

VBBA ~ VBJDR 2021 Annual CLE October 15, 2021

SPONSORED BY OUR FAMILY WIZARD

Agenda

8:45a-9a

Announcements and Get Connected

9a-11a

DHS Bootcamp

- Everything you need to know and more regarding the DHS Docket, the basics, the not so basics, ALL the statutes (§16.1-251 *et. seq.*, §63.2), the regulations, the quirks, and all the changes being implemented (new findings, escalated timeline, fictive kin, the Timeline, the new forms, new statutory requirements, etc.), the Federal Families First Legislation and Changes to Title IVE of the Social Security Act, the Virginia "PIP," the NEW judicial bench cards, and why the DHS docket is not merely "family law."

- Christianna Cunningham/Brad Hudgins, Associate City Attorneys



11a-11:15a Break

11:15a-12:15p Relief of Custody Roundtable

- A multidisciplinary look at Virginia Code §16.1-277.02- the relief of custody law: how the statute is supposed to work, the practical aspects and effects of the law, the reality of how it *really* works, funding issues, and why ROC should rarely be used.

- Rachel Evans, Associate City Attorney, Kyle Massey, VBDHS/Court Liaison, Dayna Bandy, CSA Coordinator VBDHS, Katy McCurdy, Court Service Unit Intake Supervisor, Dr. Kelly Doolan, VBDHS, Child & Youth Services, and Pamela Poindexter, VBDHS, Foster Care Prevention Supervisor

12:15p-12:45p Lunch Break



12:45p-1:00p ALL ABOUT OUR FAMILY WIZARD

- A Dynamic Presentation by our Sponsor, OUR FAMILY WIZARD, showing how to use OFW to facilitate co-parenting, help you with your case, and assist in preparation for trial.

1:00p-2:00p Juvenile Justice After July 1, 2021

- Marijuana, Presumption Against Bond, Changes in Probation, Technical Violations, and Mental Health, etc.: overview of how all the changes since July 1, 2021 *should* affect the way you handle juvenile delinquency cases
 - Megan Lang, Assistant Commonwealth Attorney
 - Mindy Stolworthy, Assistant Public Defender
 - Annamarie Pagel, Esq.- The guardian ad litem prospective

2:00p-2:15p Break



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2:15p-5:15p Judges Panel Discussions

****2 separate discussions lead by our distinguished Judges along with a panel of experts with “boots on the ground” to provide knowledge and insight into some of the hottest topics in juvenile law**

2:15p-3:45p

- Panel 1: Rethinking Law Enforcement Approaches to Juvenile Justice & Mental Health**

- How law enforcement, the court community, and community partners are working together to reach at-risk youth, attempt intervention before response, and to make changes diversion models, the study of the “RED” factors (Racial and Ethnic Disparities), along an introduction to the Marcus Davis Peters’ Act- Virginia Code §9.1-193 *et. seq.* (“Marcus Alert”), and a look at the use of juvenile detention in the face of the current posture of area less secure facilities, increased relief of custody filings involving minors with delinquency charges, and potential limitations on funding for residential treatment and/or congregate care placements.

- The Hon. Tanya Bullock, Deputy Chief William T. Dean, Sgt. James Jaworski, Dee Bolden, Deputy Director VBDHS, Olympia Perkins, Director VB-CSU, Brian Whitely, VB/JDC Acting Superintendent, Chris Hawes, JDC Clinician, Al Steward, VBDHS-Child Welfare Program Manager

3:45p-5:15pm

- Panel 2: Co-Parenting in the Pandemic & Beyond

- Looking at Virginia Code §20-124.3 under the lens of real co-parenting from a clinical and legal perspective; what the courts want to know; how issues surrounding COVID-19 and visitation are viewed in light of potential parental alienation; how counsel can facilitate compromise in light of back-logs on the docket and on-going COVID concerns; the use of remote hearings; easing childhood anxiety during a pandemic and a contested custody case.

- The Hon. Cheshire I'Anson Eveleigh, Dr. Suzanne Baldwin, Anna Clarke Sas, Esq., Bretta Lewis, Esq.



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Virginia MCLE Board

CERTIFICATION OF ATTENDANCE (FORM 2D)

MCLE requirement pursuant to Paragraph 17, of Section IV, Part Six, Rules of the Supreme Court of Virginia and the MCLE Board Regulations.

Certify Your Attendance Online at www.vsb.org

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: _____
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Email: _____

City State Zip

Course ID Number: VIII005

Sponsor: Virginia Beach Bar Association

Course/Program Title: VBBA JDR Committee Annual CLE

Live Interactive * Approved CLE Credits (Ethics Credits): 7.0 (0.0)

Date of telephone/webcast: _____ Location(s): _____

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 interact with the presenter (in real time if live interactive or other method if pre-recorded).
____ 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

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Virginia MCLE Board
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026
(804) 775-0577
www.vsb.org

[Office Use Only: Webcast]

...CELEBRATION

9:00 am ~ 11:00 am

DHS ~ CHILD WELFARE DOCKET

BOOTCAMP



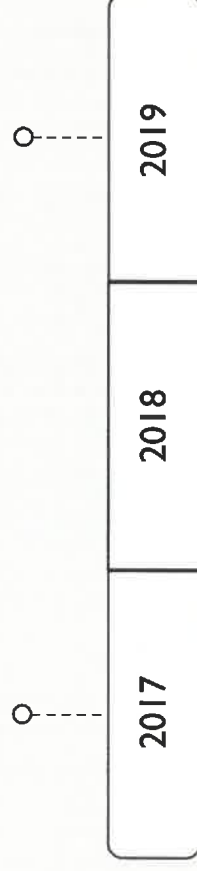
DHS~CHILD WELFARE DOCKET BOOTCAMP

VBBA JDR COMMITTEE-2021



Federal Child and Family
Services Review- Virginia Fails
Compliance

Acceptance of Virginia's
Performance Improvement Plan
by the Feds



Virginia JLARC Report- similar
findings

WHY BOOTCAMP NOW?

FEDERAL CHILD AND FAMILY SERVICE REVIEW

- * The Children's Bureau looked at 70 cases in various localities throughout the state beginning in April 2017 through June 2017
- * Results: Virginia was **NOT** in compliance with 7 out of the 7 measured factors that dealt with safety, permanency, and related welfare outcomes for youth

JLARC STUDY- RELEASED IN 2018

- In 2017, the **Virginia Joint Legislative Audit & Review Commission (“JLARC”)** also conducted a study of Virginia’s child welfare system and found similar results - most LDSS comply with Federal law but are not necessarily compliant with relative placement and permanency best practices.
- **Quick Take Away Points:** VA needs to: 1) do a better job of finding relatives 2) use kinship foster care and not merely transfer custody and close the case, 3) expedite termination where reunification is not viable- **MUST** follow 15/22 rule, and 4) do not use congregate care as a fallback
- Not all of these issues are within LDSS control; for example- JLARC recognized VA court system itself is often a barrier to termination within required timeline (District Court ~ Circuit Court –Court of Appeals)

CFSR + JLARC = STATEWIDE STRATEGIC PLAN

- In June of 2019, VDSS submitted its 5-year strategic plan to the federal government – which became known as the Performance Improvement Plan a/k/a the **“PIP.”** After a few rounds of negotiation and redrafts, it was accepted, and implementation has begun.
- The PIP begins by utilizing a group of 19 lead agencies chosen from across the state to work up a plan that will develop policy and guidance for implementation of key strategies to bring Virginia into compliance with federal law. VBDHS is a PIP agency. Thus far... the 19 PIP agencies are .05% away from “passing the PIP!! (Virginia is actually in the lead of all 50 states!!) The PIP will eventually be implemented statewide.
- Training for agency staff, city/county attorneys, and judges has already begun. There are benchmarks for each “strategy” that Virginia must meet and maintain to remain in compliance and to continue to receive federal funding, which is the primary source of funds for foster care and related child welfare services. Virginia has also made compliance by LDSS applicable to state funds (CSA= Children Services Act).
- Virginia enacted legislation to go along with the PIP; some took effect 7/1/20, the rest took effect 7/1/21.



**BECAUSE THE
RULES ARE
GETTING EVEN
LESS FLEXIBLE**

TIME TO REFRESH AND RELEARN



LET'S GET BACK TO BASICS

Start with the Code- seems basic but ask yourself- when did you last read the applicable statutes? I know they are page turners.....

Child welfare is a statutorily and regulatory driven practice. It is not just “family law” and No- NOT “*anyone can do it on the fly.*”


It combines administrative and judicial tracks that often conflict and do not make sense; failure to not understand the nuisances is malpractice.



BASIC TRAINING



VIRGINIA CODE SECTIONS

- 63.2-100 through 63.2-1530
 - 161.-226 through 16.1-361
 - 42 USC Sec. 601 *et. seq.* (Title IVE)
 - 22 VAC 40; Chapters 705 & 730
- 

HOW DOES A CASE START?

THE DIFFERENTIAL RESPONSE SYSTEM

INVESTIGATION 63.2-1505

- *Higher risk assessment
- *Quicker response time
- *Assess safety of child, cooperation of caretakers, need for protective agreement and/or safety plan & services
- *Finding = Founded or Unfounded; if Founded- level made; name of the perpetrator in state registry
- *May or may not result in court action depending on several factors, including, but not limited to: cooperation of caretakers, involvement of other agencies (law enforcement)

FAMILY ASSESSMENT 63.2-1506

- *Appears lower risk from referral
- *May not be a priority response
- Still assess for safety and cooperation
- Assess whether an investigation needs to be opened
- *No finding made / no registry
- *May or may not result in court action / usually dependent on cooperation and risk factors
- *Referral for services

INVESTIGATION=FINDING=LEVEL= REGISTRY

- 1. **Level 1.** This level includes those injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.
- 2. **Level 2.** This level includes injuries or conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.
- 3. **Level 3.** This level includes injuries or conditions, real or threatened, that result in or were likely to have resulted in minimal harm to a child.

The identifying information shall be retained based on the determined level of severity of the abuse or neglect pursuant to [22VAC40-705-110](#):

- a. **Eighteen (18)** years past the date of the complaint for all complaints determined by the local department to be founded as Level 1.
- b. **Twenty-Five (25)** years past the date of the complaints for all complaints determined to be founded by the local department as Level 1 for sex abuse.
- c. **Seven (7)** years past the date of the complaint for all complaints determined by the local department to be founded as Level 2.
- d. **Three (3)** years past the date of the complaint for all complaints determined by the local department to be founded as Level 3.

CAN THEY REALLY DO THAT?

- Interview a child or sibling without parent permission or parent presence? Yes 63.2-1518
- Patient / Doctor Privilege or Spousal Privilege? No such privileges in these cases 63.2-1519
- Take x-rays and photographs without parent permission? Yes 63.2-1520

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INVESTIGATIONS = POSSIBLE FINDING ADMINISTRATIVE APPEALS

- **63.2-1526** – a person who is suspected of or is found to have committed abuse or neglect may, within 30 days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records –
APPEAL OF THE FINDING
- No RIGHT to Counsel
- Registry may affect security clearances and job opportunities
 - bus drivers
 - day care providers
 - teachers
 - military assignments

APPEALS OF ADMINISTRATIVE FINDINGS

- 1) Local Appeal- local hearing officer

- 2) State Appeal – state hearing officer

- 3) Circuit Court – *AGs OFFICE represents the Agency at the Circuit Court Level

- Evidentiary rules are relaxed
- You will get a *redacted record* 22 VAC 40-705-190
- You will be given an opportunity to view and/or listen to any interviews used in the facts to support
- Appellant may add to the record on appeal; the Agency, with minimal exceptions, may not add to the record
- Hearing officer may “leave the record open” after the hearing for briefing by other parties or other documents to be provided by the Appellant.

~FAMILY ENGAGEMENT~



- **Safety Plan/Protective Agreement-** a voluntary agreement signed by caretakers agreeing to do something(s) or to refrain from doing something(s) and/or a voluntary plan to place a child/children outside of the home

**SO DHS FILED IN
COURT.... NOW
WHAT?**

3 PATHS.... PPO, ERO, OR ERO/PPO

Statutes: Start off around 16.1-251 and keep going

Timeline: Applies to all 3 but if ERO-Foster care-
there is no – there is absolutely no - flexibility in the
timeline- yes – even during a PANDEMIC

HAT IS THE TIMELINE ANYWAY?

NUMBERS TO REMEMBER

- Day 1 – Ex Parte hearing
- Day 5- “5 Day” - caretakers/parents to be noticed /served
- Day 30- Adjudication/Trial
- Day 60- Disposition
 - If PPO case- CT can: enter order transferring custody, and order services
 - If Removal- CT will affirm foster care plan, affirm custody to DHS, order services, parenting time, and order family to comply with relative identification and fictive kin locator tools
- 4 Months post Dispo in FC case- Foster Care Review
- 5 Months post FCR- Permanency Planning Hearing #1 – Keep goal or change goal
- 5 Months post PPHI - Permanency Planning Hearing # 2- Goal change or Return or Place
- 15/22 months in care – Mandatory Filing of TPR w/Limited exceptions
- Post TPR- Annual Foster Care Reviews ~ every 12 months until adoption or age 18
- Fostering Futures- Post 18 there is one review in court for court to approve program application

STATUTES TO KEEP IN MIND

- 63.2-1525 – In the case of a petition in the court for removal of custody of a child alleged to have been abused or neglected, competent evidence by a physician that a child is abused or neglected shall constitute prima facie evidence to support such petition.
- *16.1-245.1 - allows the filing of medical records and letter opinions by providers w/ affidavits if provided 10 days in advance all hearing except the five day- and in the case of the five day, the record must be provided at least 24 hours in advance.

MORE STATUTES....

- **16.1-296 D** = TPR appeals to be set within 90 days in Circuit Court on appeal from JDR
- **16.1-296 I** = On appeal, the Circuit Court has all the powers and authority of the JDR Court

CASES WHERE LAW ENFORCEMENT IS ALSO INVOLVED

- 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.*

A WORD ON HIGH-RISK CASES AND/OR CASES ORIGINATING FROM A LAW ENFORCEMENT RESPONSE

- 99% of the time, all DHS cases will start with a petition supported by an affidavit signed by the investigating workers; upon appointed or retained — you will get a copy of the petition and affidavit that outlines why the case was filed.
- 1% of the time- DHS will file a petition w/o the affidavit and have witnesses appear to support the petition- and often due to the nature of these cases, even though all JDR cases are sealed, this may also require the courtroom to be physically sealed whilst the parties are addressing the court.
 - Generally, these cases are cases originating from a law enforcement response where DHS may have limited access to the investigation details at the outset;
 - Sex Trafficking [Va Code Sec. 63.2-1517(C), 22 USC Sec. 7102, 42 USC 5101 et. seq.]
 - DEA/Narcotics Task Force Cases
 - Cases involving the suspicious death or harm of one parent of caretaker
 - Cases involving the suspicious death or harming of a sibling or child in the care of the parent(s) or caretaker(s)
 - Cases involving other high level criminal activity

DHS DOCKET “QUIRKS”

- Why is there is no endorsement of DHS orders by counsel?
 - The Orders are form orders created the Office of the Executive Secretary to ensure compliance with Federal law (\$\$)- they did not create lines for endorsement ☹️
- The Adjudication is not a finding against the parent or caretaker- it is a finding on behalf of the child. There is no registry of adjudications, and the files are sealed and not open to public inspection
- Burden of Proof is Preponderance of the Evidence unless TPR (CCE)
- The criminal rules do not apply- there are no “charges” or motions to suppress- this is a civil proceeding!
- PPOs/CPOs – yes- your client will not be able to purchase/own/use a gun while it is in effect
- If we all agree, do we have to appear?
 - Yes, the parties must appear to get served with the new order- particularly with PPO cases.
- I got retained by Dad in a foster care case and have a conflict- why can't I get a continuance?
 - IV-E says – continuances= NO FED \$\$
 - Even NUNC PRO TUNC Orders are a no no
 - Best bet for relief?- ask for interim hearing after but main order will still be entered timely

A WORD ON “ICWA”

- The DHS docket must comply with the Federal Indian Child Welfare Act- even if only a PPO case.
- Your client is required to report even any remotely possible Native American heritage of the child/children at issue. Failure to truthfully comply can severely compromise the case.
- Should ICWA apply to a case at bar, the applicable Indian Nations will be notified, and they have the right to intervene, and in some cases, transfer jurisdiction to a Tribal Court.
- ICWA regulations are stricter than state law and even the laws under IVE.
- ICWA v. ICPC- likely ICWA wins (no known precedent)

A WORD ON “ICPC”

ICPC=The Interstate Compact on the Placement of Children-

ICPC is statutory uniform law in all 50 states, the District of Columbia and the U.S. Virgin Islands. It is intended to ensure the protection of children who are placed across state lines for foster care and adoption. It strives to ensure responsibility and communication among all parties involved until lawful termination. Procedures for the interstate and intercountry placement of children are intended to ensure that the proposed placement is in compliance with state laws and regulations and is not contrary to the interests of the child.

The Commissioner of the Virginia Department of Social Services, through the Division of Family Services, is responsible for approving and monitoring interstate placements of children.

ICPC applies to four types of situations in which children may be sent to other states/countries:

1. Placement preliminary to an adoption
2. Placement into foster care, including foster homes, group homes, residential treatment facilities, and child-caring institutions
3. *Placement with parents and/or specified relatives when a parent or specified relative is not making the placement (safety plan).*
4. Placement of adjudicated delinquents into private institutions in other states

WHAT IS CASA AND WHY DOES MY CLIENT HAVE ANOTHER PERSON TO TALK TO?

§ 9.1-153. Volunteer court-appointed special advocates; powers and duties; assignment; qualifications; training

- **A.** Services in each local court-appointed special advocate program shall be provided by volunteer court-appointed special advocates, hereinafter referred to as advocates. The advocate's duties shall include:
 - 1. Investigating the case to which he is assigned to provide independent factual information to the court.
 - 2. Submitting to the court of a written report of his investigation in compliance with the provisions of § 16.1-274. The report may, upon request of the court, include recommendations as to the child's welfare.
 - 3. Monitoring the case to which he is assigned to ensure compliance with the court's orders.
 - 4. Assisting any appointed guardian ad litem to represent the child in providing effective representation of the child's needs and best interests.
 - 5. Reporting a suspected abused or neglected child pursuant to § 63.2-1509.
- **B.** The advocate is not a party to the case to which he is assigned and shall not call witnesses or examine witnesses. The advocate shall not, with respect to the case to which he is assigned, provide legal counsel or advice to any person, appear as counsel in court or in proceedings which are part of the judicial process, or engage in the unauthorized practice of law. **The advocate may testify if called as a witness.**

THE NOT SO BASICS-NEW STUFF

THE PIP

SO WHAT WERE THE PROBLEMS THE FEDS IDENTIFIED WITH VIRGINIA?

- We do not do a good job of “finding relatives.”
- We do not use “fictive kin” enough where we cannot find relatives.
- We do not timely interact with the alleged victim child/children. [“First Meaningful Contact”]
- We do not terminate parental rights on time.
- We give parents “too many bites at the apple” – district court appeal to circuit to court of appeals.
- We place too many children in congregate care. (RTC/Group Homes, Less Secure, etc.)

PIP = “TEAM VIRGINIA”

**2020-2024 IMPLEMENTATION OF PIP
STRATEGIES**

THE FAMILIES FIRST ACT AND CHANGES OF PRACTICE – WHAT THE WORKERS MUST DO:

• Prevention Changes

- Targeting resources and services that **prevent foster care placements** and help children remain safely in their home.

- **In-Home Case Management** – the new name for “on-going”

• USING Evidenced Based Services:

- Functional Family Therapy (FFT)
- Child Parent Interaction Therapy (PCIT)
- Multi-systemic Therapy (MST)

• Foster Care Changes

- Focus on Family Based Placements

- Enhance Diligent Recruitment Efforts- USE of TOOLS/ Genograms/IPADS

- Focus on kin-first culture
- Use Fictive Kin if no “biokin”

- Congregate Care- **USE SPARINGLY IF AT ALL**

- Pregnant or Parenting Youth
- Substance Use Treatment Facility

- Q RTP- required to fund any RTC/Group Home placement- **NEW PROCEDURES**

- At Risk and Victims of Sex Trafficking

I'M A LAWYER NOT A SOCIAL WORKER

42 USC Sec. 601 et. seq. (Title IV-E) Required Implementation of Revised provisions

Families First now allows use of **IV-E \$\$** for Prevention- but funding is limited, and criteria is strict

Virginia Code Sec. 63.2-906 Foster Care Goals- Limitations on APPLA/RTC - “Q RTP” required by Families First Act- Use and Time of **RTC is limited**

Virginia Code Sec. 63.2-910.2 “15/22” Rule/ Updated Guidance /Bench Card

Virginia Code Sec(s). 16.1-251 et. seq.- Relative Identification/New DC Forms ordering disclosure of relatives/Genogram Tool(s)/Bench Cards

Virginia Code Sec. 16.1-296; Appeals to Circuit Court – On the docket w/in 90days of appeal and get it done

THE VIRGINIA COURT IMPROVEMENT PROGRAM (VIRGINIA CIP) ~CHILD DEPENDENCY BENCHMARKS

“The bench cards are designed to advance permanency outcomes for children in foster care by supporting courts to establish appropriate permanency goals in a timely manner and achieve permanency through return home, relative placement, and adoption. To further this purpose, bench cards were developed for use at hearings to review a child’s foster care plan and provide questions based on the goal established for the child. All of the bench cards reference general hearing information and offer questions the court may ask to engage the parents and child in the hearing and assess the child’s safety and well-being. Key judicial findings are also referenced.”

http://www.vacourts.gov/courtadmin/aoc/cip/resources/child_dependency_benchcards_full_set.pdf.

PRACTICE CHANGES YOU SHOULD MAKE IN FURTHERANCE OF THE PIP

- **Stop telling your client NOT to let CPS see the Child or just refuse to talk to CPS-** if there is a valid call-the worker is required to see the children and caretaker- if you are concerned about liability- arrange for that to occur and yes, you can be there (except that CPS may interview the child alone). By doing this, you may avoid getting your client “into the system” in the first place. **When in doubt- call one of the city attorneys.**
- When appointed to a case- **fill out the relative identification/fictive kin tools (2)** at intake with client and ask the ICWA question yourself- have client initial and bring to court or email to assigned city attorney.
- Educate yourself on **QRTP and RTCs-** that way you can explain to clients the limited circumstances where they should be used.
- In all foster care cases, have a **frank** discussion at the beginning of the representation regarding the 15/22 rule- and why “merely checking the boxes” does not work. The client must show substantial remediation by month 15 or TPR will be sought. **There are very limited exceptions to TPR if goal is not achieved by month 15- and those exceptions must be filed with the Commissioner of VDSS, who can overrule the LDSS decision not to file.**

DRILLING DOWN ON THE FEDERAL FAMILY FIRST PREVENTION SERVICES ACT

- The Family First Prevention Services Act was signed into law as part of the Bipartisan Budget Act on February 9, 2018. This act reforms the federal child welfare financing streams, Title IV-E and Title IV-B of the Social Security Act, to provide services to families who are at risk of entering the child welfare system. The bill aims to:
 - prevent children from entering foster care by allowing federal reimbursement for mental health services, substance use treatment, and in-home parenting skill training; and
 - improve the well-being of children already in foster by incentivizing states to reduce placement of children in congregate care.

SO WHAT DOES FAMILY FIRST DO?

- Discourages the placement of children in any congregate care setting unless **absolutely necessary** and then A- limits the type of facility that can be used to those facilities who meet certain federal standards and B- limits the time a child can stay in such facilities to consecutive months (18 non-consecutive) 12 months if child is over 13, and 6 months if child is under 13.
- \$\$ is only available for the following types of congregate care placements:
 - family based SA programs (presently there are none in VA)
 - Programs/facilities supporting parenting or pregnant you in care
 - RTC specifically designated for children involved in and/or at risk of – sex trafficking
 - Q RTP- qualified residential treatment centers- those RTCs who meet the evidence-based practice standards set forth under FF
 - Trauma-informed model, licensed and registered nursing staff 24-7, licensed and accredited, reunification therapy available, discharge planning and min. 6 months of after care services
 - 42 USC Sec.(s) 671-672; Va. Code Sec(s). 16.1-228, 16.1-281, 16.1-282, 16.1-282.1, 16.1-282.2, 63.2-100, 63.2-906.1

NEW PROCESS CHANGES – ADDITIONAL COURT OVERSIGHT AND NOW- COMMISSIONER OVERSIGHT

- Any time a child is placed in a QRTP / congregate care setting (RTC/Group Home), 3 things must happen for either Federal IV-E and/or State CSA funding to apply (Va Code Sec. 63.2-906.1):
 - Assessment to be done w/in 30 days by a licensed and certified evaluator chosen by the State
 - Prior to this evaluation – the LDSS must submit a packet of information to the evaluator to include (among other things):
 - IACCT APPROVAL/PACKET (Independent Assessment and Certification and Coordination Team- Each child seeking admission to residential services will receive the support of the local Independent Assessment, Certification and Coordination Team (IACCT) in each locality to assess the child's needs. The IACCT will include the child, the child's family/legal guardian and clinical professionals from the child's community. Whenever possible, a primary care physician or psychiatrist who knows the child's history will be involved in the assessment.
 - FAPT APPROVAL- Family Assessment and Planning Team (Va. Code Sec. 2.2-5207 et seq.)
 - FPM DOCUMENTATION- Family Partnership Meeting
 - The Evaluator provide a should provide the LDSS with response within 5-7 days
 - Should the assessor disagree with placement -- the child has 30 days to be moved (if already in the placement)
 - **There is still a question here is to what occurs if the Court and the Assessor disagree

Should assessor concur w/placement:

- 1) The worker will immediately file a petition (form forthcoming) for the *required court review within 60 days (can be done alone w/another hearing i.e.) dispositional*; and
- 2) The Court **must find the following** to approve the placement:
 - a) The needs of child cannot be met in a foster home; and
 - b) Placement in the Q RTP (RTC/Group home) is the most effective and appropriate level of care for the child; and
 - c) Agency must demonstrate on-going active efforts to step-down to family setting.


After the court reviews and approves the placement, the assessment and court order will be reviewed by the VDSS Commissioner:

- The Commissioner has the option to order the child to transition out of the Q RTP w/in 30 days of if his review
- The Commissioner must approve stays over 12 months for children over 13 (6 months for 12 and under)

– **Again- It is unclear how this new law “meshes” with Virginia Code §16.1-278 & § 2.2-5211(E).

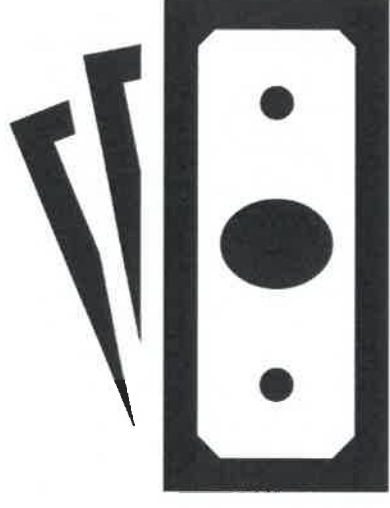


DO THE RESTRICTIONS ONLY APPLY TO CHILDREN IN FOSTER CARE?

- The restrictions currently apply to children receiving federal IV-E and/or state CSA \$\$ for maintenance and placement.
 - Children who come before CSA for funding who are not in foster care do not have to be placed into a QRTP at this time. Put differently, CSA can continue to fund placements into facilities, which are not QRTPs for children who are not in foster care; however, in the future this will likely change, and CSA will only be able to fund QRTPs for all children who are funded through CSA.
- 

ARE WE LOSING \$\$\$\$??

- NO - The Money is just really changing “Pots”
 - it is really just being moved from the “Housing/Foster Care Pot” to the “Prevention Pot.”
- IVE can/should now be used to support the Child in a home-based setting in lieu of QRTC; **the Assessor / Court will ask-**
 - WHY CAN THE CHILD NOT STAY IN THE HOME WITH SUPPORTS?
 - WHAT IS THE TRUE BARRIER TO THE SUPPORTS NOT BEING PROVIDED IN THE HOME? (WHETHER THE CHILD’S OWN HOME OR A TFC?)



WORKING WITH VBDHS

TIPS & INFORMATION

- **DHS is an umbrella entity- it has 2 separate divisions:**
- **Social Services**: child welfare, eligibility/benefits, adult services/adult foster care, adult protective services, infant & toddler, fostering futures, kinship navigator, juvenile detention center
- **Behavioral Health & Developmental Services**: adult correctional services (restoration, re-entry/ngri), adult day treatment, adult outpatient, Beach House (MHSA), case management, crisis management, emergency services (CIT/CSB screening), Child & Youth, consumer affairs, opioid recovery, Pathways, supportive housing, PACT, ICF, HRC, Project Link, adult pretrial services

VBDHS RECORDS

How can I get Records from DHS?

- 1) Issue a SDT to VBDHS- CQI, 256 N. Witchduck Rd., Ste. 2F Virginia Beach, VA 23462
- 2) Make a request through VBDHS Gov QA:

<https://www.vbgov.com/government/departments/human-services/Pages/DHS-FOIA.aspx>

Will my records be redacted, or can my request be denied?

*Yes, VBDHS is required to follow all applicable state and federal laws and regulations regarding the confidentiality of human services records

What laws might prevent me from getting the requested records?

* Virginia Code Sec. 16.1-301, 63.2-102, 63.2-104, 63.2-105, 63.2-1516.1(B), 22 VAC 40-910-100, 22 VAC 30-100-50, 22 VAC 40-705-160, 22 VAC 40-910-80, 22 VAC 40-910-90, 42 CFR P. 2, 42 USC 290dd(2), HIPAA, FERPA, 45 CFR §205.505.5(a)(2)(iv)-(v), and 7 CFR § 272.1 (C)

QUESTIONS?

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CHILD DEPENDENCY BENCHCARDS

A RESOURCE TO SUPPORT
MEANINGFUL COURT HEARINGS



COURT IMPROVEMENT PROGRAM

OFFICE OF THE EXECUTIVE SECRETARY SUPREME
COURT OF VIRGINIA

CHILD DEPENDENCY BENCHCARDS

A RESOURCE TO SUPPORT MEANINGFUL COURT HEARINGS



The Virginia Court Improvement Program (Virginia CIP) is pleased to offer this collection of child dependency bench cards, developed and recommended for use by juvenile and domestic relations district court judges, and attorneys and self-represented parties, to support meaningful court hearings and facilitate the review of efforts by the local department of social services to move a child in foster care to permanency.

These bench cards were created in the context of Virginia's 2019 Child and Family Services Review Program Improvement Plan. They are designed to advance permanency outcomes for children in foster care by supporting courts to establish appropriate permanency goals in a timely manner and achieve permanency through return home, relative placement, and adoption. To further this purpose, bench cards developed for use at hearings to review a child's foster care plan provide questions based on the goal established for the child. The bench cards reference general hearing information and offer questions the court may ask to engage the parents and child in the hearing and assess the child's safety and well-being. Key judicial findings are also referenced.



CHILD DEPENDENCY BENCHCARD ABUSE OR NEGLECT— EX PARTE EMERGENCY REMOVAL HEARING



AUTHORITY

Virginia Code §16.1-251

PURPOSE

To determine whether the child's removal from the home is necessary to prevent further abuse or neglect.

If the petitioner fails to obtain an emergency removal order within 4 hours of taking custody of a child, the affidavit or sworn testimony before the judge or intake officer must state the reasons therefor.

TIMING

Upon the filing of a petition alleging abuse or neglect of a child.

NEXT EVENT

A preliminary removal hearing held as soon as practicable, but not more than 5 business days after the child's physical removal from the home.

APPLICABLE DISTRICT COURT FORM ORDER

- DC-526, EMERGENCY REMOVAL ORDER

QUESTIONS TO CONSIDER

Custody and Paternity:

- ☐ Who is the legal custodian of the child? If other than the child's parents, what is their relationship to the child? Regarding paternity, has the local department of social services (LDSS) established paternity of the child? If not, why?

Indian Child Welfare Act:

- ☐ Is the child under the age of 18, unmarried and (i) a member of a federally recognized Indian tribe or (ii) eligible for membership in and the biological child of a member of a federally recognized Indian tribe?

ICWA applies unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

Child safety and well-being:

- ☐ What is the specific safety issue necessitating the child's removal from the home?
- ☐ What efforts were made by the LDSS to protect the child without removal of the child from the home?
- ☐ If the child has already been removed, have more than 4 hours passed since taking custody of the child? If so, why? (Reasons must be stated in the affidavit or sworn testimony.)
- ☐ Would certain court ordered conditions and limitations allow the child to return home? If not, why?
- ☐ Is there a person with a legitimate interest with whom the child can be temporarily placed, under the supervision of the LDSS, until the preliminary hearing?

Va. Code § 16.1-251 requires the court to consider temporary placement with a person with a legitimate interest under the supervision of the LDSS, until the preliminary removal hearing.

The court may order the parents or guardians of a child to provide the names and contact information for all persons with a legitimate interest to the LDSS. Va. Code § 16.1-229.1.

To support parents' counsel, guardians ad litem, and Court Appointed Special Advocates in assisting the LDSS with the identification of relatives and fictive kin resources and supports, the Court Improvement Program, in collaboration with the Virginia Department of Social Services, has developed forms, Identification of Relatives and Fictive Kin and Relative and/or Fictive Kin Resources and Supports.

- ☐ If the child has siblings who were removed from the home, are the child and siblings placed together? If not, what is the LDSS doing to place the child with his or her siblings?



CHILD DEPENDENCY BENCHCARD

ABUSE OR NEGLECT – EX PARTE EMERGENCY REMOVAL HEARING

KEY FINDINGS

- Whether the child is an Indian child as defined in 25 U.S.C. §1903(4).
- Whether the child would be subjected to an **imminent threat** to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.
This “contrary to the welfare” finding must be in the first court order placing a child in foster care, even temporarily, or the duration of the child’s stay in foster care is not eligible for Title IV-E foster care maintenance payments. (See 45 CFR 135621(c).)
- Whether **reasonable efforts** to prevent removal of the child from his or her home have been made, or are deemed to have been made because there was no reasonable opportunity to provide preventative services, or are not required pursuant to § 161-251.
This reasonable efforts finding must be made no later than 60 days from the date the child is removed from the home or the duration of the child’s stay in foster care is not eligible for Title IV-E foster care maintenance payments. (See 45 CFR 135621(b)(1).)
- That there are no alternatives less drastic than removal of a child from his or her home, which could reasonably protect the child’s life or health pending a final hearing on the petition.



CHILD DEPENDENCY BENCHCARD

ABUSE OR NEGLECT – PRELIMINARY REMOVAL (5-DAY) HEARING AND ADJUDICATORY HEARING

QUESTIONS TO CONSIDER

Custody and Paternity:

- ☐ Who is the legal custodian of the child? If other than the child's parents, what is their relationship to the child? Regarding paternity, has the local department of social services (LDSS) established paternity of the child? If not, why?

Indian Child Welfare Act:

- ☐ Is the child under the age of 18, unmarried and (i) a member of a federally recognized Indian tribe or (ii) eligible for membership in and the biological child of a member of a federally recognized Indian tribe?

ICWA applies unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

Parental participation in hearing:

- ☐ Are the parents in court? If not, why? (Addressing parents by their last name facilitates parental engagement.)
- ☐ If appointed, has counsel for the parents met with their clients? If not, why?

Child's participation in hearing:

- ☐ Is the child in court or participating in the hearing by other means (e.g., by phone or by video)? If not, why?
- ☐ If appointed, has the guardian ad litem met with the child since the date of the last hearing? If not, why?

Child safety and well-being:

- ☐ What is the specific safety issue necessitating the child's removal from the home?
- ☐ What efforts were made by the LDSS to protect the child without removal of the child from the home?
- ☐ If the child has been removed from the home, can the child be returned home safely today? Would certain court ordered conditions and limitations allow the child to return home? If not, why?
- ☐ What are the physical, emotional, educational, and mental health needs of the child? What is the LDSS doing to meet these needs?
- ☐ If the child is of school age, is it in the child's best interest to remain in his or her home school? If yes, what is the LDSS doing to keep the child in his or her home school? How is the child doing in school?
- ☐ If the child has siblings who were removed from the home, are the child and siblings placed together? If not, what is the LDSS doing to place the child with his or her siblings? Is visitation with the siblings in the best interest of the child? If not, why?

AUTHORITY

Virginia Code §16.1-252

PURPOSE

- Preliminary removal hearing
 - to determine whether the child's removal from the home is proper.
- Adjudicatory hearing – to make a finding on the allegation of abuse or neglect.

TIMING

As soon as practicable, but not more than 5 business days after the child's removal from the home when removal is pursuant to an emergency removal order.

NEXT EVENT

- An adjudicatory hearing not more than 30 days after the date of the preliminary removal hearing if an objection is made to the court making a finding on the allegations of abuse or neglect at the preliminary removal hearing.
- A dispositional hearing not more than 60 days after the date of the preliminary removal hearing, if the court finds abuse or neglect. The dispositional hearing shall be scheduled at the time of the preliminary removal hearing regardless of whether a separate adjudicatory hearing is requested.

APPLICABLE DISTRICT COURT FORM ORDERS

- DC-528, PRELIMINARY REMOVAL ORDER
- DC-527, PRELIMINARY CHILD PROTECTIVE ORDER – ABUSE OR NEGLECT
- DC-547, SUPPLEMENTAL SHEET TO CHILD PROTECTIVE ORDER
- DC-561, ADJUDICATORY ORDER FOR ABUSE OR NEGLECT CASES

CHILD DEPENDENCY BENCHCARD

ABUSE OR NEGLECT – PRELIMINARY REMOVAL (5-DAY) HEARING AND ADJUDICATORY HEARING

- ☐ Is visitation with the parents in the best interest of the child? If not, why?
- ☐ What services can the LDSS start providing to the parents now? What can the parents start doing today?
- ☐ What efforts are being made to identify relatives and fictive kin resources and supports for the child?
- ☐ Is there a person with a legitimate interest with whom the child can be placed until the dispositional hearing?

The court may order the parents or guardians of a child to provide the names and contact information for all persons with a legitimate interest to the LDSS. Va. Code § 161-229.1.

Prior to transferring temporary custody of a child to a person with a legitimate interest, the court must consider whether the person is:

- a. Willing and qualified to receive and care for the child;
- b. Willing to have a positive, continuous relationship with the child; and
- c. Willing and has the ability to protect the child from abuse and neglect.

The court's order transferring temporary custody should provide for compliance with any preliminary protective order entered on behalf of the child pursuant to § 161-253; initiation and completion of the investigation as directed by the court and court review of the child's placement pursuant to the provisions of § 161-278.2; and, as appropriate, ongoing provision of social services to the child and the temporary custodian.

To support parents' counsel, guardians ad litem, and Court Appointed Special Advocates in assisting the LDSS with the identification of relatives and fictive kin resources and supports, the Court Improvement Program, in collaboration with the Virginia Department of Social Services, has developed forms, Identification of Relatives and Fictive Kin and Relative and/or Fictive Kin Resources and Supports.

KEY FINDINGS –

PRELIMINARY REMOVAL HEARING

- Whether the child is an Indian child as defined in 25 U.S.C. § 1903(4).
- Whether the child would be subjected to an **imminent threat** to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

This “contrary to the welfare” finding must be in the first court order placing a child in foster care, even temporarily, or the duration of the child’s stay in foster care is not eligible for Title IV-E foster care maintenance payments. (See 45 CFR 135621(c).)

- Whether **reasonable efforts** have been made to prevent removal of the child from his or her home, or are deemed to have been made because there was no reasonable opportunity to provide preventative services, or are not required pursuant to § 161-252.

This reasonable efforts finding must be made no later than 60 days from the date the child is removed from the home or the duration of the child’s stay in foster care is not eligible for Title IV-E foster care maintenance payments. (See 45 CFR 135621(b) (1).)

- Whether the child is abused or neglected or is at-risk of abuse or neglect, unless an objection is made to the court making a finding on the allegation of abuse or neglect at this hearing. If an objection is made, schedule an adjudicatory hearing.

KEY FINDINGS –

ADJUDICATORY HEARING

- Whether the child is an Indian child as defined in 25 U.S.C. § 1903(4).
- Whether the child is abused or neglected or is at-risk of abuse or neglect.



CHILD DEPENDENCY BENCHCARD ABUSE OR NEGLECT – DISPOSITIONAL HEARING



AUTHORITY

Virginia Code §16.1-278.2

PURPOSE

To determine who will have custody of the child and how the case will proceed (e.g., to return the child to his/her parents or guardian or pursue another permanency option).

TIMING

Not more than 60 days after the preliminary removal hearing.

NEXT EVENT

A foster care review hearing pursuant to Va. Code § 16.1-281 (i.e., the initial foster care review hearing) if custody is transferred to the local department of social services.

The initial foster care review hearing and the dispositional hearing on the underlying abuse or neglect case should occur simultaneously.

APPLICABLE DISTRICT COURT FORM ORDERS

- DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION, FOSTER CARE PLAN
- DC-593, SUPPLEMENTAL SHEET
- DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY
- DC-532, CHILD PROTECTIVE ORDER, ABUSE OR NEGLECT
- DC-547, SUPPLEMENTAL SHEET TO CHILD PROTECTIVE ORDER

QUESTIONS TO CONSIDER

Indian Child Welfare Act:

- ☐ Is the child under the age of 18, unmarried and (i) a member of a federally recognized Indian tribe or (ii) eligible for membership in and the biological child of a member of a federally recognized Indian tribe?

ICWA applies unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

Parental participation in hearing:

- ☐ Are the parents in court? If not, why? (Addressing parents by their last name facilitates parental engagement.)
- ☐ If appointed, has counsel for the parents met with their clients? If not, why?

Child's participation in hearing:

- ☐ Is the child in court or participating in the hearing by other means (e.g., by phone or video)? If not, why?
- ☐ Has the guardian ad litem met with the child since the date of the last hearing? If not, why?

District court form DC-540, GUARDIAN AD LITEM CERTIFICATION, should be filed with the court by the child's guardian ad litem prior to any dispositional hearing to certify compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children. Va. Code § 16.1-274.

Child safety and well-being:

- ☐ What is the specific safety issue that necessitated removal of the child from the home?
- ☐ Can the child be returned home safely today? Would certain court ordered conditions and limitations allow the child to return home? If not, why?



CHILD DEPENDENCY BENCHCARD ABUSE OR NEGLECT – DISPOSITIONAL HEARING

- Is there a person with a legitimate interest with whom the child can be placed? If yes, who? What is the person's connection to the child?

The court may order the parents or guardians of a child to provide the names and contact information for all persons with a legitimate interest to the local department of social services (LDSS). Va Code § 16.1-229.1.

Prior to transferring temporary custody of a child to a person with a legitimate interest, the court must consider whether the person is:

- a. Willing and qualified to receive and care for the child;
- b. Willing to have a positive, continuous relationship with the child;
- c. Committed to providing a permanent, suitable home for the child; and
- d. Willing and has the ability to protect the child from abuse and neglect.

The court's order transferring custody should provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

To support parents' counsel, guardians ad litem, and Court Appointed Special Advocates in assisting the LDSS with the identification of relatives and fictive kin resources and supports, the Court Improvement Program, in collaboration with the Virginia Department of Social Services, has developed forms, Identification of Relatives and Fictive Kin and Relative and/or Fictive Kin Resources and Supports.

KEY FINDINGS

- Whether the child is an Indian child as defined in 25 U.S.C. § 1903(4).
- If legal custody of the child is transferred, that there is no less drastic alternative than transfer of legal custody.
- If legal custody of the child is transferred to the LDSS:
 - Whether continued placement in the home would be contrary to the welfare of the child.
 - Whether reasonable efforts have been made to prevent removal or are not required pursuant to § 16.1-278.2.



CHILD DEPENDENCY BENCHCARD INITIAL FOSTER CARE REVIEW HEARING

D

AUTHORITY

Virginia Code §16.1-281

PURPOSE

To review and approve the foster care plan for a child placed in foster care.

TIMING

Not more than 60 days after:

- The child's initial foster care placement for a child placed through an agreement between the parents/guardians and local department of social services.
- The preliminary removal hearing for a child alleged to have been abused or neglected.
- The hearing on the petition for relief of custody.
- The hearing held to dispose of a child in need of services, child in need of supervision, delinquency, or status offense petition at which the child is placed in foster care.

NEXT EVENT

- A foster care review hearing not more than 4 months after the date of this hearing. Va. Code § 16.1-282.
- A permanency planning hearing not more than 30 days after the date of this hearing if the court makes a finding that reasonable efforts to reunite are not required.
- A foster care review hearing not more than 6 months from the date of this hearing if the order entered approves the goal of another planned permanent living arrangement.
- An annual foster care review not more than 12 months from the date of this hearing if the order entered has the effect of achieving a permanent goal for the child.

APPLICABLE DISTRICT COURT FORM ORDERS

- DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION, FOSTER CARE PLAN
- DC-593, SUPPLEMENTAL SHEET
- DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY

QUESTIONS TO CONSIDER

Indian Child Welfare Act:

- ☐ Is the child under the age of 18, unmarried and (i) a member of a federally recognized Indian tribe or (ii) eligible for membership in and the biological child of a member of a federally recognized Indian tribe?

ICWA applies unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

Parental participation in hearing, if parental rights have not been terminated:

- ☐ Are the parents in court? If not, why? (Addressing parents by their last name facilitates parental engagement.)
- ☐ Has counsel for the parents met with their clients since the date of the last hearing? If not, why?
- ☐ Do the parents understand the purpose of this hearing/why we are here today? If not, explain the purpose of the hearing to the parents.
- ☐ Do the parents have relatives or friends who should be involved in this matter?

Child participation in hearing:

- ☐ Is the child in court or participating in the hearing by other means (eg, by phone or video)? If not, why?
- ☐ Has the guardian ad litem met with the child since the date of the last hearing? If not, why?
District court form DC-540, GUARDIAN AD LITEM CERTIFICATION, should be filed with the court by the child's guardian ad litem prior to any dispositional hearing to certify compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children. Va. Code § 16.1-274.
- ☐ Does the child understand the purpose of this hearing/why we are here today? If not, explain, in an age appropriate manner, the purpose of the hearing to the child.
- ☐ See court consultation requirements when foster care plan goal is permanent foster care or another planned permanent living arrangement.

Child safety and well-being:

- ☐ What is the specific issue that necessitated the child's entry into foster care?
- ☐ Can the child be returned home safely today? Would certain court ordered conditions and limitations allow the child to return home? If not, why?
- ☐ What are the physical, emotional, educational, and mental health needs of the child? What is the local department of social services (LDSS) doing to meet these needs?



CHILD DEPENDENCY BENCHCARD INITIAL FOSTER CARE REVIEW HEARING

- ☐ If the child is of school age, is it in the child's best interest to remain in his or her home school? If yes, what is the LDSS doing to keep the child in his or her home school? How is the child doing in school? Are the child's academic needs being met?
- ☐ If the child has siblings who were removed from the home, are the child and siblings placed together? If not, what is the LDSS doing to place the child with his or her siblings? Is there a visitation plan with the siblings in place? If not, why?
- ☐ What is the child's placement? How is the child doing in his/her current placement? Has the child's placement changed since the last hearing? If yes, how many times and why?

Before placing the child out-of-state, the LDSS must receive approval from Virginia's Interstate Compact on the Placement of Children (ICPC) office.

- ☐ If the child's placement is not with a relative or fictive kin, what efforts are being made to identify maternal and paternal relatives and fictive kin resources and supports for the child?
To support parents' counsel, guardians ad litem, and Court Appointed Special Advocates in assisting the LDSS with the identification of relatives and fictive kin resources and supports, the Court Improvement Program, in collaboration with the Virginia Department of Social Services, has developed forms, Identification of Relatives and Fictive Kin and Relative and/or Fictive Kin Resources and Supports.

If placement is a qualified residential treatment program (also referred to as a QRTP), see Va. Code § 16.1-281.

Foster care plan development:

- ☐ Were the parents involved in the development of the foster care plan? If not, why?
- ☐ Was the child involved in the development of the foster care plan? If not, why?
- ☐ What is the child's foster care plan goal?
- ☐ What is the child's concurrent goal? If a concurrent goal has not been established, why not?

Permanency:

If return home (reunification) is the foster care plan goal for the child:

- ☐ What steps has the LDSS taken to advance the goal?
- ☐ What efforts have the parents made to complete the requirements outlined in the foster care plan? Are there any barriers impacting the parents' completion of the foster care plan requirements? If yes, what are the barriers that exist?
- ☐ What services are in place to assist the parents with completing foster care plan requirements?
- ☐ What is the anticipated date for achieving the goal?
- ☐ Is visitation with the parents in the best interest of the child? If not, why?
- ☐ Is there a plan to support parental participation in doctor appointments, school events, extracurricular activities, etc.? If not, why?

If the concurrent goal or the foster care plan goal is:

Custody to a relative (relative placement)

- ☐ Why is this plan in the best interest of the child?
- ☐ Has a relative to whom the court may consider transferring legal custody of the child been identified? Who is the relative? What is the relative's connection to the child (e.g. family relationship and emotional relationship)?
Prior to transferring custody of a child to a relative other than the child's prior family, the court must consider whether the person is:
 - a. Willing and qualified to receive and care for the child;
 - b. Willing to have a positive, continuous relationship with the child;
 - c. Committed to providing a permanent, suitable home for the child; and
 - d. Willing and has the ability to protect the child from abuse and neglect.

The court's order transferring custody should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

CHILD DEPENDENCY BENCHCARD INITIAL FOSTER CARE REVIEW HEARING

- ☐ What is the anticipated date for achieving the goal?

Adoption

- ☐ Why is this plan in the best interest of the child?
- ☐ Has adoption been discussed with the child? If the child is age 14 or older, does the child object to parental rights being terminated? What are the child's concerns?
- Parental rights may be terminated over the objection of a child age 14 or older if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion. Va. Code § 16.1-283.
- ☐ What steps are being taken to finalize the adoptive placement in a timely manner? Are there barriers to finalizing the adoptive placement? How are identified barriers being addressed?
- ☐ What is the anticipated date for achieving the goal?

Permanent foster care

- ☐ Is the child age 16 or older?
- ☐ Why is this plan in the best interest of the child?
- ☐ What efforts have the LDSS made, as of the date of this hearing, to return the child home or secure the child's placement with a fit and willing relative or adoptive parent?
- ☐ Does the child have a relationship with his/her parent(s)? If yes, was the parent involved in the planning for a permanent placement? Is there a visitation plan in place with the parents? If yes, what is the nature and frequency of the visitation?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 16.1-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.

Another planned permanent living arrangement

- ☐ Is the child age 16 or older?
- ☐ What is the severe and chronic emotional, physical or neurological disabling condition requiring long-term residential treatment?
- ☐ Why are the goals of return home, relative placement, adoption, and permanent foster care not in the child's best interest? What is at least one compelling reason why these goals are not achievable?
- ☐ Does the LDSS have, as of the date of this hearing, documentation of unsuccessful efforts to return the child home or to secure a placement with a fit and willing relative?
- ☐ Has a long-term residential treatment provider been identified?
- ☐ What is the anticipated length of time of the child's treatment?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 16.1-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.

KEY FINDINGS

- Whether reasonable efforts to reunite the child with his parents are not required under Va. Code § 16.1-281.
- If the effect of the order is to achieve a permanent goal by terminating parental rights, placing a child age 16 or older in permanent foster care, or directing the LDSS to provide independent living services to transition a child refugee or asylee age 16 or older from foster care, whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.
- Whether to approve or disapprove the child's foster care plan.



CHILD DEPENDENCY BENCHCARD FOSTER CARE REVIEW HEARING

E

AUTHORITY

Virginia Code §16.1-282

PURPOSE

To review the foster care plan for a child (1) who is placed through a parental placement agreement that has not yet been dissolved by the court, or (2) who is in the legal custody of the local department of social services and who has not had a petition to terminate parental rights granted, filed, or ordered to be filed, is not placed in permanent foster care, or, is age 16 or over and the child's plan is not independent living.

TIMING

Not more than 4 months after the dispositional hearing held pursuant to § 16.1-281 to review and approve the initial foster care plan, unless at such hearing, the court made a finding that reasonable efforts to reunite are not required.

NEXT EVENT

- A permanency planning hearing not more than 5 months from the date of this hearing, or not more than 30 days from the date of this hearing if a finding is made that reasonable efforts to reunite are not required.
- An annual foster care review not more than 12 months from the date of this hearing if the order entered has the effect of achieving a permanent goal for the child.
- A foster care review hearing not more than 6 months from the date of this hearing if the order entered approves the goal of another planned permanent living arrangement.

APPLICABLE DISTRICT COURT FORM ORDERS

- DC-555, FOSTER CARE REVIEW ORDER
- DC-593, SUPPLEMENTAL SHEET
- DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY

QUESTIONS TO CONSIDER

Indian Child Welfare Act:

- ☐ Is the child under the age of 18, unmarried and (i) a member of a federally recognized Indian tribe or (ii) eligible for membership in and the biological child of a member of a federally recognized Indian tribe?

ICWA applies unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

Parental participation in hearing, if parental rights have not been terminated:

- ☐ Are the parents in court? If not, why? (Addressing parents by their last name facilitates parental engagement.)
- ☐ Has counsel for the parents met with their clients since the date of the last hearing? If not, why?
- ☐ Do the parents understand the purpose of this hearing/why we are here today? If not, explain the purpose of the hearing to the parents.
- ☐ Do the parents have relatives or friends who should be involved in this matter?

Child participation in hearing:

- ☐ Is the child in court or participating in the hearing by other means (eg, by phone or video)? If not, why?
- ☐ Has the guardian ad litem met with the child since the date of the last hearing? If not, why?

District court form DC-540, GUARDIAN AD LITEM CERTIFICATION, should be filed with the court by the child's guardian ad litem prior to any dispositional hearing to certify compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children. Va. Code § 16.1-274.

- ☐ Does the child understand the purpose of this hearing/why we are here today? If not, explain, in an age appropriate manner, the purpose of the hearing to the child.
- ☐ See court consultation requirements when foster care plan goal is permanent foster care or another planned permanent living arrangement.

Foster parent participation in hearing:

- ☐ Are the foster parents in court? If not, why?

The Adoption and Safe Families Act requires foster parents be "provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child." These requirements do not include the right to standing as a party to the case. 42 U.S.C. 675(5)(G).

CHILD DEPENDENCY BENCHCARD FOSTER CARE REVIEW HEARING

Child safety and well-being:

- ☐ What is the specific issue that necessitated the child's entry into foster care? Have there been new issues identified that contribute to the decision to continue the child in foster care? Have these issues been addressed in the foster care plan?
- ☐ Can the child be returned home safely today? Would certain court ordered conditions and limitations allow the child to return home? If not, why?
- ☐ What are the physical, emotional, educational, and mental health needs of the child? What is the local department of social services (LDSS) doing to meet these needs?
- ☐ If the child is of school age, is it in the child's best interest to remain in his or her home school? If yes, what is the LDSS doing to keep the child in his or her home school? How is the child doing in school? Are the child's academic needs being met?
- ☐ If the child has siblings who were removed from the home, are the child and siblings placed together? If not, what is the LDSS doing to place the child with his or her siblings? Is visitation with the siblings in the best interest of the child? If not, why?
- ☐ What is the child's current placement? How is the child doing in his/her current placement? Has the child's placement changed since the last hearing? If yes, how many times and why?
Before placing the child out-of-state, the LDSS must receive approval from Virginia's Interstate Compact on the Placement of Children (ICPC) office.
- ☐ If the child's placement is not with a relative or fictive kin, what efforts are being made to identify maternal and paternal relatives and fictive kin resources and supports for the child?
To support parents' counsel, guardians ad litem, and Court Appointed Special Advocates in assisting the LDSS with the identification of relatives and fictive kin resources and supports, the Court Improvement Program, in collaboration with the Virginia Department of Social Services, has developed forms, Identification of Relatives and Fictive Kin and Relative and/or Fictive Kin Resources and Supports.

If placement is a qualified residential treatment program (also referred to as a Q RTP), see Va. Code §16.1-281.

Foster care plan development:

- ☐ Were the parents involved in the development of the foster care plan? If not, why?
- ☐ Was the child involved in the development of the foster care plan? If not, why?
- ☐ What is the child's foster care plan goal? Is this goal different from the initial goal? If yes, why?
- ☐ What is the child's concurrent goal? If a concurrent goal has not been established, why not?

Permanency:

If return home (reunification) is the foster care plan goal for the child:

- ☐ What steps has the LDSS taken to advance the goal?
- ☐ What efforts have the parents made to complete the requirements outlined in the foster care plan? Are there any barriers impacting the parents' completion of the foster care plan requirements? If yes, what are the barriers that exist?
- ☐ What services are in place to assist the parents with completing foster care plan requirements?
- ☐ What is the anticipated date for achieving the goal?
- ☐ Is visitation with the parents in the best interest of the child? If not, why?
- ☐ Is there a plan to support parental participation in doctor appointments, school events, extracurricular activities, etc.? If not, why?

If the concurrent goal or the foster care plan goal is:

Custody to a relative (relative placement)

- ☐ Why is this plan in the best interest of the child?
- ☐ What is the anticipated date for achieving the goal?

CHILD DEPENDENCY BENCHCARD FOSTER CARE REVIEW HEARING

- ☐ Has a relative to whom the court may consider transferring legal custody of the child been identified? Who is the relative? What is the relative's connection to the child (e.g. family relationship and emotional relationship)?

Prior to transferring custody of a child to a relative other than the child's prior family, the court must consider whether the person is:

- Willing and qualified to receive and care for the child;
- Willing to have a positive, continuous relationship with the child;
- Committed to providing a permanent, suitable home for the child; and
- Willing and has the ability to protect the child from abuse and neglect.

The court's order transferring custody should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

Adoption

- ☐ Why is this plan in the best interest of the child?
- ☐ Has adoption been discussed with the child? If the child is age 14 or older, does the child object to parental rights being terminated? What are the child's concerns?

Parental rights may be terminated over the objection of a child age 14 or older if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion. Va. Code § 16.1-283.

- ☐ What steps are being taken to finalize the adoptive placement in a timely manner? Are there barriers to finalizing the adoptive placement? How are identified barriers being addressed?
- ☐ What is the anticipated date for achieving the goal?

Permanent foster care

- ☐ Is the child age 16 or older?
- ☐ Why is this plan in the best interest of the child?
- ☐ What efforts have the LDSS made, as of the date of this hearing, to return the child home or secure the child's placement with a fit and willing relative or adoptive parent?
- ☐ Does the child have a relationship with his/her parent(s)? If yes, was the parent involved in the planning for a permanent placement? Is there a visitation plan in place with the parents? If yes, what is the nature and frequency of the visitation?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 16.1-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.

Another planned permanent living arrangement

- ☐ Is the child age 16 or older?
- ☐ What is the severe and chronic emotional, physical or neurological disabling condition requiring long-term residential treatment?
- ☐ Why are the goals of return home, relative placement, adoption, and permanent foster care not in the child's best interest? What is at least one compelling reason why these goals are not achievable?
- ☐ Does the LDSS have, as of the date of this hearing, documentation of unsuccessful efforts to return the child home or to secure a placement with a fit and willing relative?
- ☐ Has a long-term residential treatment provider been identified?
- ☐ What is the anticipated length of time of the child's treatment?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 16.1-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.



CHILD DEPENDENCY BENCHCARD FOSTER CARE REVIEW HEARING

KEY FINDINGS

- Whether the child is an Indian child as defined in 25 U.S.C. § 1903(4).
- Whether reasonable efforts have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child.
- Whether reasonable efforts to reunite the child with his parents are not required under Va. Code § 161-281.
- Whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child, if the order entered has the effect of achieving a permanent goal for the child by terminating parental rights, placing the child in permanent foster care, or directing the LDSS to provide services to transition a child age 16 or older from foster care.
- Whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanency plan and to monitor the child's status in another planned permanent living arrangement, if the plan approved for the child is another planned permanent living arrangement. Va. Code § 161-282.1.
- Whether to approve or disapprove the child's foster care plan.



CHILD DEPENDENCY BENCHCARD PERMANENCY PLANNING HEARING

AUTHORITY

Virginia Code §16.1-2821

PURPOSE

To establish a permanent goal for the child and either achieve the permanent goal or defer such action through approval of an interim plan for the child.

TIMING

- Not more than 5 months after the date of the foster care review hearing.
- Not more than 10 months after the date of the hearing held pursuant to § 16.1-281 to review and approve the initial foster care plan.

NEXT EVENT

- If an interim permanency plan is approved, a permanency planning hearing not more than 6 months from the date of this hearing.
- A foster care review hearing not more than 12 months from the date of this hearing, so long as the child remains in the custody of the local department of social services.
- A foster care review hearing not more than 6 months from the date of this hearing if the approved goal is another planned permanent living arrangement.

APPLICABLE DISTRICT COURT FORM ORDERS

- DC-557, PERMANENCY PLANNING ORDER
- DC-558, PERMANENT FOSTER CARE PLACEMENT ORDER
- DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY
- DC-593, SUPPLEMENTAL SHEET
- DC-531, ORDER FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

QUESTIONS TO CONSIDER

Indian Child Welfare Act:

- ☐ Is the child under the age of 18, unmarried and (i) a member of a federally recognized Indian tribe or (ii) eligible for membership in and the biological child of a member of a federally recognized Indian tribe?

ICWA applies unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

Parental participation in hearing:

- ☐ Are the parents in court? If not, why? (Addressing parents by their last name facilitates parental engagement.)
- ☐ Has counsel for the parent(s) met with their clients since the date of the last hearing? If not, why?
- ☐ Do the parents understand the purpose of this hearing/why we are here today? If not, explain the purpose of the hearing to the parents.
- ☐ Do the parents have relatives or friends who should be involved in this matter?

Child participation in hearing:

- ☐ Is the child in court or participating in the hearing by other means (e.g., by phone or video)? If not, why?
- ☐ Has the guardian ad litem met with the child since the date of the last hearing? If not, why?

District court form DC-540, GUARDIAN AD LITEM CERTIFICATION, should be filed with the court by the child's guardian ad litem prior to any dispositional hearing to certify compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children. Va. Code § 16.1-274.

- ☐ Does the child understand the purpose of this hearing/why we are here today? If not, explain, in an age appropriate manner, the purpose of the hearing to the child.

The court shall consult with the child in an age-appropriate manner regarding the proposed permanency plan or transition plan for the child, unless the court finds that such consultation is not in the best interest of the child.

Foster parent participation in hearing:

- ☐ Are the foster parents in court? If not, why?

The Adoption and Safe Families Act requires foster parents be "provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child." These requirements do not include the right to standing as a party to the case. 42 U.S.C. 675(5)(G.).

CHILD DEPENDENCY BENCHCARD PERMANENCY PLANNING HEARING

Child safety and well-being:

- ☐ What is the specific issue that necessitated the child's entry into foster care? Have there been new issues identified that contribute to the decision to continue the child in foster care? Have these issues been addressed in the foster care plan?
- ☐ Can the child be returned home safely today? Would certain court ordered conditions and limitations allow the child to return home? If not, why?
- ☐ What are the physical, emotional, educational, and mental health needs of the child? What is the local department of social services (LDSS) doing to meet these needs?
- ☐ If the child is of school age, is it in the child's best interest to remain in his or her home school? If yes, what is the LDSS doing to keep the child in his or her home school? How is the child doing in school? Are the child's academic needs being met?
- ☐ If the child has siblings who were removed from the home, are the child and siblings placed together? If not, what is the LDSS doing to place the child with his or her siblings? Is there a visitation plan with the siblings in place? If not, why?
- ☐ What is the child's current placement? How is the child doing in his/her current placement? Has the child's placement changed since the last hearing? If yes, how many times and why?
Before placing the child out-of-state, the LDSS must receive approval from Virginia's Interstate Compact on the Placement of Children (ICPC) office.
- ☐ If the child's placement is not with a relative or fictive kin, what efforts are being made to identify maternal and paternal relatives and fictive kin resources and supports for the child?
To support parents' counsel, guardians ad litem, and Court Appointed Special Advocates in assisting the LDSS with the identification of relatives and fictive kin resources and supports, the Court Improvement Program, in collaboration with the Virginia Department of Social Services, has developed forms, Identification of Relatives and Fictive Kin and Relative and/or Fictive Kin Resources and Supports.

If placement is a qualified residential treatment program (also referred to as a QRTP), see Va. Code § 16.1-281E.

Termination of parental rights:

- ☐ Has the child been in foster care 15 of the most recent 22 months? If yes, has a petition to terminate parental rights been filed or has an exception to filing a petition to terminate parental rights been documented in the child's foster care plan?
- ☐ If an exception to filing a petition for termination of parental right has been documented, what is the exception?

Foster care plan development:

- ☐ Were the parents involved in the development of the foster care plan? If not, why?
- ☐ Was the child involved in the development of the foster care plan? If not, why?
- ☐ What is the child's foster care plan goal?
- ☐ What is the child's concurrent goal? If a concurrent goal has not been established, why not?

Permanency:

If return home (reunification) is the foster care plan goal for the child:

- ☐ What steps has the LDSS taken to advance the goal?
- ☐ What efforts have the parents made to complete the requirements outlined in the foster care plan? Are there any barriers impacting the parents' completion of the foster care plan requirements? If yes, what are the barriers that exist?
- ☐ What is the anticipated date for achieving the goal?
- ☐ Is visitation with the parents in the best interest of the child? If not, why?
- ☐ Is there a plan to support parental participation in doctor appointments, school events, extracurricular activities, etc.? If not, why?

If the concurrent goal or the foster care plan goal is:

Custody to a relative (relative placement)

- ☐ Why is this plan in the best interest of the child?
- ☐ What is the anticipated date for achieving the goal?

CHILD DEPENDENCY BENCHCARD PERMANENCY PLANNING HEARING

- ☐ Is there a relative to whom the court may consider transferring legal custody of the child? Who is the relative? What is the relative's connection to the child (e.g. family relationship and emotional relationship)?

Prior to transferring custody of a child to a relative other than the child's prior family, the court must consider whether the person is:

- a. Willing and qualified to receive and care for the child;
- b. Willing to have a positive, continuous relationship with the child;
- c. Committed to providing a permanent, suitable home for the child; and
- c. Willing and has the ability to protect the child from abuse and neglect.

The court's order transferring custody should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

Adoption

- ☐ Why is this plan in the best interest of the child?
- ☐ Has adoption been discussed with the child? If the child is age 14 or older, does the child object to parental rights being terminated? What are the child's concerns?
Parental rights may be terminated over the objection of a child age 14 or older if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion. Va. Code § 16.1-283.
- ☐ Does the foster care plan document termination of parental rights as being in the child's best interest? If no, has an exception to filing a petition to terminate parental rights been documented in the foster care plan?
- ☐ What steps are being taken to finalize the adoptive placement in a timely manner? Are there barriers to finalizing the adoptive placement? How are identified barriers being addressed?
- ☐ What is the anticipated date for achieving the goal?

Permanent foster care

- ☐ Is the child age 16 or older?
- ☐ Why is this plan in the best interest of the child?
- ☐ What efforts has the LDSS made, as of the date of this hearing, to return the child home or secure the child's placement with a fit and willing relative or adoptive parent?
- ☐ Does the child have a relationship with his/her parent(s)? If yes, was the parent involved in the planning for a permanent placement? Is there a visitation plan in place? If yes, what is the nature and frequency of the visitation?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 16.1-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.

Another planned permanent living arrangement

- ☐ Is the child age 16 or older?
- ☐ What is the severe and chronic emotional, physical or neurological disabling condition requiring long-term residential treatment?
- ☐ Why are the goals of return home, relative placement, adoption, and permanent foster care not in the child's best interest? What is at least one compelling reason why these goals are not achievable?
- ☐ Does the LDSS have, as of the date of this hearing, documentation of unsuccessful efforts to return the child home or to secure a placement with a fit and willing relative?
- ☐ Has a long-term residential treatment provider been identified?
- ☐ What is the anticipated length of time of the child's treatment?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 16.1-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.



CHILD DEPENDENCY BENCHCARD PERMANENCY PLANNING HEARING

KEY FINDINGS

- Whether the child an Indian child as defined in 25 U.S.C. § 1903(4).
- Whether reasonable efforts have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child.
- Whether reasonable efforts to reunite the child with his parents are not required under Va. Code § 161-281.
- Whether reasonable efforts have been made to achieve the permanent goal identified in the foster care plan.
- Whether to approve or disapprove the child's foster care plan.

If approving an interim permanency plan, also find:

- When the goal is return home, whether: (i) the parent has made marked progress toward reunification with the child; (ii) the parent has maintained a close and positive relationship with the child; and (iii) the child is likely to return home in the near future, although it is premature to set an exact date at the time of this hearing.
- When return home is not the goal, whether: (i) marked progress is being made to achieve the permanent plan goal identified; and (ii) it is premature to set an exact date at the time of this hearing.



CHILD DEPENDENCY BENCHCARD ANNUAL FOSTER CARE REVIEW HEARING

AUTHORITY

Virginia Code §16.1-282.2

PURPOSE

To review the foster care plan for a child who remains in the legal custody of the local department of social services and who has had a petition to terminate parental rights granted, filed, or ordered to be filed, is placed in permanent foster care, or, is age 16 or over and the child's plan is independent living.

TIMING

Annually for any child who remains in the legal custody of a local department of social services and (i) on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed,

(ii) who is placed in permanent foster care, or

(iii) who is age 16 or over and for whom the plan is independent living.

NEXT EVENT

- An annual foster care review hearing so long as the child remains in the custody of the local department of social services.
- A foster care review hearing not more than 6 months from the date of this hearing if the order entered approves the goal of another planned permanent living arrangement.

APPLICABLE DISTRICT COURT FORM ORDERS

- DC-555, FOSTER CARE REVIEW ORDER
- DC-593, SUPPLEMENTAL SHEET

QUESTIONS TO CONSIDER

Indian Child Welfare Act:

- ☐ Is the child under the age of 18, unmarried and (i) a member of a federally recognized Indian tribe or (ii) eligible for membership in and the biological child of a member of a federally recognized Indian tribe?

ICWA applies unless and until it is determined that the child is not a member or is not eligible for membership in an Indian tribe.

Parental participation in hearing, if parental rights have not been terminated:

- ☐ Are the parents in court? If not, why? (Addressing parents by their last name facilitates parental engagement.)
- ☐ Has counsel for the parents met with their clients since the date of the last hearing? If not, why?
- ☐ Do the parents understand the purpose of this hearing/why we are here today? If not, explain the purpose of the hearing to the parents.
- ☐ Do the parents have relatives or friends who should be involved in this matter?

Child participation in hearing:

- ☐ Is the child in court or participating in the hearing by other means (eg, by phone or video)? If not, why?
- ☐ Has the guardian ad litem met with the child since the date of the last hearing? If not, why?

District court form DC-540, GUARDIAN AD LITEM CERTIFICATION, should be filed with the court by the child's guardian ad litem prior to any dispositional hearing to certify compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children. Va. Code § 16.1-274.

- ☐ Does the child understand the purpose of this hearing/why we are here today? If not, explain, in an age appropriate manner, the purpose of the hearing to the child.
- ☐ See court consultation requirements when foster care plan goal is permanent foster care or another planned permanent living arrangement.

Foster parent participation in hearing:

- ☐ Are the foster parents in court? If not, why?

The Adoption and Safe Families Act requires foster parents be "provided with notice of, and a right to be heard in, any proceeding to be held with respect to the child." These requirements do not include the right to standing as a party to the case. 42 U.S.C. 675(5)(G).

CHILD DEPENDENCY BENCHCARD ANNUAL FOSTER CARE REVIEW HEARING

Child safety and well-being:

- ☐ What are the physical, emotional, educational, and mental health needs of the child? What is the local department of social services (LDSS) doing to meet these needs?
- ☐ If the child is of school age, is it in the child's best interest to remain in his or her home school? If yes, what is the LDSS doing to keep the child in his or her home school? How is the child doing in school? Are the child's academic needs being met?
- ☐ If the child has siblings who were removed from the home, are the child and siblings placed together? If not, what is the LDSS doing to place the child with his or her siblings? Is visitation with the siblings in the best interest of the child? If not, why?
- ☐ What is the child's current placement? How is the child doing in his/her current placement? Has the child's placement changed since the last hearing? If yes, how many times and why?
Before placing the child out-of-state, the LDSS must receive approval from Virginia's Interstate Compact on the Placement of Children (ICPC) office.
- ☐ If the child's placement is not with a relative or fictive kin, what efforts are being made to identify maternal and paternal relatives and fictive kin resources and supports for the child?
To support parents' counsel, guardians ad litem, and Court Appointed Special Advocates in assisting the LDSS with the identification of relatives and fictive kin resources and supports, the Court Improvement Program, in collaboration with the Virginia Department of Social Services, has developed forms, Identification of Relatives and Fictive Kin and Relative and/or Fictive Kin Resources and Supports.
If placement is a qualified residential treatment program (also referred to as a Q RTP), see Va. Code § 16.1-281.

Foster care plan development:

- ☐ If foster care plan goal is permanent foster care, were the parents involved in the development of the foster care plan? If not, why?
- ☐ Was the child involved in the development of the foster care plan? If not, why?
- ☐ What is the child's foster care plan goal? Is this goal different from the previous goal? If yes, why?
- ☐ What is the child's concurrent goal? If a concurrent goal has not been established, why not?
- ☐ What is the child's current placement? How is the child doing in his/her current placement? Has the child's placement changed since the last hearing? If yes, how many times and why?

Permanency:

If the foster care plan goal is:

Adoption

- ☐ Why is this plan in the best interest of the child?
- ☐ Has adoption been discussed with the child? If the child is age 14 or older, does the child object to parental rights being terminated? What are the child's concerns?
Parental rights may be terminated over the objection of a child age 14 or older if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion. Va. Code § 16.1-283.
- ☐ What steps are being taken to finalize the adoptive placement in a timely manner?
Are there barriers to finalizing the adoptive placement? How are identified barriers being addressed?
- ☐ What is the anticipated date for achieving the goal?
The LDSS will file an Adoption Progress Report with the court every 6 months from the date the goal of adoption is approved until the adoption is finalized. It is best practice for the LDSS to file the Adoption Progress Report to be heard with the petition for annual foster care review hearing to meet that 6 month reporting requirement.

CHILD DEPENDENCY BENCHCARD ANNUAL FOSTER CARE REVIEW HEARING

Permanent foster care

- ☐ Is the child age 16 or older?
- ☐ Why is this plan in the best interest of the child?
- ☐ What services are being provided to the child and permanent foster care parents?
- ☐ Has there been a change in circumstances since entry of the order placing the child in permanent foster care? If yes, what?
- ☐ Does the child have a relationship with his/her parent(s)? If yes, was the parent involved in the planning for a permanent placement? Is there a visitation plan in place? If yes, what is the nature and frequency of the visitation?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 161-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.

Another planned permanent living arrangement

- ☐ Is the child age 16 or older?
- ☐ What is the severe and chronic emotional, physical or neurological disabling condition requiring long-term residential treatment?
- ☐ Why are the goals of return home, relative placement, adoption, and permanent foster care not in the child's best interest? What is at least one compelling reason why these goals are not achievable?
- ☐ Does the LDSS have, as of the date of this hearing, documentation of unsuccessful efforts to return the child home or to secure a placement with a fit and willing relative?
- ☐ Has a long-term residential treatment provider been identified?
- ☐ What is the anticipated length of time of the child's treatment?
- ☐ What is the LDSS doing to prepare the child to live independently?

Required court consultation with the child: Va. Code § 161-282.1 provides that the court ask the child about his or her desired permanency outcome and make a judicial determination as to why return home, relative placement, and adoption are not in the child's best interest.

CHILD'S PREFERENCE OF POSSIBILITY OF RESTORATION OF PARENTAL RIGHTS

- Does the child meet the criteria established in Va. Code § 16.1-283.2? If so, inquire of the guardian ad litem and LDSS whether the child has expressed a preference that the possibility of restoring the parental rights of his/her parent(s) be investigated.
- Has such a preference been expressed? If so, direct the LDSS or the child's guardian ad litem to conduct an investigation of the parent(s).

KEY FINDINGS

- Whether the child is an Indian child as defined in 25 U.S.C. § 1903(4).
- Whether reasonable efforts to reunite the child with his parents are not required under Va. Code § 161-281.
- Whether reasonable efforts have been made to place the child in a timely manner in accordance with the approved foster care plan that established a permanent goal for the child and to complete the steps necessary to finalize the permanent placement of the child.
- Whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanency plan and to monitor the child's status in another planned permanent living arrangement, if the plan approved for the child is another planned permanent living arrangement. Va. Code § 161-282.1.
- Whether to approve or disapprove the child's foster care plan.