1:00pm ~ 2:00pm

Juvenile Justice After July 1, 2021

NEW LAWS & JUVENILE JUSTICE 2020-2021

MEGAN LANG, ASSISTANT COMMONWEALTH'S ATTORNEY

MINDY STOLWORTHY, ASSISTANT PUBLIC DEFENDER

ANNAMARIE PAGEL, C.A.C./G.A.L.

2020

Judicial Discretion and Considerations When Sentencing Youth

Va. Code 16.1-272

- Circuit Court Judges must consider specific youth-related factors when sentencing a child.
- Judges must consider adverse childhood experiences (ACEs), childhood trauma, and experience with any child welfare agency or other removal from the child's home.
- Judges must consider how children are developmentally different than adults and therefore less culpable for their actions.
- Judges must craft proportional, age-appropriate sentences for children and not rely on mandatory minimum sentences. When creating or reviewing the sentence of a child adjudicated on a felony, the court may
  - **depart from any mandatory minimum, or**
  - **suspend any applicable sentence.**

CUSTODIAL INTERROGATION OF CHILD

Va. Code 16.1-247.1

- Prior to any custodial interrogation of a child by law enforcement the child's parent, guardian or legal custodian shall be notified of their arrest; **and**

- The child shall have contact with their parent, guardian or legal custodian.

- Notification can be in person, electronic, by telephone or video conference

Va. Code 16.1-247.1

- **Exceptions**: Custodial interrogation may be conducted without notification if the parent, guardian, or legal custodian is:
  - A co-defendant in the alleged offense.
  - Has been arrested for, charged with, or is being investigated for a crime against the child.
  - If, after every reasonable effort is made to notify them, the parent, guardian or legal custodian cannot be located or refuses contact with the child.
  - The officer conducting the interrogation reasonably believes the information sought is necessary to protect life, limb, or property from an imminent danger and the questions are limited to those that are reasonably necessary to obtain such information.

PAROLE ELIGIBILITY

- **Va. Code 53.1-165.1**

- Persons who were juveniles at the time of their offense are eligible for parole if:

  1. They have been sentenced to more than 20 years (either for a single offense or for multiple offenses); and

  2. They have served at least 20 years of their sentence

DISORDERLY CONDUCT

Va. Code 18.2-415(D)

- The provisions of 18.2-415 shall not apply to any elementary or secondary school student if the conduct occurred
  - On the property of any elementary or secondary school;
  - On a school bus; or
  - At any activity conducted or sponsored by any elementary or secondary school.
- This does not bar prosecution of youth who engage in activity that violate other provisions of the Virginia Code while on school premises, school buses, or engaging in school activities.

Elimination of Automatic Certification as an Adult for Youth Ages 14 or 15

- **Va. Code 16.1-269.1**
  - If a juvenile 16 or older is charged with murder in violation of § **18.2-31**, **18.2-32** or **18.2-40** or aggravated malicious wounding in violation of § **18.2-51.2**, the juvenile court shall only conduct a preliminary hearing and if probable cause is found, the charge will be certified to Circuit Court.
  - If the juvenile is 14 years of age or older, but less than 16 years of age, then the court may proceed, on motion of the attorney for the Commonwealth, as provided in subsection A of § **16.1-269.1**.
    - Except as provided in subsections B and C, if a juvenile 14 years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult.

ELIMINATION OF PROSECUTORIAL DISCRETION ON INTENT TO CERTIFY AS AN ADULT CASES FOR YOUTH AGES 14 OR 15

- Va. Code 16.1-269.1.
- If a juvenile 16 or older is charged with a violent or significant felony, and after reviewing a report provided by the Court Service Unit, and the Commonwealth's attorney provides notice of an intent to certify the juvenile for trial as an adult, the Juvenile court will only hold a probable cause hearing.
- If the Court finds probable cause, the case will be certified for trial as an adult in Circuit Court as long as certain statutory conditions are met
- If the juvenile is 14 years of age or older, but less than 16 years of age, then the court may proceed on a transfer hearing, on motion of the attorney for the Commonwealth, as provided in subsection A of § 16.1-269.14.

MORE 16.1-269.1

- All other felonies stayed the same with regard to transfer.

2021

Allowing Evidence of Mental Illness in Non-Insanity Cases

- **§ 19.2-271.6**. Evidence of defendant's mental condition admissible; notice to Commonwealth.
- Old law barred any evidence of defendant's mental illness unless he plead NGRI
- New law allows evidence of mental illness, intellectual disabilities, or developmental disabilities if that evidence tends to negate a mental state element of the offense.
- THIS WAS CREATED TO ESTABLISH THAT DEFENDANT'S MENTAL CONDITION AT TIME OF OFFENSE IS ADMISSIBLE TO SHOW THAT DEFENDANT DID NOT HAVE THE INTENT TO COMMIT THE CRIME CHARGED

DEFFERED FINDING- AUTISM OR INTELLECTUAL DISABILITY

- **§ 19.2-303.6**. Deferred disposition in a criminal case; persons with autism or intellectual disabilities.
- Authorizes DF for all crimes other than capital murder and acts of violence under 19.2-297.1 when a person has been diagnosed with autism or intellectual disability
- Defendant must present evidence of the diagnosis (Autism Spectrum Disorder or Intellectual Disability as defined in 37.2-100)
- Court finds by clear and convincing evidence that the criminal conduct was caused by or had a direct and substantial relationship to the person's disorder or disability
- Court must consider the position of the attorney for the Commonwealth and the views of the victims
- No limit to how many times something can be deferred under this section

Repealing Petit Larceny 3rd Statute

- Although the General Assembly raised the larceny threshold to $1000 in 2020, the Code still permitted people charged for a third time to face up to five years in prison.
- New law repeals the enhanced penalties for a second or subsequent misdemeanor larceny conviction.

Marijuana Legalization

When you wake up and weed is legal

But sorry kids....

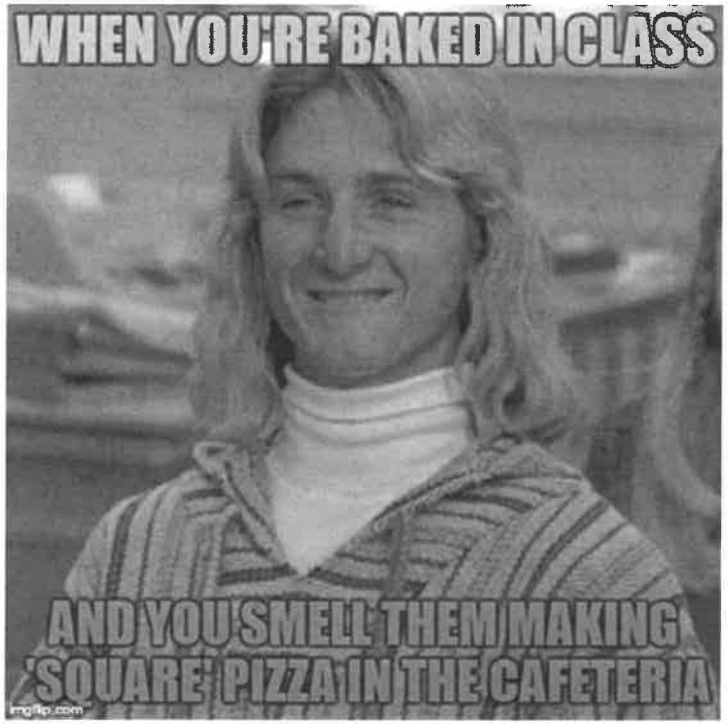
4.1-1105.1.C.: Underage Poss. of Marijuana Under 18 yrs old:

- Civil penalty up to $25

-court shall require the accused to enter a substance abuse treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused.

- Delinquent Offense

§ 4.1-1109: Marijuana on School Grounds- Class 2 Misdemeanor



Serious Offender Reviews

- **16.1-285.1 and 16.1-285.2**
- Gives DJJ and Court discretion to disregard plea agreement between defense and Commonwealth as to length of time juvenile is sent to DJJ as serious offender
- A juvenile offender's sentence may be reviewed for early release on petition by the DJJ to the court after commitment of 2 years regardless of the plea agreement or court order

§ 19.2-3.1. Personal appearance by two-way electronic video and audio communication

§ 19.2-3.1. Personal appearance by two-way electronic video and audio communication; standards.

- Allows with consent of both parties and the COURT
- Entry of a plea and related sentencing for felony or misdemeanor
- Entry of NP or dismissal
- Revocation pursuant to 19.2-306

§ 18.2-58. Robbery

- "Five to life" range removed
- New Statute creates degrees of punishment corresponding to the severity of a robbery offense- Class 2,3,5,or 6 Felony

New Law: if a juvenile is charged with robbery, then a juvenile court shall conduct a preliminary hearing, for purposes of certifying the charge to the grand jury whenever a juvenile 16 years of age or older is charged with a robbery charge that is punishable as a Class 2 or Class 3 felony.

§ 18.2-58. Robbery

A. For the purposes of this section, "serious bodily injury" means the same as that term is defined in § 18.2-51.4.

§ 18.2-51.4 : "serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

§ 18.2-58. Robbery

Any person who commits robbery is guilty of a felony and shall be punished as follows:

1. Any person who commits robbery and causes serious bodily injury to or the death of any other person is guilty of a Class 2 felony.

2. Any person who commits robbery by using or displaying a firearm, as defined in § 18.2-308.2:2, in a threatening manner is guilty of a Class 3 felony.

3. Any person who commits robbery by using physical force not resulting in serious bodily injury or by using or displaying a deadly weapon other than a firearm in a threatening manner is guilty of a Class 5 felony.

4. Any person who commits robbery by using threat or intimidation or any other means not involving a deadly weapon is guilty of a Class 6 felony.

New Sentencings

- Limit on period of good behavior equal to statutory maximum penalty for offense (§ 19.2-303.1)
- Likely total of maximums for all charges at sentencing
- Period of supervised probation limited (except certain sex offenses) to 5 years from release from any incarceration (§ 19.2-303)
- Limits do not apply to restitution and court-ordered programs

Probation Revocations

- 1st violation (except absconding or possession of firearm) – active incarceration prohibited
- 2nd violation (except absconding or possession of firearm) – presumption against incarceration unless court finds by preponderance that defendant cannot be safely diverted through less restrictive means, then ≤ 14 days
- 3rd or subsequent violation – no limit on incarceration
- Limits do not apply if necessary for evaluation or participation in court-ordered drug, alcohol or mental health program
- Technical + other bases (other than good conduct violation without conviction)
- No limit on amount of the suspended time that can be imposed
- Maximum period of re-suspension is statutory maximum (§ 19.2-306)
- Minus time already served but plus any period of absconding
- Calculated from the date of original sentencing order

Questions?

2:15pm ~ 3:45pm - Panel 1:

RETHINKING LAW ENFORCEMENT APPROACHES TO JUVENILE JUSTICE & MENTAL HEALTH

MARCUS ALERT

The Marcus Alert is a joint project between Department of Behavioral Health and Developmental Services and Department of Criminal Justice Services

General Information, Intersections with STEP-VA and Behavioral Health Enhancements, and Initial Planning

Questions or Comments?
email:
marcusalert@dbhds.virginia.gov

THE ACT

The Marcus-David Peters Act is a comprehensive approach to ensuring that Virginia provides a therapeutic, health-focused response to behavioral health emergencies. It was largely the result of advocacy by the family of Marcus-David Peters, a young, Black, Biology teacher who was shot by Richmond Police in the midst of a mental health crisis. The Act includes coordination between recent investments in the behavioral health crisis continuum, including mobile crisis teams to respond statewide 24/7, protocols that focus on full diversion to the behavioral health system, specific requirements for mobile crisis and law enforcement when law enforcement is called as back-up, protocols to guide any co-response programs or other community care models, and protocols regarding police presentation, training, and behavior such as use of force whenever responding to a behavioral health emergency. In other words, the Marcus-David Peters Act is more complicated than an investment in behavioral health crisis services, a new program for law enforcement to implement, or a reform of crisis intervention training, because it takes a comprehensive, systems-wide approach to decreasing Virginia's reliance on law enforcement as the de facto response to behavioral health emergencies. Improved policies, protocols, and outcomes are expected as a result of the implementation of the Act, with specific benefits expected for Black Virginians, Indigenous Virginians, and Virginians of Color due to existing racial disparities in behavioral health care access and law enforcement involvement and outcomes. Transparent data collection and reporting, including racial disparities, are also required components.

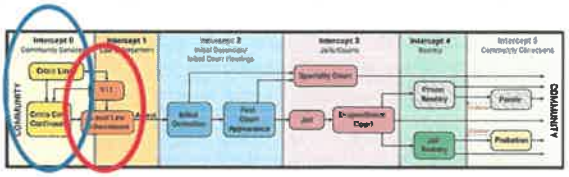
The Act includes responsibilities for DBHDS and DCJS. Some Key Components are:

- State Plan and Guidance
- Community Coverage
- Three Protocols
- Voluntary Database
- Transparent Data and Reporting

STEP-VA AND MARCUS ALERT

The Marcus Alert is a complementary initiative to other recent and ongoing investments in behavioral health crisis services such as STEP-VA. The Sequential Intercept model (below) demonstrates different points at which people with behavioral health disorders and developmental disabilities can enter, or be prevented from entering (diverted from), the criminal justice system.

Blue = STEP-VA/Behavioral Health Mobile Crisis
Red = Marcus Alert



Through STEP-VA and Medicaid Enhancements key structures being developed at the state level are:

1. a software platform for phone response (de-escalation, connection to services) and mobile crisis dispatch
2. four reimbursement rates to be added to the Medicaid state plan December, 2021
3. statewide mobile crisis training curriculum for all providers to be dispatched from hubs
4. Statewide coverage by mobile crisis teams

These current and ongoing investments align with the Crisis Now model. Learn more at **www.crisisnow.com**

It is essential that resources, priorities, and timelines are aligned between these initiatives, to ensure that Virginia's behavioral health emergency response is robust, coordinated, health-focused, and equitable.

CRISIS SYSTEM TRANSFORMATION TIMELINE

January –July, 2021

- State Marcus Alert workgroup launch
- Virtual Community Listening Sessions
- RFP for Call Center/Dispatch Software
- State Plan due to General Assembly, July 1, 2021
- Localities to implement voluntary databases, July 1, 2021
- Ongoing children's mobile crisis teams (STEP-VA)

July- December, 2021

- Communities begin Marcus Alert planning process
- DBHDS and DCJS to post instructions for submitting plans and proposals
- Statewide mobile crisis dispatch launch (infrastructure)
- Adult mobile crisis teams funded
- Initial areas launch community coverage and protocols
- Medicaid reimbursement for 4 new crisis services: Dec 1, 2021

December 2021- July 2022

- Public service campaign continue, community outreach
- Select 2nd round of areas for full implementation
- All communities implement protocols by July 1, 2022
- July 16, 2022 all states federally required to have 9-8-8 link to National Suicide Prevention Lifeline and crisis services

Beyond July 2022

- Continued phasing in of community coverage, until statewide coverage is achieved by 2026
- Ongoing data, reporting, and quality improvement, including health disparities
- Yearly reporting to General Assembly

We are pleased to first partner with:

1: Orange, Madison, Culpeper, Fauquier, and Rappahannock Counties (Rappahannock-Rapidan Community Services)

2: Prince William County (Prince William County Community Services)

3: City of Bristol and Washington County including the towns of Abingdon, Damascus, and Glade Spring (Highlands CSB)

4: City of Richmond (Richmond Behavioral Health Authority)

5: City of Virginia Beach (Virginia Beach Human Services)

Va. Code Ann. § 9.1-193

Current through the 2021 Regular Session and Special Session I of the General Assembly

- VA - Code of Virginia (Annotated)
- TITLE 9.1. COMMONWEALTH PUBLIC SAFETY
- CHAPTER 1. DEPARTMENT OF CRIMINAL JUSTICE SERVICES
- ARTICLE 16. MENTAL HEALTH AWARENESS RESPONSE AND COMMUNITY UNDERSTANDING SERVICES (MARCUS) ALERT SYSTEM.

§ 9.1-193. Mental health awareness response and community understanding services (Marcus) alert system; law-enforcement protocols

A. As used in this article, unless the context requires a different meaning:

"Area" means a combination of one or more localities or institutions of higher education contained therein that may have law-enforcement officers as defined in § 9.1-101.

"Body-worn camera system" means the same as that term is defined in § 15.2-1723.1.

"Community care team" means the same as that term is defined in § 37.2-311.1.

"Comprehensive crisis system" means the same as that term is defined in § 37.2-311.1.

"Developmental disability" means the same as that term is defined in § 37.2-100.

"Developmental services" means the same as that term is defined in § 37.2-100.

"Historically economically disadvantaged community" means the same as that term is defined in § 56-576.

"Mental health awareness response and community understanding services alert system" or *"Marcus alert system"* means the same as that term is defined in § 37.2-311.1.

"Mental health service provider" means the same as that term is defined in § 54.1-2400.1.

"Mobile crisis response" means the same as that term is defined in § 37.2-311.1.

"Mobile crisis team" means the same as that term is defined in § 37.2-311.1.

"Registered peer recovery specialist" means the same as that term is defined in § 54.1-3500.

"Substance abuse" means the same as that term is defined in § 37.2-100.

B. The Department of Behavioral Health and Developmental Services and the Department shall collaborate to ensure that the Department of Behavioral Health and Developmental Services maintains purview over best practices to promote a behavioral health response through the use of a mobile crisis response to behavioral health crises whenever possible, or law-enforcement backup of a mobile crisis response when necessary, and that the Department maintains purview over requirements associated with decreased use of force and body-worn camera system policies and enforcement of such policies in the protocols established pursuant to this article and § 37.2-311.1.

C. By July 1, 2021, the Department shall develop a written plan outlining (i) the Department's and law-enforcement agencies' roles and engagement with the development of the Marcus alert system; (ii)

the Department's role in the development of minimum standards, best practices, and the review and approval of the protocols for law-enforcement participation in the Marcus alert system set forth in subsection D; and (iii) plans for the measurement of progress toward the goals for law-enforcement participation in the Marcus alert system set forth in subsection E.

D. All protocols and training for law-enforcement participation in the Marcus alert system shall be developed in coordination with local behavioral health and developmental services stakeholders and approved by the Department of Behavioral Health and Developmental Services according to standards developed pursuant to § 37.2-311.1. Such protocols and training shall provide for a specialized response by law enforcement designed to meet the goals set forth in this article to ensure that individuals experiencing a mental health, substance abuse, or developmental disability-related behavioral health crisis receive a specialized response when diversion to the comprehensive crisis system is not feasible. Specialized response protocols and training by law enforcement shall consider the impact to care that the presence of an officer in uniform or a marked vehicle at a response has and shall mitigate such impact when feasible through the use of plain clothes and unmarked vehicles. The specialized response protocols and training shall also set forth best practices, guidelines, and procedures regarding the role of law enforcement during a mobile crisis response, including the provisions of backup services when requested, in order to achieve the goals set forth in subsection E and to support the effective diversion of mental health crises to the comprehensive crisis system whenever feasible.

E. The goals of law-enforcement participation, including the development of local protocols, in comprehensive crisis services and the Marcus alert system shall be:

1. Ensuring that individuals experiencing behavioral health crises are served by the behavioral health comprehensive crisis service system when considered feasible pursuant to protocols and training and associated clinical guidance provided pursuant to Title 37.2;

2. Ensuring that local law-enforcement departments and institutions of higher education with law-enforcement officers establish standardized agreements for the provision of law-enforcement backup and specialized response when required for a mobile crisis response;

3. Providing immediate response and services when diversion to the comprehensive crisis system continuum is not feasible with a protocol that meets the minimum standards and strives for the best practices developed by the Department of Behavioral Health and Developmental Services and the Department pursuant to § 37.2-311.1;

4. Affording individuals whose behaviors are consistent with mental illness, substance abuse, intellectual or developmental disabilities, brain injury, or any combination thereof a sense of dignity in crisis situations;

5. Reducing the likelihood of physical confrontation;

6. Decrease arrests and use-of-force incidents by law-enforcement officers;

7. Ensuring the use of unobstructed body-worn cameras for the continuous improvement of the response team;

8. Identifying underserved populations in historically economically disadvantaged communities whose behaviors are consistent with mental illness, substance abuse, developmental disabilities, or any combination thereof and ensuring individuals experiencing a mental health crisis, including individuals experiencing a behavioral health crisis secondary to mental illness, substance use problem, developmental or intellectual disabilities, brain injury, or any combination thereof, are directed or referred to and provided with appropriate care, including follow-up and wrap-around services to individuals, family members, and caregivers to reduce the likelihood of future crises;

9. Providing support and assistance for mental health service providers and law-enforcement officers;

10. Decreasing the use of arrest and detention of persons whose behaviors are consistent with mental illness, substance abuse, developmental or intellectual disabilities, brain injury, or any combination thereof by providing better access to timely treatment;

11. Providing a therapeutic location or protocol to bring individuals in crisis for assessment that is not a law-enforcement or jail facility;

12. Increasing public recognition and appreciation for the mental health needs of a community;

13. Decreasing injuries during crisis events;

14. Decreasing the need for mental health treatment in jail;

15. Accelerating access to care for individuals in crisis through improved and streamlined referral mechanisms to mental health and developmental services;

16. Improving the notifications made to the comprehensive crisis system concerning an individual experiencing a mental health crisis if the individual poses an immediate public safety threat or threat to self; and

17. Decreasing the use of psychiatric hospitalizations as a treatment for mental health crises.

F. By July 1, 2021, every locality shall establish a voluntary database to be made available to the 9-1-1 alert system and the Marcus alert system to provide relevant mental health information and emergency contact information for appropriate response to an emergency or crisis. Identifying and health information concerning behavioral health illness, mental health illness, developmental or intellectual disability, or brain injury may be voluntarily provided to the database by the individual with the behavioral health illness, mental health illness, developmental or intellectual disability, or brain injury; the parent or legal guardian of such individual if the individual is under the age of 18; or a person appointed the guardian of such person as defined in § 64.2-2000. An individual shall be removed from the database when he reaches the age of 18, unless he or his guardian, as defined in § 64.2-2000, requests that the individual remain in the database. Information provided to the database shall not be used for any other purpose except as set forth in this subsection.

G. By July 1, 2022, every locality shall have established local protocols that meet the requirements set forth in the Department of Behavioral Health and Developmental Services plan set forth in clauses (vi), (vii), and (viii) of subdivision B 2 of § 37.2-311.1. In addition, by July 1, 2022, every locality shall have established, or be part of an area that has established, protocols for law-enforcement participation in the Marcus alert system that has been approved by the Department of Behavioral Health and Developmental Services and the Department.

History

2020, Sp. Sess. I, cc. 41 , 42 .

Annotations

Notes

EDITOR'S NOTE. --

Acts 2020 Sp. Sess. I, cc. 41 and 42 , cl. 2 provides: "That the Department of Behavioral Health and Developmental Services and the Department of Criminal Justice Services shall coordinate a public service campaign to run from July 1,

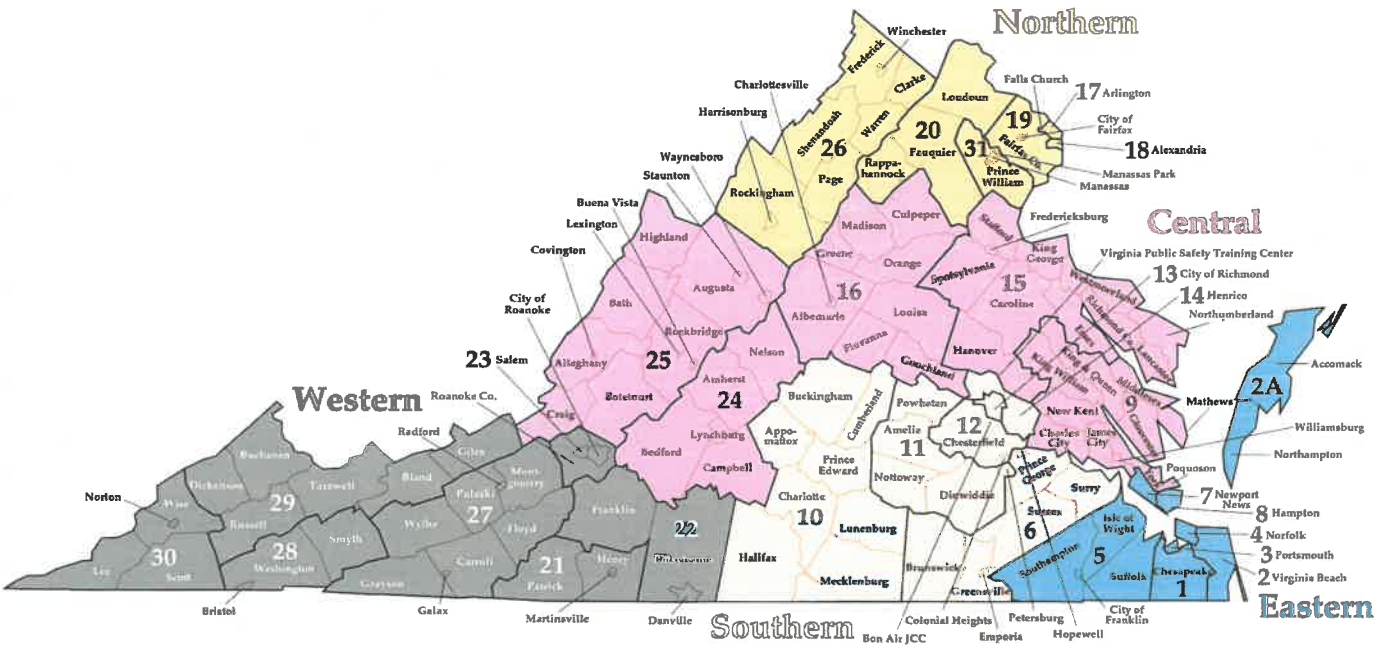
2021, until January 1, 2022, announcing the development and establishment of community care teams and mental health awareness response and community understanding services (Marcus) alert systems in localities and areas throughout the Commonwealth."

Acts 2020 Sp. Sess. I, cc. 41 and 42, cl. 3 provides: "That this act shall be referred to as the Marcus-David Peters Act."

EFFECTIVE DATE. --

This section is effective March 1, 2021, pursuant to Va. Const. Art. IV, § 13.

COURT SERVICE UNITS (CSU)



(/documents/community/Regional Map - Website.pdf)

Click map for a printable pdf version

Eastern Region	District 1 Chesapeake (/pages/community/csu1.htm)	District 2 Virginia Beach (/pages/community/csu2.htm)	District 2A Accomac (/pages/community/csu2A.htm)	Dis (/p
Northern Region	District 17 Arlington (/pages/community/csu17.htm)	District 18 Alexandria (/pages/community/csu18.htm)	District 19 Fairfax (/pages/community/csu19.htm)	Dis (/p
Western Region	District 21 Martinsville (/pages/community/csu21.htm)	District 22 Rocky Mount (/pages/community/csu22.htm)	District 23 Roanoke (/pages/community/csu23.htm)	Dis (/p
Southern Region	District 6 Hopewell (/pages/community/csu6.htm)	District 10 Halifax (/pages/community/csu10.htm)	District 11 Petersburg (/pages/community/csu11.htm)	Dis (/p
Central Region	District 9 Williamsburg (/pages/community/csu9.htm)	District 15 Fredericksburg (/pages/community/csu15.htm)	District 16 Charlottesville (/pages/community/csu16.htm)	Dis (/p

WHAT THEY DO

Juvenile Intake – Intake services are provided 24 hours a day at every CSU. The intake officer has the authority to receive, review, and process complaints. Based on the information gathered, the officer determines whether a petition should be filed with the juvenile court and, if so, whether the juvenile should be released to the parents or detained pending a court hearing.

Investigations and Reports – Social histories make up the majority of the reports that CSU personnel complete. Social histories describe the social adjustment of the youth before the court and provide timely, relevant, and accurate data. This helps the court determine what will happen to the youth, and the most appropriate services for the juvenile and the family.

Domestic Relations – In addition to handling complaints about youth, CSUs provide services for domestic relations complaints, which can include non-support, family abuse, adjudication of custody (permanent and temporary), abuse and neglect, termination of parental rights, visitation rights, paternity, and emancipation.

Custody Investigations – While most custody investigations are performed by the local Department of Social Services staff, some CSUs also perform investigations to provide recommendations to the court on parental custody and visitation based on the best interests of the youth and defined criteria in the Virginia Code.

Probation – The most common consequence for a juvenile who has been found guilty of a charge is probation supervision. DJJ's probation officers constantly strive to achieve a "balanced approach," focusing on the principles of community protection (public safety), accountability, and competency development.

Parole Services – After they are released from Bon Air Juvenile Correctional Center or private placement, youth offenders are provided parole services to help them transition back to the community. Parole officers provide case management services, arrange for appropriate transitional services, and monitor the offender's adjustment to the community. Juveniles may receive family and individual counseling, referral to other community services, vocational services, or specialized educational services.

REGIONAL MANAGERS

EASTERN

Michael Morton
(757) 282-3657
michael.morton@djj.virginia.gov (mailto:michael.morton@djj.virginia.gov)

NORTHERN

Dee Kirk
(703) 307-1072
dee.kirk@djj.virginia.gov (mailto:dee.kirk@djj.virginia.gov)

WESTERN

Robert Foster
(540) 580-0301
robert.foster@djj.virginia.gov (mailto:robert.foster@djj.virginia.gov)

SOUTHERN

Regina Harris
(804) 380-6610
regina.harris@djj.virginia.gov (mailto:regina.harris@djj.virginia.gov)

CENTRAL

Stephanie Garrison
(804) 338-7849
stephanie.garrison@djj.virginia.gov (mailto:stephanie.garrison@djj.virginia.gov)

CONTACT INFO

Hours: 8:00 A.M. - 5:00 P.M.
Address: 600 East Main Street, 20th Floor
Richmond, Virginia 23219
Mailing Address: P.O. Box 1110
Richmond, Virginia 23218-1110
Fax: (804) 371-6497

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(https://polarisproject.org/get-assistance/national-human-trafficking-hotline)

(https://logi.cgieva.com/Public/rdPage.aspx?rdReport=Public.PublicLandingPage&rdProcess=Process.procSetEnvironment&rdTaskID=tskStartUp&rdRnd=50933)

(/documents/about-djj/DJJ Org Chart.pdf) Organization Chart (/documents/about-djj/DJJ Org Chart.pdf)

(https://www.datapoint.apa.virginia.gov/dashboard.php) Expenditures (https://www.datapoint.apa.virginia.gov/dashboard.php)

COMMUNITY DIVERSION

The Community Diversion unit is responsible for front-end reform and system improvement efforts. The team works to improve outcomes for youth by increasing diversion opportunities, providing technical assistance and implementation support for the Juvenile Detention Alternatives Initiative (JDAI), as well as oversight and management of the Virginia Community Crime Control Act (VJCCCA).

Juvenile Detention Alternatives Initiative (JDAI)

The intent of the Juvenile Detention Alternatives Initiative (JDAI) is to change policies, practices and programs to ensure that only those youth who are the greatest risk to public safety are held in secure pre-trial detention. The overall goals are to protect public safety, reduce the unnecessary or inappropriate use of secure detention, and to redirect public finances to more effective purposes.

The initiative, supported by the Annie E. Casey Foundation, is grounded in eight core strategies including collaboration; data-driven decision making; objective admissions screening; alternatives to secure detention; expedited case processing; rigorous facility inspections; and strategies to reduce racial disparities.

In 2017, JDAI celebrated its 25th and is now operating in more than 300 local jurisdictions across 39 states and the District of Columbia. Since joining JDAI in 2003, Virginia has seen significant reductions in admissions, length of stay, and average daily population in detention centers. JDAI efforts have reduced the number of youth in secure detention, as well as the juvenile justice system overall. A priority of JDAI continues to be the elimination of racial and ethnic disparities across all youth and family-serving agencies.

JDAIconnect (https://community.aecf.org/community/jdai-connect) is an online platform that is open to anyone. The site provides an array of opportunities for networking, learning, technical assistance, problem solving and sharing experiences in juvenile justice reform.

Virginia Juvenile Community Crime Control Act (VJCCCA)

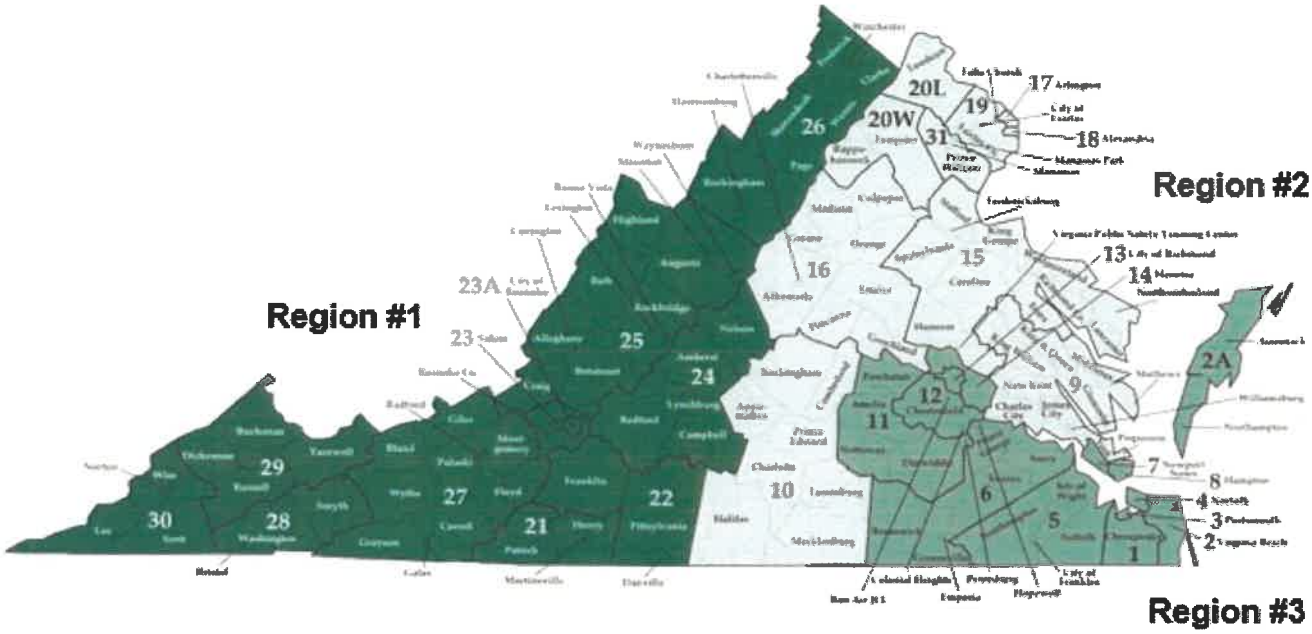
In 1995, the Virginia General Assembly passed the Virginia Juvenile Community Crime Control Act (VJCCCA) "to establish a community-based system of progressive intensive sanctions and services that correspond to the severity of offense and treatment needs."

VJCCCA is meant to:

- Be a community-based system;
- Be made up of progressive intensive sanctions and services;
- Correspond with the severity of the offense and treatment needs; encourage communities to develop, implement, operate and evaluate programs and services responsive to juvenile offender needs and crime trends in their community;
- Provide an adequate level of services available to every Juvenile and Domestic Relations District Court;
- Allow local autonomy and flexibility in addressing juvenile crime;
- Encourage public and private partnership in the design and delivery of services;
- Emphasize parental responsibility, through services that hold juveniles and families accountable for their behavior;
- Facilitate a locally driven statewide planning process for allocating state resources; and
- Provide adequate service capacity

All 133 cities and counties in Virginia participate in VJCCCA. Benefits of VJCCCA include:

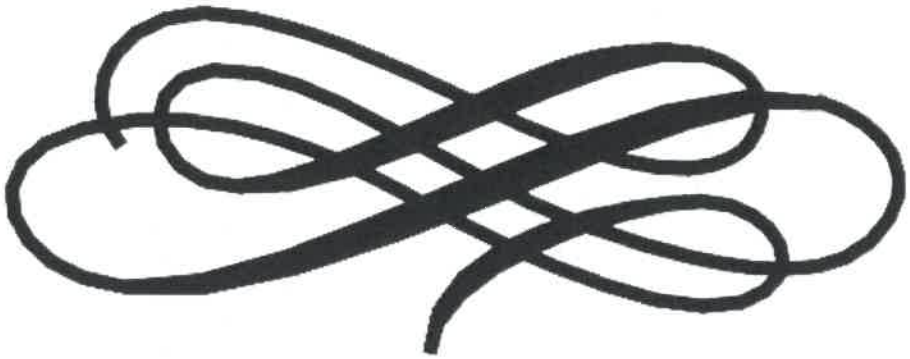
- Judges have additional alternative sentencing options;
- Communities have received additional funding to create or enhance programs that they have needed for some time;
- Localities have greater flexibility to design programs to meet the needs of their communities;
- The number and variety of programs and services available for youth has increased in most communities, and;
- Programs and services appear to be serving more youth in their own community



Updated: May 2021

CONTACTS

Jenna Easton
Community Diversion Program Manager
(804) 350-2353
jenna.easton@djj.virginia.gov (mailto:jenna.easton@djj.virginia.gov)



RESOURCES

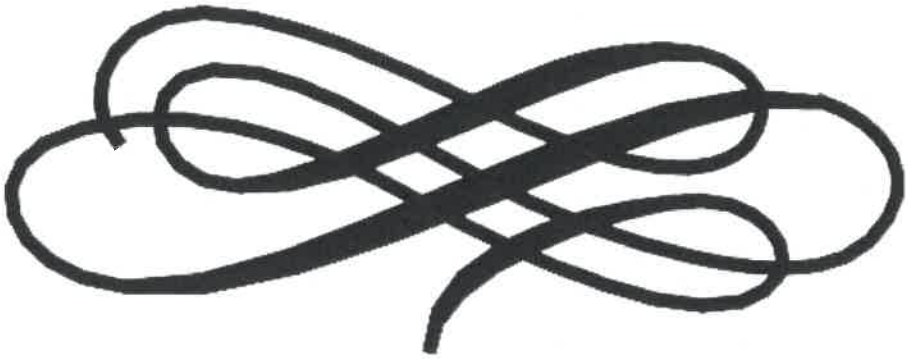
VJCCCA Policy Manual (/documents/community/VJCCCA_Manual_July_2014.pdf)

VJCCCA Allowable Programs and Services (/documents/community/VJCCCA_Allowable_Programs_and_Services_Effect_7-1-2016.pdf)

Local Program Manual Template (/documents/community/VJCCCA Program Manual Headings and Template for Individual Programs 1-2019.pdf)

Guidance Document: Prevention Services Category (/documents/community/VJCCCA Guidance Document Prevention Services Category 6-2019.pdf)

Prevention Services Concept Paper Template (/documents/community/VJCCCA Prevention Services Category Concept Paper Templete 6-2019.pdf)



REGIONAL CONTACTS

Melisa Furtado
VJCCCA Coordinator
Region #1
CSUs: 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
(804) 298-5259
melisa.furtado@djj.virginia.gov (mailto:melisa.furtado@djj.virginia.gov)

Katherine Farmer
VJCCCA Supervisor
Region #2
CSUs: 9, 10, 15, 16, 17, 18, 19, 20, 31
(804) 291-7083
katherine.farmer@djj.virginia.gov (mailto:katherine.farmer@djj.virginia.gov)

Romilda Smith
VJCCCA Coordinator
Region #3
CSUs: 1, 2, 2A, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14
(804) 807-21017
romilda.smith@djj.virginia.gov (mailto:romilda.smith@djj.virginia.gov)

(https://www.facebook.com/pages/Virginia-Department-of-Juvenile-Justice/1435765579993038)

(https://polarisproject.org/get-assistance/national-human-trafficking-hotline)

(https://logi.cgieva.com/Public/rdPage.aspx?rdReport=Public.PublicLandingPage&rdProcess=Process.procSetEnvironment&rdTaskID=tskStartUp&rdRnd=50933)

(/documents/about-djj/DJJ Org Chart.pdf) Organization Chart (/documents/about-djj/DJJ Org Chart.pdf)

(https://www.datapoint.apa.virginia.gov/dashboard.php) Expenditures (https://www.datapoint.apa.virginia.gov/dashboard.php)

OUR TRANSFORMATION

On any given day, the Department of Juvenile Justice has somewhere between 4,500 and 5,000 youth under some kind of supervision, with more than 90 percent of those youth being supervised in their communities through diversion, probation or parole.

The Department's mission – to protect the public by helping court involved youth become productive citizens – is best accomplished through individually tailoring the right mix of accountability and rehabilitation to meet the identified risk and need levels for every youth who walks through our doors, and making sure that we use data, research, and evidence-based practices to inform the interventions and services we provide. We also best accomplish our mission when we provide the youth in our system with those things that any adolescent needs to grow into a healthy, productive adult.

We emphasize four cornerstones of positive youth development: a feeling of **safety** in one's surroundings; a strong sense of **connection** to one's community and supportive family members and/or other adults; a belief in the **purpose** of activities such as education, treatment and vocational training or actual work; and a sense of **fairness** in the accountability, consequences and opportunities one receives in response to their actions.

Over the last several years, the Department has undertaken a rigorous self-analysis to make sure that we are using taxpayer resources effectively, and getting the outcomes we want for the youth, families and communities we serve. This analysis led us to develop an ambitious plan to transform our work to get better outcomes for the children, families and communities we serve. Our transformation efforts break down into four core initiatives:

Safely **Reduce** the use of the large and aging juvenile correctional facilities.

Reform correctional and treatment practices within the facilities and with youth returning to communities.

Develop a plan to ultimately **Replace** older, outdated facilities with smaller, regional, and treatment-oriented juvenile correctional centers and a statewide continuum of local alternative placements and evidence-based services.

Sustain our transformation by maintaining safe, healthy, inclusive work places; continuing to recruit, retain, and develop a team of highly skilled and motivated staff; and aligning our procedures, policies, and resources to support the team in meeting the of transformation.

Click HERE (/pages/about-djj/djj-framework.htm) to learn more in DJJ's Strategic Framework.

Created by the Code of Virginia §66-4 (https://law.lis.virginia.gov/vacode/title66/chapter1/section66-4/), the Board of Juvenile Justice ensures the development and implementation of a long-range youth services policy and advises the Governor, the Director of the Department of Juvenile Justice and the General Assembly on matters relating to youth services.

In July 2014, the Virginia Secretary of Public Safety and Homeland Security and the Department of Juvenile Justice (DJJ) invited the Annie E. Casey Foundation ("Casey") to conduct an assessment of Virginia's juvenile justice system with a particular focus on the use and performance of DJJ's juvenile correctional centers (JCCs). While the first phase of the assessment was completed in early 2015, the work with Casey has been ongoing, primarily in the form of technical assistance across the agency, including further targeted assessments of DJJ's work.

Based on the assessments, national research, and considerable staff and stakeholder input, DJJ is transforming the work of the agency to reflect what we have learned. Many of the changes we are making are based on evidence and research on what best promotes success and reduces recidivism rates among court-involved youth. We also recognize that to be successful we must focus not only on the positive development of the young people in our system, but also the positive development and sustainability of the staff who serve them. Accordingly, we must strive in all of the work we do to meet the needs of our youth and staff in the following four areas:

SAFETY

Youth and staff need to feel safe in their environment and need a sense of physical and emotional well-being.

CONNECTION

Youth and staff need to feel connected to supportive and caring adults, whether they are family, staff, or coworkers.

PURPOSE

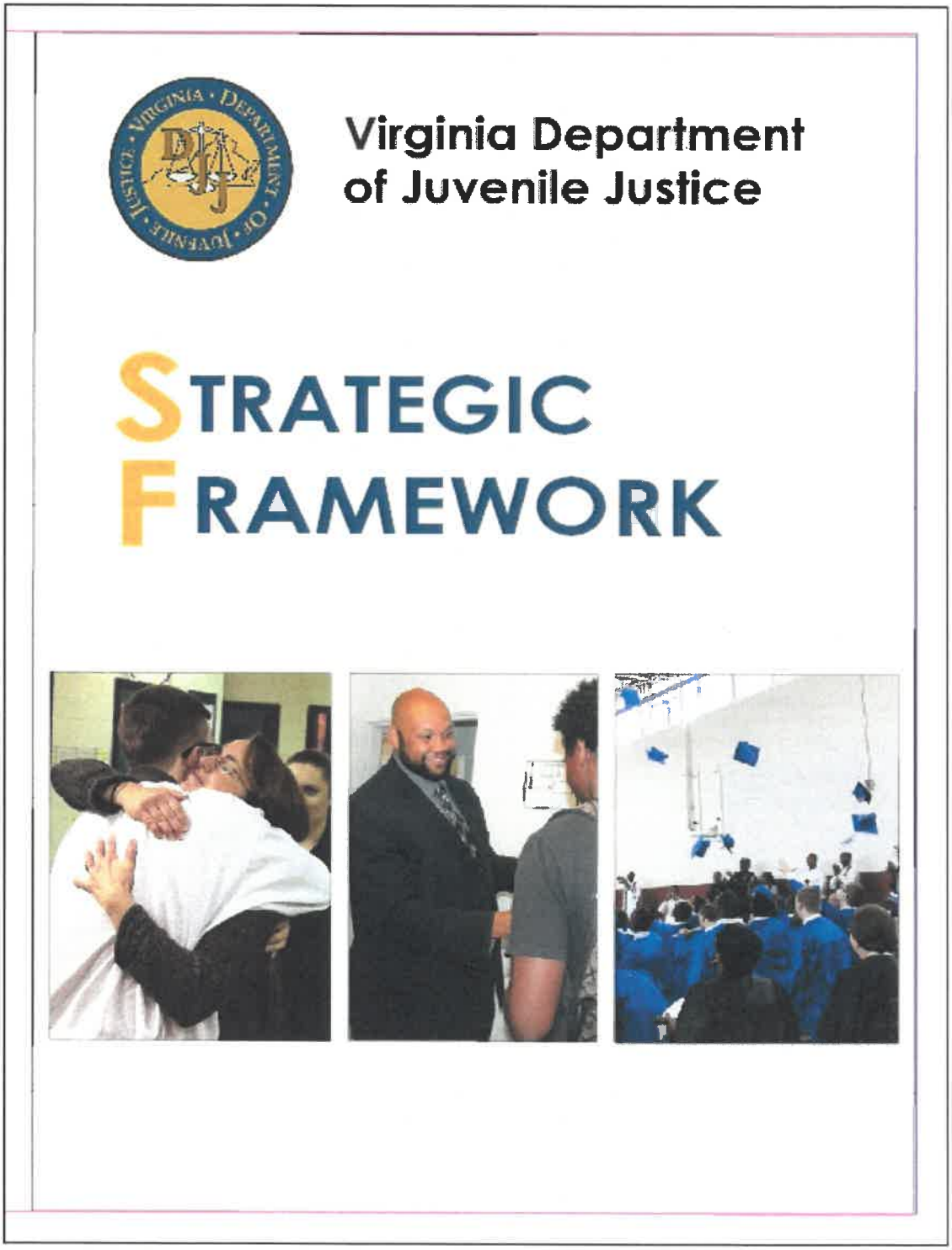
Youth and staff need to have goals to strive toward, skills to hone, and a sense that they have a valuable role to play in the lives of people and the community around them.

FAIRNESS

Youth need to perceive their environment and interactions as fair and transparent. They need to be held accountable in a manner proportionate to their offense and offense history, and similar to other youth in their situation. Staff need to feel that they are treated fairly, compensated adequately, and supported in their efforts to meet the expectations of the department.

DJJ'S MISSION

The Virginia Department of Juvenile Justice protects the public by preparing court-involved youth to be successful citizens.



(/documents/about-djj/Strategic Framework.pdf)

Click on image above to learn more

To reach our goals for both youth and staff, we have developed an agency transformation plan. The plan consists of three core operational strategies as well as a strategy dedicated to sustaining, maintaining, and evaluating our reforms and progress. These strategies will continue to guide the department toward fulfilling our mission of protecting the public by preparing court-involved youth to be successful citizens and members of their communities.

(https://www.facebook.com/pages/Virginia-Department-of-Juvenile-Justice/1435765579993038)

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3:45pm ~ 5:15pm - Panel 2:

Co-Parenting in the Pandemic & Beyond

CO-PARENTING IN THE AGE OF COVID

I. INTRODUCTION

A. General Definition of Co-parenting

1. "Coparenting is a family systems notion that refers to the degree of support and coordination among two or more adults responsible for a given child's care and upbringing. It does not include the 'romantic, sexual, compassionate, emotional, financial, and legal aspects of the adult's relationship that does not relate to childrearing" (McHale and Lindahl, 2010, p.10-12).

2. Designed to move from adversarial roles toward cooperative and complementary roles. Parents operate in a child-focused, business-like and respectful manner. Best candidates are those who have mild to moderate conflict. The best scenario is that there is one area of conflict but otherwise work together.

B. General Benefits of Coparenting provides:

1. Improved conflict resolution (non-litigious)

2. Healthier communication
    a. Parents learn techniques to manage anger.

3. Effective parenting
    a. That includes identifying their child's needs.
    b. Understand the detrimental impact of conflict on the child's emotional development.

C. Questions To Ask Before Engaging a Co-parenting Professional:

1. Who selects the counselor? Is it parental choice (and if so, do the parents need to agree) or the court? What are the qualifications to become a coparenting counselor and the implications for successful outcomes?

2. How are the number of sessions-based on response set, need, or defined duration? Is this the judgment of the counselor or the court?

3. What about confidentiality? When court ordered, this is limited. Discussion with GAL-at discretion of parents or court ordered?

D. Factors to Consider:

1. Generally: Four types of parenting styles:
    a. Authoritarian – focus on obedience, punishment over discipline.

b. Authoritative-create positive relationship; obey rules.
c. Permissive-do not follow rules; kids will be "kids".
d. Uninvolved.

2. What about parallel parenting?

II. COVID AND FUTURE PANDEMIC IMPACTS ON COPARENTING

A. With each of the parenting styles above, how will the parents react differently to a crisis, pandemic, or total change in typical operating procedures?

B. What impact will the stress of the unknown have on the parents? Will it impact them differently? How do they feel about?

1. Vaccinations.

2. Traveling.

3. Virtual v. in-person school.

4. Handling daycare closures.

C. What impact with the stress and isolation during quarantine, social distancing, and cancellation or suspension of athletic and prosocial activities have on the children? How can parents work together to assist?

D. Will telehealth be available for coparenting?

E. With school closures, how can parents work together to lessen the impact on their children's education?

1. Tutor?

2. Primary designated parent for education?

F. With fears of virus spread, how do we bring together parents who disagree on politics, medical choices etc.? Did they have a history before COVID on how to resolve differences?

G. How can parents coparent with court delays and closures?

H. How to protect clients from opposing party taking advantage of delays and closures.

III.TIPS FOR PRACTITIONERS:

A. Ask your client about each of the issues listed and see what areas of commonality may exist, and what areas may be contentious.

B. Try to find independent support for your client's view on the topics listed above:

1. Pediatrician support and records for past vaccinations.

2. Precautions for travel for visitation or vacations, CDC recommendations.

3. How did the children do with virtual school in 2020? What support from counselors or teachers can you find for your client's position and what is best for the children?

4. What childcare resources or emergency family support may be available in the case of a future school closure? Are there neighborhood resources for a virtual school co-op?

5. Can the parents work together to encourage safe prosocial or across-household learning opportunities?

C. Assist client with working with other parent, GAL or professionals.

D. Source a list of telehealth providers who will work with your client's insurance.

E. Academic support across households.

1. With school closures, how can parents work together to lessen the impact on their children's education?

2. With fears of virus spread, how do we bring together parents who disagree on politics, medical choices etc.?

3. How can parents coparent with court delays and closures?

F. Is mediation an option? Mediators can work remotely and can resolve the matter partially or to completion before case may be heard in court.

IV. COMMENTS FROM JUDGES REGARDING ISSUES MOST COMMON IN POST-PANDEMIC CUSTODY CASES SUCH AS VACCINATIONS, TRAVEL, AND IN PERSON LEARNING AND THOUGHTS ON EACH OF THESE ISSUES REGARDING WHAT HAS WORKED FOR LITIGANTS AND WHAT HAS NOT.

VIRGINIA CODE § 20-124.3. Best interests of the child; visitation

In determining best interests of a child for purposes of determining custody or visitation arrangements, including any pendente lite orders pursuant to § 20-103, the court shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;

2. The age and physical and mental condition of each parent;

3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual, and physical needs of the child;

4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers, and extended family members;

5. The role that each parent has played and will play in the future, in the upbringing and care of the child;

6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;

7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;

8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age, and experience to express such a preference;

9. Any history of (i) family abuse as that term is defined in § 16.1-228; (ii) sexual abuse; (iii) child abuse; or (iv) an act of violence, force, or threat as defined in § 19.2-152.7:1 that occurred no earlier than 10 years prior to the date a petition is filed. If the court finds such a history or act, the court may disregard the factors in subdivision 6; and

10. Such other factors as the court deems necessary and proper to the determination.

The judge shall communicate to the parties the basis of the decision either orally or in writing. Except in cases of consent orders for custody and visitation, this communication shall set forth the judge's findings regarding the relevant factors set forth in this section. At the request of either party, the court may order that the exchange of a child shall take place at an appropriate meeting place.

1994, c. 769 ; 1999, c. 634 ; 2000, c. 466 ; 2004, c. 221 ; 2009, c. 684 ; 2012, c. 358 ; 2019, c. 378 ; 2020, cc. 1074 , 1075 .

Family Law: The Impact Of COVID-19 On Child Support Cases In 2020 And Beyond

Bretta Z. Lewis

As the nation experiences a spike in COVID cases, and as we embark on what is likely to be a bizarre holiday season (because...2020), family lawyers continue to face difficult questions from concerned clients who rely on child support to make ends meet, as well as clients paying support at levels they believe are not sustainable.

Even in typical times, parents disagree about what costs are reasonable for childcare and healthcare, and each expresses doubt that the other is being forthcoming about gross income and earning potential. In 2020, the pandemic has thrown a new variable into these everyday arguments and has created additional stress on both sides of child support cases. Financial insecurity and the uncertainty of school attendance has made forecasting an economic future and calculating a reliable, longterm child support award more challenging than ever.

Additionally, in child support cases that have been pending since prior to the pandemic, attorneys and trial judges face a myriad of complex calculations that take into account unprecedented periods of low income caused by business closures, as well as income highs generated by unemployment payments and stimulus checks. Restaurant workers, hospitality employees, and airline industry personnel may have periods of no income, while construction workers, real estate agents, and grocery store workers may be working overtime and making higher salaries than ever. None of these numbers are sustainable, but they represent real money that is changing hands, so the primary parent asks, "Shouldn't the children benefit, even temporarily?" At the same time, the payor parent asks, "How can we use these numbers? ... Do I have to work overtime forever or go to jail?"

With these wildly fluctuating scenarios, how can Virginia attorneys competently advise clients, whether they are payors or payees, in these uncertain times? This article, written with assistance from the Division of Child Support Enforcement, aims to guide Virginia lawyers in advising clients and suggesting pragmatic solutions for the child support problems caused by the pandemic and the nightmare that is 2020.

Income Issues Caused by 2020 Anomalies

In cases filed prior to 2020 that were continued during Court closures (including appeals), as well as cases with large arrearages accumulated before 2020, child support calculations may span a period of time since well before the pandemic. If your client is an employee of an industry impacted by the pandemic, your case will likely involve either very low income caused by closures, or very high income bolstered by governmental benefit payments, or a combination of both.

The payor will likely argue that 2020 unemployment and stimulus payments should not be included because they are not regular income on which a long-term order should rely. To

the contrary, the payee will argue that all payments are income to which the child should be entitled in any computation of child support. In this scenario, the law favors the payee. "Stimulus checks" are not mentioned in the statute, but are not excluded and would properly be considered income.

Pursuant to Virginia Code § 20-108.2(C), the definition of "income" used to calcaulate child support includes but is not limited to, "salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits ...1 workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or awards [emphasis added]."

Although there are exceptions to what is considered income (please see footnote), the inclusion of unemployment benefits is explicit, as are gifts, prizes, and awards, which, by definition, are not guaranteed to be repeated. As such, the clear intent of the legislature was to include unusual payments in child support so that the child may share in the financial windfalls of the parents regardless of the reliability of the funds.

Case law holds "the amount of child support under the guidelines must be based on the parents' actual gross income."2 Cases that directly address unusual or unique payments, such as gifts from family members, hold that it is proper to include such payments, even when the gift is not likely to be repeated.

While case law seems clear, the result of inflated 2020 calculations is likely to cause consternation for payor clients, so the best practice in this anomalous year may be to find a solution that leads to an agreement between payor and payee.

When one or both parents have received stimulus money or unemployment payments, which is clearly akin to a gift as contemplated in Howe, one solution is to calculate guidelines using actual (or annualized) income from 2020 to determine if there is a marked inflation. It is likely in this scenario, particularly if both parents received governmental benefits, that the 2020 child support may not be unreasonably elevated because both parties will have experienced an increase that is unlikely to be repeated in 2021. Seeing these numbers on paper may help calm the clients if they see that the bump in income on both sides actually leveled out.

In a case that spans several years, especially when there is an arrearage, running the 2020 guidelines and assigning an amount to that year separately is one solution to determine the correct amount that should have been paid in 2020. Once that is accomplished, a separate provision may be crafted for non-2020 support. The parties may agree to average the 2020 number with 2018 and/or 2019, or use the 2019 number as a more typical income figure for running 2021 guidelines.

It is prudent to advise clients who are paying inflated 2020 support numbers to file early in 2021 for a reduction, because courts will continue to docket slowly while managing the COVID closure backlog. By the time the client gets into court, the payor and payee will likely have 2021 data that will allow annualization, paving the way for faster relief if the

payors find themselves in an economically perilous situation as the result of an inflated award. In the interim, mediation or negotiation may be successful.

Child Care Issues Caused by the Pandemic

Currently, Virginia school systems are operating on various platforms including in-person, distance, and hybrid learning. There is no uniformity between cities, counties, or regions, so attorneys in the Commonwealth have an ever-changing matrix of childcare issues to consider in child support cases.

In many cases, parents face a Hobson's choice of paying for daycare that was not anticipated before the pandemic, or taking leave from work to supervise children who are at home. To make matters worse, schools are changing plans daily, and parents have no idea how to calculate childcare costs from one month to the next.

As with changing income levels, attorneys should advise their clients to run the guidelines using expenses that they actually have, and not the expenses that they would or could have in a different scenario. In cases where the children are at home rather than school, it makes sense to identify periods when child care was more expensive and to annualize the amount. Parents have always annualized higher childcare costs for summer, so applying the "COVID" months in the same way should not be a novel concept.

Using DCSE to Assist Clients In Adjusting Support Amounts

In the past, the Division of Child Support Enforcement (DCSE) would typically engage with parties in an administrative capacity only, or DCSE would become involved after the entry of a decree if a substantial arrearage had accumulated and the payee sought enforcement. Although many family law attorneys have limited or no experience with DCSE, this may soon change. In 2020, DCSE has taken steps to alleviate the confusion and burden on the Court system that has been caused by the pandemic.

With child support calculations thrown into turmoil by COVID-19, DCSE hopes to provide assistance to parties who need to adjust support payments faster than the courts can accommodate. Since early 2020, DCSE has expanded operations to provide non-litigation options when a prior order needs to be reviewed and/or adjusted to accommodate changes in income, child care, or other expenses.

Geoffrey Scott Darnell, Esq., Legal Director of Operations for DCSE East, reported that since the onset of the pandemic, "DCSE has been expanding its services and offering relief to payors and payees alike." "We don't see ourselves as representing one party," he said, "We see ourselves as an agency that can help both parties come together to get the children the support they need, while taking into account the totality of the circumstances so that the solution is viable for both parents." Darnell explained, "Currently, DCSE is in the process of implementing new procedures to facilitate expanded applications of the Administrative Review of Court orders under Virginia Code § 63.2-1921."

Darnell added, "The goal is to have more orders reviewed out of court, which can be done remotely in most cases. The only need for a hearing would be if there is objection to the

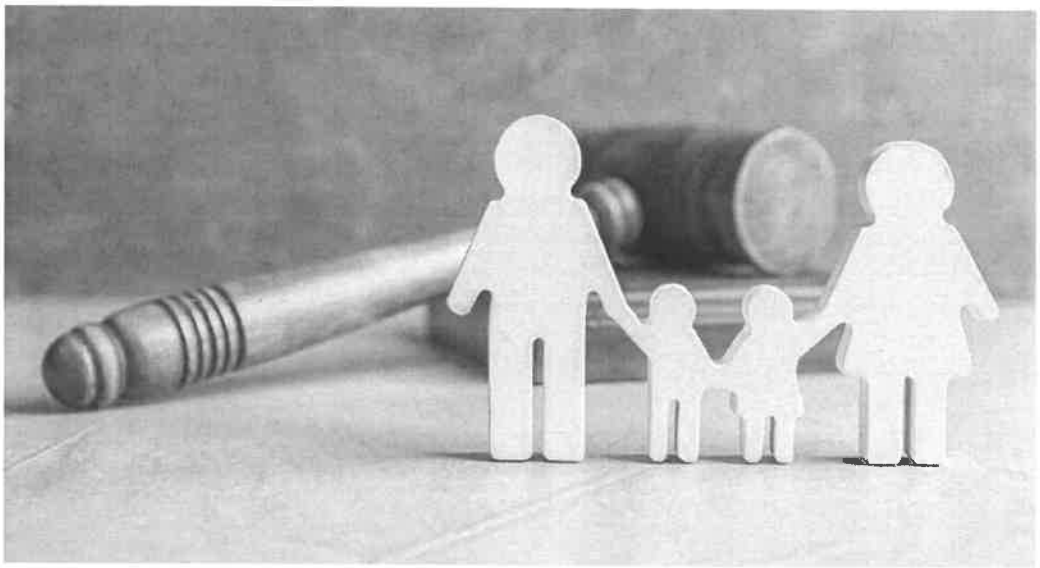
new order and a hearing is requested." Darnell stated that DCSE's goal is threefold: "Our hope is to (1) reduce new docket size to assist courts in catching up with the backlog; (2) keep more people out of court for safety and efficiency; and (3) have more compliant parties because they have worked through and agreed on an order in more cases." Darnell added, "This has been an underused option for DCSE in the past but will be a priority in 2021."

In short, during the remainder of 2020 and beyond, encouraging parties to work together for the good of the children remains the best practice. With the help of DCSE, Virginia lawyers have a new opportunity to encourage families to compromise and agree on a new path forward.

Bretta Z. Lewis is a family law attorney with 20+ years of litigation experience. She has specialized knowledge in matters involving special needs children, domestic and substance abuse, mental health issues, and non-traditional family structures. She is an adjunct professor at William and Mary Law School, a frequent lecturer in ethics and family law, serves on the Virginia State Bar Disciplinary Board, is a member of Virginia State Bar Council and the faculty of the Harry L. Carrico Professionalism Course.

Family Law: From Mayhem to Mindfulness In (Almost) Post-Pandemic Virginia

by Bretta Z. Lewis



To call COVID-19 an "issue" with respect to family law is akin to calling what happened on the Titanic "a vacation mishap." Although not all Virginia lawyers practice family law, it seems that all of us are, directly or indirectly, impacted by divorce. Whether it is your loved one, a neighbor, friend, or yourself, every person who has been privy to the turmoil caused by divorce turns to someone for advice.

Lawyers and mental health professionals are the obvious sources for guidance, and sometimes the line between legal advice and counseling is blurry (hence the traditional title "Attorney and Counsellor at Law). Unfortunately, all Virginia attorneys, including those who practice family law, are currently facing a massive breakdown of the typical way we assist clients due to court closures and other pandemic response measures. Although we always aspire to advance our clients' interests swiftly and efficiently, this goal seems all but impossible since the pandemic closures and restrictions have been enacted. There is no way to provide solid advice to clients without adding the caveat, "Nobody really knows what is going to happen … I mean, literally, nobody." This is new turf for even the most seasoned professionals and is unprecedented in the Commonwealth's court system.

Ethical rules forbid us from guaranteeing outcomes to clients, however, in pre-COVID Virginia, we could at least tell clients when and where to appear for hearings and advise them of the possible outcomes. Now, we have no idea what matters will proceed, what the timetable will be, or what format to expect. We have no way to ease our clients' fears about their financial futures or make any reliable assessment about the long-term ramifications of the litigation. With each order, each edict, and each publication from the Executive and Judicial branches, interpretations of which seem to differ in each jurisdiction and judicial district, the waters become increasingly murky.

In the family law realm, not only is uncertainty frustrating and disconcerting, but it can also be emotionally devastating and, in some cases, dangerous. Mental health professionals are concerned about the "layering" effect of the lack of closure on families. Dr. Robert Archer, a leading national expert in forensic psychology and adolescent development, emphasizes that "Stress is viewed by psychologists as a cumulative experience," and that "The pandemic is making additional demands on the coping resources of family members."

The pandemic has multiplied already existing issues including domestic violence

and substance abuse, during a time when in-person services are often suspended. The pressure cooker created by social isolation, financial strain, and unprecedented unemployment is taking an insurmountable toll on families. Some husbands and wives feel that there is no choice but to separate. This requires them to divide the remaining resources, including dividing time with often stressed-out children.

As responsible, compassionate practitioners, Virginia family law attorneys can help. After serving as a Guardian *Ad Litem* since 2005, I believe that we must first protect the most vulnerable participants, the children. We have to find a way to reach into the whirlpool and pull them out before they drown in their parents' stress. We also need to give our adult clients as much guidance as possible in solving their problems without waiting for the overwhelmed courts to provide answers.

With creative, empathetic representation, parties can avoid the stress of waiting and preparing for trial. Forward-thinking family lawyers can use new methods to change the norms in resolving conflicts and focus our energy into providing solutions in a revolutionary way. In short, we can become helpers.

This article seeks to shed some light for Virginia lawyers, both from a place of ideology and practicality. Family lawyers are facing some tricky questions that are as of yet, unanswerable.

(1) How can parents who are separating, divorcing, or already divorced effectively co-parent and deal with delays, litigation and indefinite continuances?
(2) How can parents effectively implement "distance learning" and support educational development when they are separated, divorced and at odds with the other parent?
(3) How do we best manage child support cases when the courts are overwhelmed, and parties are facing unemployment, furloughs, or other loss of income stability?

Generally, for all of these unknowns, it seems that keeping parties out of court and finding an amicable, flexible solution that can be implemented immediately may be the best practice. Below are some insights gained in discussions with experts who deal regularly with families in crisis:

(1) Custody, Visitation and Co-parenting: Parents in the process of separation and divorce may be feeling hopeless because pending matters have been continued, finances are uncertain, they are reeling from the long, stressful litigation process, and/or because health concerns are exacerbating the situation. Families may be experiencing new rifts in previously quasi-functional family dynamics due to suffocating mandatory togetherness, while families already in crisis may find that the pandemic has created an unbearable tension.

Statistics from crisis hotlines indicate that substance abuse and domestic violence are escalating as anxiety and frustrations are fueled by isolation and despair. In some cases, one parent may be refusing to communicate or cooperate with the other and the courts are not able to respond quickly. There are, however, methods available to assist families to move toward a solution, even without court intervention.

Instead of waiting for a trial in a divorce or custody case, attorneys should hold settlement conferences on a flexible schedule, accommodating childcare and other contributing stressors. Using platforms such as Zoom, WebEx, Microsoft Teams, and Google Meetings, responsible and compassionate attorneys and the Guardian *Ad Litem*, working together, can assist parents to move past emotion and encourage them to find practical ways to preserve precious resources and protect their children. Agreements incorporated into court orders can provide closure without the stress of making litigants recount all of their interpersonal differences in open court and having rulings imposed after a long day of angry testimony. I have already participated in several remote settlement conferences with opposing counsel, parties, and, in some cases, the Guardian *Ad Litem* appearing by telephone or video. **Even in seemingly impossible cases involving adultery, protective orders, and domestic violence allegations, the matters have settled.** Literal sighs of relief echoed among all involved knowing that the matters would simply be removed from the docket by submission of agreed orders rather than playing the waiting game and enduring several more months of litigation.

If the matter is too complex or controversial for a simple settlement conference, or if the attorneys reach an impasse, mediation is an excellent option for accessing neutral assistance without the stress of a trial. The Hon. Winship Tower (ret.), an experienced mediator specializing in complex divorces, practiced family law before joining the Virginia Beach Juvenile and Domestic Bench in 2000. Judge Tower reports a high level of success with remote mediation noting that she has concluded multiple remote mediations and enthusiastically recommends the process.

"It has proven to be a flexible, viable alternative to resolving family law matters creatively and constructively," Judge Tower added. "Clients have expressed relief and gratitude for the opportunity to bring certainty and closure."

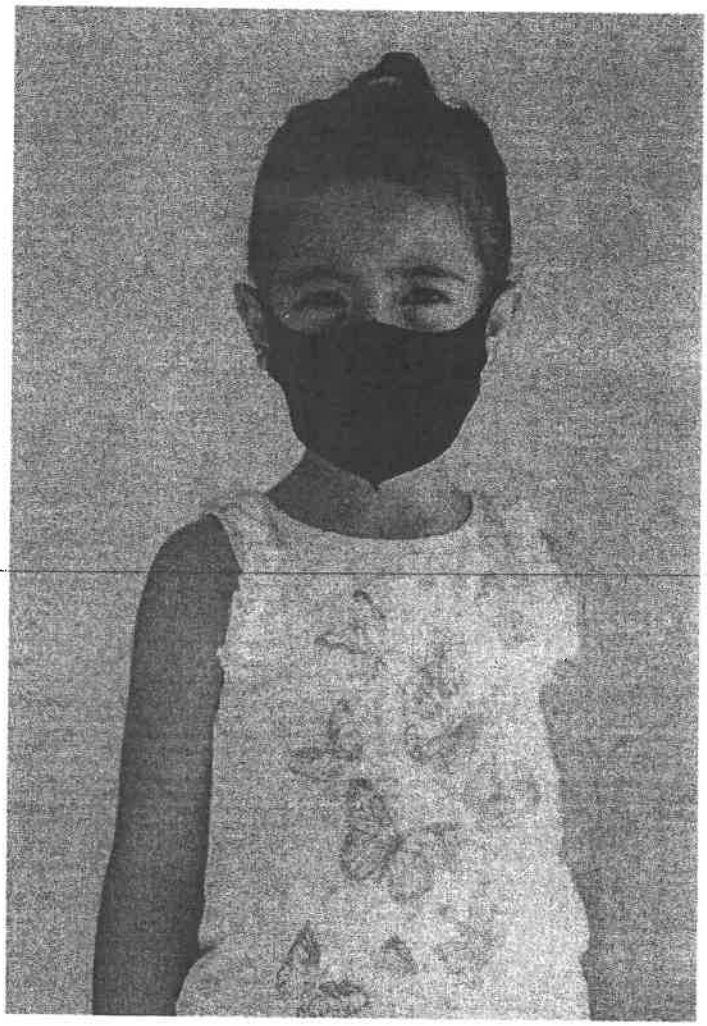
Once families put litigation behind them, they can begin the work of healing and restoring their children's security and confidence, which also requires a new approach. Archer reminds us that even though parents have differences, it is critical to find common ground, particularly now, stating, "It is already apparent that combining the effects of COVID-19 and domestic litigation…can have debilitating effects on the mental health" of family members. Archer urges parents to "maintain positive and close relationships with their children," adding, "the quality of the parent – child relationship is the single best predictor of the child's emotional development."

When parents struggle to communicate about parenting issues, it may be wise for them to consider remote mental health services. Due to the pandemic, many insurance providers are waiving copayments and authorizing insurance payments for "telehealth" or video therapy. Remote family or co-parenting sessions may be easier than traditional sessions for post-divorce couples who find it difficult to be in the same room. Having professional guidance during sensitive conversations

Family Law *continued on page 23*

Family Law: The Impact of COVID-19 on Child Support Cases in 2020 and Beyond

by Bretta Z. Lewis



As the nation experiences a spike in COVID cases, and as we embark on what is likely to be a bizarre holiday season (because...2020), family lawyers continue to face difficult questions from concerned clients who rely on child support to make ends meet, as well as clients paying support at levels they believe are not sustainable.

Even in typical times, parents disagree about what costs are reasonable for childcare and healthcare, and each expresses doubt that the other is being forthcoming about gross income and earning potential. In 2020, the pandemic has thrown a new variable into these everyday arguments and has created additional stress on both sides of child support cases. Financial insecurity and the uncertainty of school attendance has made forecasting an economic future and calculating a reliable, long-term child support award more challenging than ever.

Additionally, in child support cases that have been pending since prior to the pandemic, attorneys and trial judges face a myriad of complex calculations that take into account unprecedented periods of low income caused by business closures, as well as income highs generated by unemployment payments and stimulus checks. Restaurant workers, hospitality employees, and airline industry personnel may have periods of no income, while construction workers, real estate agents, and grocery store workers may be working overtime and making higher salaries than ever. None of these numbers are sustainable, but they represent real money that is changing hands, so the primary parent asks, "Shouldn't the children benefit, even temporarily?" At the same time, the payor parent asks, "How can we use these numbers? ... Do I have to work overtime forever or go to jail?"

With these wildly fluctuating scenarios, how can Virginia attorneys competently advise clients, whether they are payors or payees, in these uncertain times? This article, written with assistance from the Division of Child Support Enforcement, aims to guide Virginia lawyers in advising clients and suggesting pragmatic solutions for the child support problems caused by the pandemic and the nightmare that is 2020.

Income Issues Caused by 2020 Anomalies

In cases filed prior to 2020 that were continued during Court closures (including appeals), as well as cases with large arrearages accumulated before 2020, child support calculations may span

a period of time since well before the pandemic. If your client is an employee of an industry impacted by the pandemic, your case will likely involve either very low income caused by closures, or very high income bolstered by governmental benefit payments, or a combination of both.

The payor will likely argue that 2020 unemployment and stimulus payments should not be included because they are not regular income on which a long-term order should rely. To the contrary, the payee will argue that all payments are income to which the child should be entitled in any computation of child support. **In this scenario, the law favors the payee. "Stimulus checks" are not mentioned in the statute, but are not excluded and would properly be considered income.**

Pursuant to Virginia Code § 20-108.2(C), the definition of "income" used to calcaulate child support includes but is not limited to, "salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits ...[1] workers' compensation benefits, **unemployment insurance benefits,** disability insurance benefits, veterans' benefits, spousal support, rental income, gifts, prizes or awards **[emphasis added]**."

Although there are exceptions to what is considered income (*please see footnote*), the inclusion of unemployment benefits is explicit, as are gifts, prizes, and awards, which, by definition, are not guaranteed to be repeated. As such, the clear intent of the legislature was to include unusual payments in child support so that the child may share in the financial windfalls of the parents regardless of the reliability of the funds.

Case law holds "the amount of child support under the guidelines must be based on the parents' actual gross income."[2] Cases that directly address unusual or unique payments, such as gifts from family members, hold that it is proper to include such payments, even when the gift is not likely to be repeated.[3]

While case law seems clear, the result of inflated 2020 calculations is likely to cause consternation for payor clients, so the best practice in this anomalous year may be to find a solution that leads to an agreement between payor and payee.

When one or both parents have received stimulus money or unemployment payments, which is clearly akin to a gift as contemplated in *Howe*, one solution is to calculate guidelines using actual (or annualized) income from 2020 to determine if there is a marked inflation. It is likely in this scenario, particularly if both parents received governmental benefits, that the 2020 child support may **not** be unreasonably elevated because both parties will have experienced an increase that is unlikely to be repeated in 2021. Seeing these numbers on paper may help calm the clients if they see that the bump in income on both sides actually leveled out.

In a case that spans several years, especially when there is an arrearage, running the 2020 guidelines and assigning an amount to that year separately is one solution to determine the correct amount that should have been paid in 2020. Once that is accomplished, a separate provision may be crafted for non-2020 support. The parties may agree to average the 2020 number with 2018 and/or 2019, or use the 2019 number as a more typical income figure for running 2021 guidelines.

It is prudent to advise clients who are paying inflated 2020 support numbers to file early in 2021 for a reduction, because courts will continue to docket slowly while managing the COVID closure backlog. By the time the client gets into court, the payor and payee will likely have 2021 data that will allow annualization, paving the way for faster relief if the payors find themselves in an economically perilous situation as the result of an inflated award. In the interim, mediation or negotiation may be successful.

Child Care Issues Caused by the Pandemic

Currently, Virginia school systems are operating on various platforms including in-person, distance, and hybrid learning. There is no uniformity between cities, counties, or regions, so attorneys in the Commonwealth have an ever-changing matrix of childcare issues to consider in child support cases.

In many cases, parents face a Hobson's choice of paying for daycare that was not anticipated before the pandemic, or taking leave from work to supervise children who are at home. To make matters worse, schools are changing plans daily, and parents have no idea how to calculate childcare costs from one month to the next.

Encouraging parties to work together for the good of the children remains the best practice.

As with changing income levels, attorneys should advise their clients to run the guidelines using expenses that they *actually have*, and not the expenses that they would or could have in a different scenario. In cases where the children are at home rather than school, it makes sense to identify periods when child care was more expensive and to annualize the amount. Parents have always annualized higher childcare costs for summer, so applying the "COVID" months in the same way should not be a novel concept.

Using DCSE to Assist Clients In Adjusting Support Amounts

In the past, the Division of Child Support Enforcement (DCSE) would typically engage with parties in an administrative capacity only, or DCSE would become involved after the entry of a decree if a substantial arrearage had accumulated and the payee sought enforcement. Although many family law attorneys have limited or no experience with DCSE, this may soon change. In 2020, DCSE has taken steps to alleviate the confusion and burden on the Court system that has been caused by the pandemic.

With child support calculations thrown into turmoil by COVID-19, DCSE hopes to provide assistance to parties who need to adjust support payments faster than the courts can accommodate. Since early 2020, DCSE has expanded operations to provide non-litigation options when a prior order needs to be reviewed and/or adjusted to accommodate changes in income, child care, or other expenses.

Darnell

Geoffrey Scott Darnell, Esq., Legal Director of Operations for DCSE East, reported that since the onset of the pandemic, **"DCSE has been expanding its services and offering relief to payors and payees alike."** "We don't see ourselves as representing one party," he said, "We see ourselves as an agency that can help both parties come together to get the children the support they need, while taking into account the totality of the circumstances so that the solution is viable for both parents." Darnell explained, "Currently, DCSE is in the process of implementing new procedures to facilitate expanded applications of the Administrative Review of Court orders under Virginia Code § 63.2-1921."[4]

Darnell added, "The goal is to have more orders reviewed out of court, which can be done remotely in most cases. The only need for a hearing would be if there is objection to the new order and a hearing is requested." Darnell stated that DCSE's goal is threefold: **"Our hope is to (1) reduce new docket size to assist courts in catching up with the backlog; (2) keep more people out of court for safety and efficiency; and (3) have more compliant parties because they have worked through and agreed on an order in more cases."** Darnell added, "This has been an underused option for DCSE in the past but will be a priority in 2021."

In short, during the remainder of 2020 and beyond, encouraging parties to work together for the good of the children remains the best practice. With the help of DCSE, Virginia lawyers have a new opportunity to encourage families to compromise and agree on a new path forward.

Endnotes

1 Income under this section does not include benefits from public assistance and social services programs as defined in § 63.2-100; Federal supplemental security income benefits; Child support received; or Income received by the payor from secondary employment income not previously included in "gross income," where the payor obtained the income to discharge a child support arrearage established by a court or administrative order and the payor is paying the arrearage pursuant to the order.

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