a continuance, and he was not prejudiced at trial.

Next, father argues that the circuit court should have treated the videotaped statement and the child's statements the same and excluded all of them. However, the circuit court did not err in allowing the videotaped statements because the [*8] notice was sufficient. Father's counsel previously had seen the videotape and was able to prepare for its introduction at trial. Code § 63.2-1523(C). Father's counsel knew the contents of the videotaped statements. It was irrelevant that father's counsel viewed the videotaped statements during the proceedings in the JDR court because once counsel saw the videotape, the Department complied with the statute.

During the Department's direct examination of the child's therapist, the circuit court did not allow the Department to ask about the child's statements made to the therapist because the Department's notice under Code § 63.2-1522 was inadequate. On cross-examination, mother's counsel asked the therapist whether she was in favor of returning the children to mother, and the therapist responded negatively. Counsel followed up with additional questions regarding the therapist's opinion. On redirect examination, the Department asked the therapist whether the therapist's concerns were based on the child's statements, and the therapist confirmed that they were. Then, over father's objections, the circuit court allowed the therapist to

testify about the child's statements, since the door was opened during cross-examination. **[*9]**

Assuming without deciding that the circuit court erred in allowing the child's statements, the error was harmless. HN8[↑] The standard for non-constitutional error is established in Code § 8.01-678, which provides, in pertinent part:

> When it plainly appears from the record and the evidence given at the trial that the parties have had a fair trial on the merits and substantial justice has been reached, no judgment shall be arrested or reversed . . . [f]or any . . . defect, imperfection, or omission in the record, or for any error committed on the trial.

In this case, any error in allowing the therapist to testify about the child's statements was harmless because the circuit court heard the same evidence through the videotaped statements of the child.

Accordingly, the circuit court did not err in its rulings regarding the videotaped statements and the child's statements to the therapist.

Assignment of error #5

Father argues that the circuit court erred in concluding that the Department proved by clear and convincing evidence that his parental rights should be terminated. In his opening brief, father reiterates his previous arguments that the circuit court erred in admitting the videotape and the child's statements. **[*10]** Father also contends that the videotape shows the child was coerced and that her statements were not trustworthy. HN9[↑] "The credibility of the witnesses and the weight accorded the evidence are matters solely for the fact finder who has the opportunity to see and hear that evidence as it is presented." Sandoval v. Commonwealth, 20 Va. App. 133, 138, 455 S.E.2d 730, 732 (1995) (citations omitted). In light of all the evidence presented, the trial court's judgment was not plainly wrong or without evidence to support it.

CONCLUSION

For the foregoing reasons, the circuit court's ruling is summarily affirmed. Rule 5A:27.

Affirmed.

End of Document

Panel 6 9/20/2018

A DOG IN THE COURTROOM??

Laura Kanter, CHKD CAP

Sarah Nelson, Regent University School of Law, Candidate for JD 2019

Asha Pandya, Esq.

with special guest……

MEKI, CHKD Therapy Dog

A Dog in the Courtroom

Pros and Cons

First things first: Who is the dog?!

- Meki was born on May 27, 2014 in California.
- Meki was professionally trained by Canine for Companions for Independence, Northeast Region and graduated May 13, 2016.
- Meki began working at the CHKD Child Abuse Program in May 2016 with his handler, Laura Kanter, LCSW, Mental Health Services Coordinator.

Why is the Meki here?

- The United States Supreme Court has declared child abuse to be one of the most difficult problems to detect and prosecute, largely because the only witness is often the victim.
- How do we handle these difficult cases when the problem becomes magnified because the only witness is a traumatized child who will not speak? Courthouse Dogs.

Why is child abuse a problem for the courts

- When a child is the victim in a case, he or she often suffers trauma from exposure to the harsh atmosphere of the typical courtroom.
- To ease the harsh environment, many states have implemented a variety of mitigation measures in an attempt to protect child victims.
- When traumatized children testify, they are often frightened. Some children can have an endless list of psychological symptoms, such as nightmares, intrusive memories, bed wetting, psychological and physiological reactivity, behavior issues, irritability, poor academic performance, decreased appetite, negative thoughts/beliefs about themselves and the world, and hypervigilance.

What is the solution?

- Courthouse dogs around the country are currently being used to assist victims and witnesses through numerous steps within the justice system, such as participating in forensic medical exams, forensic interviews, individual therapy sessions, and trials.
- Courthouse dogs are facility dogs, meaning the dogs receive the same training as a service dog placed with people with special needs and the same certification (ADI).

What specifically is a facility dog?

- Expertly trained dogs who partner with a handler in working in a health care, visitation or education setting
- Trustworthy in professional environments and can perform over 40 commands designated to motivate and inspire clients with special needs
- Handlers are working professionals responsible for handling and caring for the facility dog
- Handlers are committed to long-term employment where they directly serve clients with special needs a minimum of twenty hours per week

What are the training specifics?

- Raised in a family home from 8 weeks to 18 months old
- Returned to Canine Companions for Independence training center for 6 to 9 months of advance training for a total of four more "semesters" of advanced training
- Dogs are medically tested and temperaments are evaluated

CANINE COMPANIONS
FOR INDEPENDENCE®

Training: First Semester

- Continues basic obedience commands
- Wheelchair training and retrieval command
- Those who pass move on

Training: Second Semester

- Finishes the commands the dogs will need to know such as pull and light switch
- Learns over 40 commands
- Screen dogs to be sure they meet expectations
- Prepare for Team Training, where the dogs are paired with a recipient

Training: Team Training

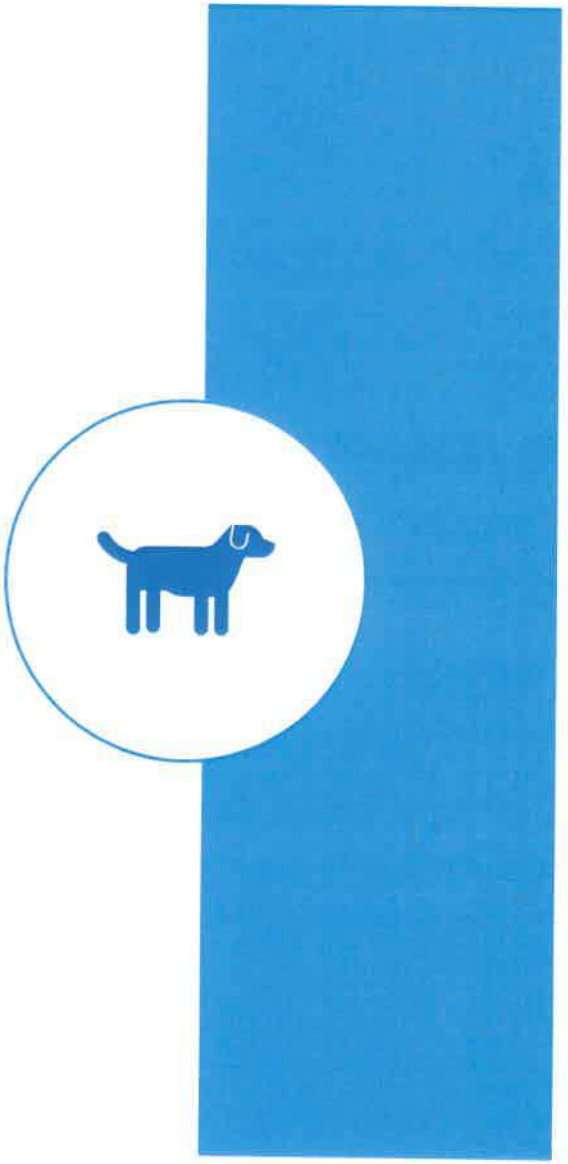
- This two-week session teaches the recipients proper care and handling of the Canine Companion.
- After the training session and public access testing for ADI certification, they attend a graduation ceremony in which the puppy raiser passes the leash to the Graduate and the Graduate receives the Canine Companions assistance dog.

Training: Follow-up

- Comprehensive follow-up program to ensure the ongoing success of its working teams
- Final testing and certification occurs approximately 6 months after graduation
- Dogs must pass ADI certification testing every 1-3 years, time frame dependent on performance during the previous testing
- Workshops, seminars and reunions are offered throughout the working life of the dog.
- Instructors remain in close touch with graduates on an on-going basis to provide training and resolve any behavioral issues

What is the difference between a facility dog and a therapy dog?

- Therapy dogs are dogs who go with their owners to volunteer in settings such as schools, hospitals, and nursing homes.
- "From working with a child who is learning to read to visiting a senior in assisted living, therapy dogs and their owners work together as a team to improve the lives of other people." American Kennel Club, 2015.



What is the difference between a facility dog and a therapy dog?

Facility Dog	Therapy Dog
Bred and raised to be a working dog	Pet dog
Constant training throughout the first two years of the dog's life by puppy raisers and professional trainers	Trained by the owner or a trainer
Trained to respond to 40+ commands	No specific training standards
Specific training standards to be certified by the ADI (Assistance Dogs International)	Must meet certain criteria for health, grooming and behavior (sometimes certified by Therapy Dogs International)

What is the difference between a facility dog and a therapy dog?

- Therapy dogs have a Bachelor's Degree.
- Facility dogs have a Ph.D.

What is the impact of dogs?

- Physiological response which eases child and creates judicial efficiency
- Testifying children are less likely to have their trauma exacerbated
- Decreased barriers of fear, distrust, and anxiety which allows courts to ascertain the truth in a testimony
- Decreased anxiety levels and increased ability to engage and share difficult life situations with others
- Enhanced hormone levels of dopamine and endorphins associated with happiness and well-being and decreased levels of cortisol, a stress hormone, following a quiet 30-minute session of interacting with a dog
- Reduced levels of stress hormone cortisol in healthcare professionals after as little as 5 minutes interacting with a therapy dog

Research shows....

- Courts, medical professionals, and academic literature all agree that a person receives innumerable physical and psychological benefits from the presence of a dog, particularly in times of stress
- Scientific studies have shown that dogs reduce blood pressure, alleviate stress, and anxiety, improve self-esteem, and decrease loneliness
- Therapists document decreased anxiety and the ability to engage, share difficult life situations, answer questions, and speak articulately
- Real World Examples: hospital patients, nursing home residents, universities during exam weeks, and those suffering from psychological trauma including the victims of the shootings in Newtown Connecticut and the Boston Marathon bombings

Why dogs?

- Non-judgmental listener
- Non-threatening
- Helps build rapport
- Comforting
- Parents become less anxious
- Child's perception of the process becomes more positive

Besides court, what can Meki do?

- Forensic interviews
- Medical exams
- Therapy
- Case management with families
- Assessments
- Presence with staff and multidisciplinary teams

How did this even start?

- In 1987, the first dog helped comfort a traumatized child during an interview by a prosecutor in Queens, New York.
- In 1992, a German Shepard in Mississippi became the first dog allowed into a courtroom to comfort a witness in the United States.
- Dogs did not begin their rise to normality in the courtroom until 2003 in Seattle.
- In 2008 the dogs working in legal settings began being referred to as courthouse dogs and in 2012 a nonprofit organization terms Courthouse Dogs Foundation was formed in order to train individuals in the legal community about how facility dogs can assist in legal proceedings.

Where is the courthouse dogs program now?

As of July 26, 2018 Courthouse dogs had 176 dogs working in 38 states.

That is 22 more dogs and three new states allowing dogs into the courtroom within the past nine months.

What about Virginia?

- As of July 1, 2018 a brand new criminal statute makes Virginia the 9th state to statutorily implement courthouse dogs into courtrooms.
- Unfortunately, the statute only applies to criminal proceedings, but the statute makes great strides for children involved in these cases.
- Va. Code §18.2-67.9:1 requires a certified facility dog.

Va. Code §18.2-67.9:1.

- In any criminal proceeding, either party may apply for an order allowing a certified facility dog to be present with a witness
- The court must find by a preponderance of the evidence:

1. The dog to be used qualifies as a certified facility dog;
2. The use of a certified facility dog will aid the witness in providing his testimony; and
3. The presence and use of the certified facility dog will not interfere with or distract from the testimony or proceedings.

- The order should be sought to apply 14 days before the hearing to which it is to apply.
- The court may also take liberties and use its discretion for fairness such as jury instructions.

Is this all legally possible?: Procedural and Evidentiary Rules

FRE 611 & Va. Sup. Ct. R. 2:611 explain that the court has "reasonable control" over the method of interrogating witnesses and presenting evidence in order to (1) ascertain the truth, (2) evade unnecessary expenditure of time, and (3) protect witnesses from harassment or undue embarrassment.

Ascertaining the truth may be done more efficiently from a relatively composed witness rather than from a distraught one.

Having more cooperative children on the witness stand may preclude time-consuming breaks otherwise needed to allow upset witnesses to compose themselves.

Protecting witnesses from harassment or undue embarrassment, is fulfilled from the emotional physiological response of the dog.

Is this all legally possible?: Procedural and Evidentiary Rules

FRCP 43 says under most circumstances, at trial, the witnesses' testimony must be taken in open court.

"For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location."

The standard of testimony in open court should be the goal.

The use of courthouse dogs improves the litigation process because it obtains the goals the procedural rule seeks while the testimony remains in the open court preferences.

Is this all legally possible? Consideration of Constitutionality

- The *Confrontation Clause* gives a defendant the right "to be confronted with the witness against him."
- A fact primarily proved by a witness cannot be established unless the defendant can look upon the witness while being tried. This requirement is crucial for cross-examination and impeachment.
- We need a balance between the rights of the accused and the need to protect the rights of child victims.
- Many options, such as closed-circuit testimony, have made strides, but dogs can protect both constitutional rights by keeping the integrity of the courtroom intact AND the child's well-being.

Is this all legally possible?: Constitutionality

- The United States Supreme Court: protecting child victims of sex crimes from more extensive trauma and embarrassment is a compelling state interest.
- The United States Supreme Court frequently sustains legislation with the goal of protecting the physical and emotional well-being of a child-victim, even when these laws tread into the delicate realm of constitutionally protected rights.
- Example:
  1. "Justif[iably] depriving the press and public of their constitutional right to attend criminal trials, where the court makes a case-specific finding that the closure of the trial is necessary to protect the welfare of the minor."
  2. Sometimes, the physical and psychological well-being of a child is enough justification to deprive a defendant's right to face his or her accuser in court.
- Arguably, if the Supreme Court will go to the extent to deprive a constitutional protection in order to protect a minor, this justifies the use of courthouse dogs, which leave the right to face-to-face confrontation more integrally intact.

Is this all legally possible?: Analogized with comfort items

Courts nationally have also given way to allowing children to be accompanied to the witness stand by inanimate comfort objects, such as teddy bears and dolls.

When appellate courts review the use of comfort items, the court looks to see if the trial court balanced the defendant's constitutionally protected rights with whether the particular witness truly had a compelling need for such an item.

When these rights have been properly balanced, courts are reluctant to hold the mere use of a comfort item violates due process or the *Confrontation Clause*.

Is this all legally possible?: Already employed techniques in Virginia

1988

Since 1988, Virginia has been using two-way closed-circuit testimony through Va. Code § 18.2-67.9

2014

In Virginia, in 2014, when a child was unable to speak when it came to verbalizing specificities of the allegations, the child was given permission to write the answers of her testimony.

When a dog may not be appropriate?

Commonly heard complaints

The use of courthouse dogs is "overkill that unduly focuses the jury upon the child's alleged status as a victim before any conviction [is] achieved."

Prejudice: If a juror sees an adorable dog, their subconscious cannot help but to find sympathy and find truth in anything the witness is saying rather than truly sorting out the facts.

Prejudice: if a factfinder thinks a witness is so traumatized he or she needs a therapy dog, guilt becomes presumed out of some notion, "you must have done something terrible to this person."

Overcoming concerns

Dogs do not signal to jurors if a child is not telling the truth, is stressed due to the traumatic events he/she experienced, or if he/she is generally uncomfortable while not telling the truth.

By not behaving any differently, signaling, or interpreting the child's behavior (which has the potential to be misread), dogs do not sway the story a child would have told nor do they tell the story for a child.

Overcoming concerns

The use of courthouse dogs should not be swayed by these fears because the dogs are not trained for someone to have comfort to overcome a lie or to signal to anyone in the courtroom the witness is or is not lying.

The dogs keep the integrity of cross-examination more intact since the child who rises to the standard of a closed-circuit testimony would potentially not have to leave the room.

With such a strong stigma against this persona of criminal acts, emphasis *must* be placed on the balancing test between prejudice against the defendant and the need of the witness. The balancing test should also take into account the nature of the crime.

Overcoming concerns

Attorneys who oppose the use of courthouse dogs have concerns with who the handler is and what his or her role is.

Is this just a person who takes the dog to and from court with control and liability or does the handler resemble handlers of other service dogs in the criminal justice system, such as drug detection dogs which alert their handler to certain conditions?

It should be clear handlers discussed in this context are the former, control and liability for the dog only.

Handlers are working professionals and must pass a public access test that certifies that they can safely provide services in a public setting.

Handlers attend ongoing trainings. Initially, handlers who attend court proceedings must sign a confidentiality oath.

The great jury instruction debate

- Many jurisdictions provide jury instructions
- Judge Shockley's dicta on jury instructions (Marsh v. Commonwealth, 2017)
- Va. Code §18.2-67.9:1 discusses jury instructions
- Why they are to be used with caution

Other Courthouse Dogs around the Country: The Dog

Courthouse dogs understand intricate commands, one specifically which comports with the perfect courtroom setting. On the command, often called "visit", "down", or "wait", dogs are trained to lie "very quiet and calm," be "invisible" and provide "comfort." Dogs can assist witnesses in the courtroom for several hours.

Most dogs come at no price to taxpayers. Regardless of how the dog is funded, the dogs should not be a part of court costs.

Other Courthouse Dogs around the Country: The Dog

- Many different breeds of dogs are used.
- Most are Golden Retrievers, Labrador Retrievers, or a mix of the two because of the breeds' respective traits for comfort, calm temperament, and ability to remain silent to not disrupt procedure.
- Some jurisdictions choose the breed of dog based on hypoallergenic or size concerns, while others have been rescued in order to specially fit the bond between victims.

Other Courthouse Dogs around the Country: The Dog

Therapy Dog's Name	Breed	Handler
Bailey	Lab	Marlene
Bogey	Boykin Spaniel	Richard
Brody	Lab / Golden Retriever Mix	Heather
Copper	Minature Goldendoodle	Linda
Daisy	Labrador Retriever	Patty
Gertie	Cavalier King Charles Spaniel	Lauralee
Honey Girl	Miniature Dachshund	Bobbie Jo
Kosmo	Jack Russell Terrier	Preston
Lucke	Golden Retriever	Sydney
Peyton	Rough Collie	Vicki
Margo	Labrador Retriever	Stephanie
Mattie Loo	Cavalier King Charles Spaniel	Karen
Molly	Golden Retriever	Don
Pippin	Golden Retriever	Chris
Schatze	Weimaraner	Barbara
Shiloh	Olde English Bulldogge	M'Lisa
Squirt	YorkShire Terrier	M'Lisa
Starla	Cavalier King Charles Spaniel	Stephanie

One jurisdiction in Florida uses as many as thirteen dogs; each dog has a profile on the courthouse website for children to choose which dog he or she would like as their companion.

Other Courthouse Dogs around the Country: The Dog

One unique jurisdiction has had such success with three dogs that the court is currently attempting to train an eight-week old dog within the courthouse itself.

Other Courthouse Dogs around the Country: The Handler

- Judge's assistants;
- Courthouse employees;
- The Judge;
- Many attorneys serve as the primary handler, such as a local Guardian ad Litem, the county attorney, or the prosecuting attorney;
- Court community members also frequently serve as handlers such as the Police Department Community Affairs Unit, forensic interviewers, sheriff, the director for CASA, or the program director of the DA's Victim Witness Assistance Division; and
- Staff members of Child Advocacy Centers (Meki's location!)
- Some dogs are handled by professionals and are trained by assistance dog organizations, while others are handled by volunteers.

Other Courthouse Dogs around the Country: The Handler in Court

During proceedings, Handlers should sit in the rows near the witness box rather than interact with the dog so the jury never knows of the handler's existence to avoid the idea that the handler is somehow controlling the child or the dog.

In Judge Shockley's courtroom handlers are given a place to sit so that the dog can see the handler. Unfortunately, due to courtroom set up, this is near the jury. However, if the dog breaks his down/wait command, the handler can quickly correct him rather than the child having to correct the dog, which is not ideal.

Handlers should never interpret the behavior of a dog to the court or encourage the behavior. Statements which could seem innocent and comforting such as, "tell your new friend what happened to you," encourage children to tell a story. The handler is only controlling the dog in terms of commands.

In order for this program to be most effective against biases, handlers should be impartial persons separate from the parties to the case.

Other Courthouse Dogs around the Country: Location during testimony

The dog should be beside the victim.

The victim should first be seated, then the handler may walk the dog and place the dog in the command position at the child's feet, where the dog should remain until after the testimony is completed.

Each court should implement procedures to ensure the factfinder can see the dog as little as possible to avoid distraction and prejudice to the defendant.

The most ideal location for the dog is concealed within the witness box.

If physical courtroom settings line up, when a courthouse dog lie on the floor near the witness, it is possible for them to be entirely out of the juror's view.

If these parameters do not line up in a particular courtroom, the courthouse dog should be positioned, if possible, so the dog's presence is not considerably distracting to jurors.

Meki and the CAP Team

Panel 7 9/20/2018

ETHICS in Criminal and Civil Juvenile Cases

The Hon. Kevin C. Duffan

Bretta Lewis, Esq.

MINI-HANDBOOK OF RULES AND COMMENTARY USEFUL IN ANSWERING HYPOTHETICALS PRESENTED IN ETHICS MATERIALS

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENT

Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[2a] Another important skill is negotiating and, in particular, choosing and carrying out the appropriate negotiating strategy. Often it is possible to negotiate a solution which meets some of the needs and interests of all the parties to a transaction or dispute, i.e., a problem-solving strategy.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

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[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See* also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

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RULE 1.2 Scope of Representation

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(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

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(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

COMMENT

Additionally, lawyers have long recognized that a more collaborative, problem-solving approach is often preferable to an adversarial strategyin pursuing the client's needs and interests. Consequently, diligence includes not only an adversarial strategy but also the vigorous pursuit of the client's interest in reaching a solution that satisfies the interests of all parties. The client can be represented zealously in either setting.

END OF MATERIALS

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Virginia MCLE Board

CERTIFICATION OF ATTENDANCE (FORM 2)

MCLE requirement pursuant to Paragraph 17, of Section IV, Part Six, Rules of the Supreme Court of Virginia and the MCLE Board Regulations.

INSTRUCTIONS

Certify Your Attendance Online at www.vsb.org see Member Login

Complete this Certification. Retain for two years.

MCLE Compliance Deadline - October 31. MCLE Reporting Deadline - December 15.

A $100 fee will be assessed for failure to comply with either deadline.

Member Name: _____ **VSB Member Number:** _____

Address: _____ **Daytime Phone:** _____

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_____

City **State** **Zip**

Course ID Number: **VIFF009**

Sponsor: **Virginia Beach Bar Association**

Course/Program Title: **2018 Annual VBBA/VBJDR CLE**

Live Interactive * **CLE Credits (Ethics Credits):** **7.0** **(1.0)**

Date Completed: _____ **Location:** _____

By my signature below I certify

___ I attended a total of _____ (hrs/mins) of **approved CLE**, of which (_____) (hrs/mins) were in **approved Ethics**. Credit is awarded for actual time in attendance (0.5 hr. minimum) rounded to the nearest half hour. (Example: 1hr 15min = 1.5hr)

___ The sessions I am claiming had written instructional materials to cover the subject.

___ I participated in this program in a setting physically suitable to the course.

___ I was given the opportunity to participate in discussions with other attendees and/or the presenter.

___ I understand I may not receive credit for any course/segment which is not materially different in substance than a course/segment for which credit has been previously given during the same completion period or the completion period immediately prior.

___ I understand that a materially false statement shall be subject to appropriate disciplinary action.

* NOTE: A maximum of 8.0 hours from pre-recorded courses may be applied to meet your yearly MCLE requirement. Minimum of 4.0 hours from live interactive courses required.

_____ _____

Date Signature

Questions? Contact the MCLE Department at (804) 775-0577

If not certified online, this form may be mailed

Virginia MCLE Board
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026
Web site: www.vsb.org

[Office Use Only: Live]

LEGAL ETHICS

Materials Prepared and Presented by: Bretta Z. Lewis, Esq.

I. RULE 1.1 Competence

Lawyers are aware of this rule, but what does it really mean? As a Court Appointed lawyer or GAL, if you are certified and have taken the classes and done the necessary training under a mentor, does being certified and on the CAC/GAL list make an attorney competent *de facto*? What if you think you understand and know the law in an area of the law, but you have never had an actual case dealing with a certain statute? Does that necessarily mean you are not competent in this area?

These are questions we all have to ask ourselves when faced with a case that presents questions that we have not seen before. In the end, for each lawyer's personal ethical barometer, competence not only has to be felt in your gut *but also* shown in your performance. We all know lawyers who think they are experts, but misunderstand and misinterpret the law and, as a result, the client suffers. If, at some point during the representation, a question of law or an interpretation of fact presents itself, each attorney has an obligation under this rule to realize that they need assistance and to get it.

HYPOTHETICAL –

Andrew Applebee is a new lawyer on the GAL/CAC list. He has trained under a mentor, he has watched several cases, taken the requisite CLE and has served as co-counsel on several criminal and civil cases in JDRC. On Andrew's first duty day, he gets a case where he represents a father in a DHS case and the City is moving for Emergency Removal due to abuse and neglect of three children. The Affidavit states that the mother and father both claim to be 50% Cherokee Indian. The allegations are many and varied and include substance abuse issues, physical violence issues, domestic abuse between the parents that has, at times, occurred in front of the children, and DHS alleges that the children live in a dangerously dirty dirty house.

Andrew is overwhelmed because these charges also might trigger criminal issues if they are proven, he doesn't know how to prepare his client, and while he knows that the Native American issue means something, he isn't sure what to do about it or how it impacts his client's case or parenting rights. He doesn't want to embarrass himself his first day, and he also doesn't want the Court to kick him off of the list or lose faith in him.

Questions:

1. Can Andrew assume that he is competent to represent the father by virtue of his certification and move forward, knowing that it is only the first of many hearings, and figure he will figure it as he goes along?

2. The mother also has counsel, who is more experienced than Andrew. The parents appear to be together, and appear to have their interests aligned. Can Andrew ethically and

openly discuss what his client has told him so that he and the mother's attorney can collaborate about a possible joint defense? How might this strategy impact whether he has met the burden of competence? Are there any other rules he has to consider when he speaks to the mother's attorney?

3. With respect to the Native American issues, what should Andrew do since he suspects these are important facts? Since he doesn't exactly know what the implications are, can he simply ask the City Attorney representing DHS or does his duty of competence prevent this as a way for him to get up to speed?

GAL QUESTION

1. How does the analysis of competence change if the attorney in question is the GAL? Who would be the victim if the GAL is not familiar with the law, but knows that the CAC for each parent will be making an argument to explain it and decides to make a recommendation after hearing those arguments?

2. Does the GAL have an independent obligation to research the statutes and issues and to make an argument to the Court? What if the GAL understands the issues but decides that it is not in the child's best interests to make the recommendation that is most in keeping with the law?

II. RULE 1.2 Scope of Representation

In private practice, attorneys are well aware that Representation Agreements are crucial in defining the scope of representation and ensuring that there are no areas of confusion in terms of what the lawyer does and does not have an obligation to undertake on behalf of a client. Attorneys have a lot of leeway in terms of limiting the role he or she will play in the client's case.

The world of CAC and GAL are not as clear in that the Court is selecting the attorney and the lawyer has less of a chance to decline the representation after consultation. Likewise, the client has not chosen and vetted the lawyer. In addition, the hectic nature of practice in this area, and the financial constraints under which CAC and GALs have to work make it impractical to treat each case as if it were the only case he or she is handling.

Because the community served by the appointment of attorneys is, by definition, low income, and because these matters are some of the most serious a person can face, attorneys have to be sure that the behavior they exhibit is ethical and that the client is not punished because he or she is poor or undereducated. Each lawyer has to balance the time, financial constraints, and the sometimes difficult task of communicating with clients who may not grasp the concept as readily of a private client.

HYPOTHETICAL -

Using the fact pattern above regarding the DHS case and Andrew Appelbee, it is clear that while the Court has appointed the attorney to represent the dad, the Court has not specifically defined the Scope of the attorney's representation, and he is not sure what the outcome will be, so he is not sure whether his representation will be limited to the DHS case for removal, or whether there will be a series of hearings such the 5 day, adjudicatory, dispositional and other hearings, because the need for each hearing will depend on the outcome of the prior hearing.

Additionally, the Commonwealth has now filed criminal charges for child endangerment and cross warrants against the parents for assault and battery. There is also some suggestion that the mother's case would be better if she filed for divorce and vice versa.

Once the case gets into the later stages, the father calls Andrew every day and asks him questions about what he should do with respect to the criminal charges, the divorce, and with respect to his defense of his parental rights.

Eventually, the City offers voluntary termination, or an entrustment, but Andrew says his client will never agree to that, but he does not consult the father because the father has told him no fewer than 50 times that he will never agree to give up his kids. The father's rights are ultimately terminated. The father wants to file an immediate appeal and demands that Andrew do so and "fight this to the Supreme Court if we have to!"

Questions Related to Rule 1.2:

1. What is the best practice with respect to how the attorney can define the scope of representation with the client? Since the Court has issued an order stating that the attorney is appointed with a specific case number at the top, does the lawyer still need an engagement letter?

2. Does Andrew have an ethical obligation to advise this client about his criminal cases and his divorce? What if he believes that his acquittal or conviction will materially impact the DHS case? What if he believes that the divorce will materially impact his ability to have his children returned? How does Andrew define the scope of representation and how should he make sure his client does not have unreasonable expectations about how much work he is obligated to do for him with these overlapping matters?

3. Has Andrew violated any rules by not discussing the entrustment or voluntary termination with his client even though the client has told him so many times that he would never agree to give up his kids?

4. Does Andrew have an obligation to file the appeal upon the client's directive even if he believes with every fiber of his being that it is a total loser of a case? If Andrew loses in Circuit Court, does he have an obligation to file a subsequent appeal even though he

strongly believes that any argument he will make that the Court erred would be frivolous? Are there any other Rules involved with this decision?

GAL QUESTIONS

1. Assuming there is a GAL appointed to represent the children in this case, how can the GAL satisfy the duty to consult with the client and allow the client to make decisions if the client is a child? Does a GAL appointment carry different obligations?

2. When a child expresses a preference that is not or does not appear reasonable, does a GAL have an obligation to explain anything else to the child once he or she decides to recommend against the preference? Does the age of the child impact the answer here?

III. RULE 1.3 Diligence

Under the same analysis as above, attorneys who serve as CACs and GALs have to balance the duty to be diligent with the sometimes difficult facts and personalities the cases present. Additionally, with the sometimes overlapping and complex issues that arise in domestic and DHS cases, it can be hard to draw the same kinds of boundaries with clients that would be easier to draw if the relationship were not ordained by the Court.

When considering the application of this rule in this very specific context, it is critical to understand the facts, the law, and the potential outcomes and consequences to the client and make sure the client understands to the best of his or her ability.

To complicate matters, clients in this context may be mentally ill, may not agree that they need treatment or assistance, may not speak English, may have substance abuse issues, and may be terrible at letting the attorney know where they live and how to contact them. The client simply may not trust authority or may have unreasonably negative feelings about lawyers. The ethical obligation to remain diligent in the face of clients with difficult personalities or more serious problems becomes complex and is worth exploring and considering and developing a best practice strategy.

Hypothetical –

Using the fact pattern above, assume that Andrew was also appointed in the criminal assault charge against his client where the mother is the alleged victim, as well as the assault and criminal charges related to his alleged abuse of his children. The matters are all in the same VBJDRC courtroom and are set for the same date as the DHS matters.

QUESTIONS:

1. At what point may Andrew ethically move to withdraw even though the client does not want him to withdraw and even thought the Court expects him to continue the representation until the conclusion of the case?

2. Does your answer to #1 change if Andrew, despite the Order of Appointment, went ahead and completed a standard Engagement Agreement with the client stating that the relationship is subject to the typical rules and that the attorney reserves the right to withdraw if the client is dishonest with the attorney or if the client's objectives appear repugnant to the attorney?

3. The father in this case calls Andrew every day to ask him whether he thinks is going to go to jail and lose his kids. Andrew advised his client in court that he did not believe he would be going to jail but he did believe getting the children back was going to be a long process. Andrew has advised his client to take a deferred finding and the client has agreed. Andrew has called the client back several times and the questions are always the same. After three months of this, the attorney decides to stop answering the calls and not to call back until a week before trial. Has Andrew violated Rule 1.3 by making this policy?

4. Does your answer to #3 change if it turns out that the father was arrested for another assault the day after Andrew's last call back? When Andrew learns of the new assault arrest, he has a week to prepare for the new charges. Has he violated Rule 1.3 now, even though he could not have known about the new charges and the client never told him in the message that anything new had happened but merely left the same message he always did, "Hey. This is Mr. Smith. I have some questions for you. Please call me back."

5. Does your answer change if the messages the client is leaving every day at 3 a.m. are slurred, nonsensical, and if the client has repeatedly told Andrew that he hates lawyers and that he was the reason he lost his children and that he never wants to speak to him again?

6. What does Andrew do if he cannot find the client because the numbers the client uses to call him are always disconnected, if the voicemail is full, or if the client's address is unknown and the letters Andrew is sending are always returned? How far does Rule 1.3, in connection with the rules about communication, require Andrew to go to find his client?

7. Once Andrew is appointed to represent the father in the DV cases, how does Rule 1.3 come into play with the collaborative approach he has taken with the mom's attorney? What should he do to make sure he does not damage his client or violate privilege?

END OF HYPOTHETHICALS AND CLE MATERIALS PREPARED BY BRETTA Z. LEWIS

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