



VBBA ~ VBJDR

**ANNUAL BENCH/
BAR CLE**

***September
22, 2022***

8:30a-5:30pm VB TCC/ATC

We are back- in person and on-line!

CLE/IDC/GAL Credit Pending

**SPONSORED BY
Virginia Beach Bar Association JDR Committee**

8:30am-9am Registration and Breakfast

9:00am-10am Grandparents/3rd Party Custody

1 hr

- This session will discuss the different standards that the courts apply for third party petitions for custody versus visitation, important cases regarding third party custody and visitation issues, the recent amendment to Virginia Code § 20-124.2 regarding grandparent visitation including the debate regarding its constitutionality and practice pointers for attorneys trying these types of cases.

- a. Judge Eveleigh
- b. Judge Lannetti
- c. Cynthia Chaing, Esq.

10am-11:30am Felony Child Abuse: New Law, New Considerations, and Implications for Companion DHS Cases

1 & ½ hrs

- Parental Privilege: *Eberhardt & Woodson*
- Adults Charged as Adults for Juvenile Offenses
- Domestic Violence
- DHS Interview Requirements, Joint Investigation Statute, Foster Care Timeline and Pending Indictments
 - Judge Bennett
 - Megan Lang, CWA
 - Richard Edgington, PD
 - Brad Hudgins, CA

11:30am-11:45am Break

11:45am-12:45pm The 17.5/18-21 GAP

1 hr

- Charges, Certification, and Transfer Issues
- Sentencing Issues
- Young Adults w/ MH and/or ID Diagnosis
 - i. Changes and Challenges in service options
 - ii. Changes and Challenges in placement options
 - Judge Quick
 - Andrew Rice, CWA
 - Krystal Kennedy, C&Y
 - Christianna Cunningham, CA

12:45pm-1:45pm Lunch : SPEAKER- TRAVIS HASSAN MAY

1:45pm-2:45pm Relief of Custody – A Multidisciplinary Approach

1 hr

- Judge Bennett
- Dr. Kelly Doolan, C&Y
- Kyle Massey, DHS
- Dayna Bandy, VBDHS-CSA
- Katy McCurdy, CSU
- Elena Ilardi, CA

2:45-3:45pm

Sex Trafficking In Virginia Beach

1 hr

- Judge Shupert
- Judge Hollowell
- Nickle Herron, CWA
- Mindy Stolworthy, PD
- Rachel Evans, CA
- Jospeh Garrett, DHS/VB Task Force

3:45pm-3:50pm

Break

3:50pm-5:50pm

HOT TOPIC IN ETHICS

2 hrs

- Bretta Lewis
- Judge Eveleigh
- Judge Normile

THIRD PARTY CUSTODY & VISITATION RIGHTS IN VIRGINIA

2022

Third-Party Custody and Visitation Rights in Virginia

I. Fundamental Right of Parents over Care, Custody, and Control of Their Children

- A. “[S]o long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.” *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000) (plurality opinion).
- B. The “liberty interest . . . of parents in the care, custody, and control of their children---is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel*, 530 U.S. at 65.
- C. There is a presumption that fit parents act in the best interests of their children. *Id.* at 68-69.
- D. A best-interests analysis alone, without any presumption in favor of a fit parent’s decision, improperly infringes upon fundamental liberty interest of parents in the care, custody, and control of their children. *See Williams v. Williams*, 24 Va. App. 778,784-85 (1997).

II. 3-Prong Test for Third-Party Custody/Visitation:

A. Prong 1: Is the petitioner a “person of legitimate interest”?

1. First apply the straightforward language in Va. Code § 20-124.1

- a. “Person with a legitimate interest” shall be broadly construed and includes, but is not limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives, and family members provided any such party has intervened in the suit or is otherwise properly before the court.
- b. The term shall be broadly construed to accommodate the best interest of the child.
- c. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily; (ii) whose interest in the child derives from or through a person whose parental rights have been terminated, either voluntarily or involuntarily, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to Va. Code § 63.2-1241; or (iii) who has been convicted of a violation of subsection A of Va. Code § 18.2-61, § 18.2-63, subsection B of Va. Code § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation.”

2. Next, if needed, apply expanded options in *Surles v. Mayer*, 48 Va. App. 146, 165 (2006)
 - a. “To qualify as a person of legitimate interest the petitioner need only show that he maintains a relationship with the child similar in nature to those expressly listed in Code § 20-124.1.”

B. Prong 2: If petitioner is found to be a “person of legitimate interest”

1. If the issue is custody: Is there clear and convincing evidence to rebut the legal presumption in favor of parents?
 - a. Va. Code § 20-124.2(B): “In determining custody, the court shall give primary consideration to the best interests of the child. . . . The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest.”
 - b. Five circumstances that rebut the presumption – *Bailes v. Sours*, 231 Va. 96, 340 (1986)
 - 1) Parental unfitness,
 - 2) Previous order of divestiture,
 - 3) Voluntary relinquishment of rights,
 - 4) Abandonment, or
 - 5) Special facts and circumstances constituting an extraordinary reason for taking a child from its parent.
2. If the issue is visitation: Is there clear and convincing evidence that there would be actual harm done to the child if the third party was not granted visitation?
 - a. *Surles v. Mayer*, 48 Va. App. 146, 166-67 (2006)
 - 1) “[W]hen fit parents object to non-parental visitation, a trial court should apply ‘the best interests standard in determining visitation only after it finds harm if visitation is not ordered.’”
 - 2) “To justify a finding of actual harm under the clear and convincing burden of proof, the evidence must establish more than the obvious observation that the child would benefit from the continuing emotional attachment with the [third party].”
 - b. EXCEPTIONS to actual harm requirement:
 - 1) If one of the two parents affirmatively requests the third party visitation: *Surles v. Mayer*, 48 Va. App. 146, 167 (2006)
 - a) “[T]he actual harm standard does not apply where one parent objects to the third party’s request for visitation, but the other parent affirmatively requests that the third party be allowed visitation.”

2) If the third party already has custody: *Surles v. Mayer*, 48 Va. App. 146, 168 (2006)

a) “[W]here the third party already possesses, through a valid consent order, joint legal custody of the child and sole physical custody of the child, the ‘actual harm’ standard is likewise inapplicable.”

3) If a grandparent is the third party and the related parent is deceased or incapacitated: Va. Code § 20-124.2(B2)

a) “In any case or proceeding in which a grandparent has petitioned the court for visitation with a minor grandchild, and a natural or adoptive parent of the minor grandchild is deceased or incapacitated, the grandparent who is related to such deceased or incapacitated parent shall be permitted to introduce evidence of such parent’s consent to visitation with the grandparent, in accordance with the rules of evidence. If the parent’s consent is proven by a preponderance of the evidence, the court may then determine if grandparent visitation is in the best interest of the minor grandchild.”

C. Even if Prong 1 and Prong 2 are met, is this custody/visitation arrangement in the best interest of the child?

1. Va. Code § 20-124.3: “In determining best interests of a child for purposes of determining custody or visitation arrangements . . . the court shall consider the following:

- a. “The age and physical and mental condition of the child, giving due consideration to the child’s changing developmental needs;
- b. “The age and physical and mental condition of each parent [and the third party];
- c. “The relationship existing between each parent[, the third party,] 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;
- d. “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;
- e. “The role that each parent [and the third party] has played and will play in the future, in the upbringing and care of the child;
- f. “The propensity of each parent [and the third party] 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;
- g. “The relative willingness and demonstrated ability of each parent [and the third party] to maintain a close and continuing relationship with the child, and the ability of each parent [and the third party] to cooperate in and resolve disputes regarding matters affecting the child;

- h. “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;
- i. “Any history of (i) family abuse as that term is defined in Va. Code § 16.1-228; (ii) sexual abuse; (iii) child abuse; or (iv) an act of violence, force, or threat as defined in Va. Code § 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
- j. Such other factors as the court deems necessary and proper to the determination.”

III. Practice Tips

A. When working with the actual harm prong of visitation

1. Because the court will not overturn a fit parent’s decision, emphasize the parent’s fitness/unfitness.
 - a. *See Commonwealth v. Hayes*, 215 Va. 49, 53, 205 S.E.2d 644, 648 (1974).
 - 1) Addressed that such a finding of unfitness presumably would be based upon “anti-social, immoral, and illegal conduct.”
 - b. *See Turner v. Turner*, 3 Va. App. 31, 348 (1986)
 - 1) “Dr. Loganbill found that both parents were fit, that they were providing the child supportive, nurturing parenting, and that the child had a healthy bond with each parent. There is no claim that the father is in any way an unfit parent.” *Turner*, 3 Va. App. at 39.
 - 2) “The record reveals that the child is well mannered, well groomed, well adjusted, doing well in school and progressing well emotionally. In short, the father was doing a good job as the custodial parent.” *Id.* at 38. “Where factual situations present clear unfitness, danger to a child, unwillingness to parent, abandonment of a child and other gross conduct, the application of the *Keel* [best-interests] test may not be difficult.” *Id.* at 37.
 - c. *See Dotson v. Hylton*, 29 Va. App. 635 (1999)
 - 1) Even an incarcerated and convicted felon, serving 10 years, can be deemed a fit parent.
 - d. *See Melton-Parson v. Melton*, 94 Va. Cir. 305, 305-6 (Norfolk 2016)
 - 1) The Mother was found to be fit with regard to providing for the Child’s “financial, educational, moral, and social needs.”
2. Because the continuing emotional attachment to the third party alone is not sufficient to prove actual harm, consider expert testimony that there will be long-term harm and future effects.
 - a. *See O’Rourke v. Vuturo*, 49 Va. App. 139, 149-50 (2006)

3. Note that only an affirmative request for third party visitation by one of the parents will result in the actual harm test no longer applying; silence or failure to object will not be construed as an affirmative request.

a. *Surles v. Mayer*, 48 Va. App. 146, 169 (2006)

IV. Inconsistencies and Concerns with Virginia Law for Third Party Custody/Visitation

A. The Current Legal Tests for Third Party Custody/Visitation

1. Third Party Visitation: As it stands, the standard for third party visitation is more stringent than the standard for third party custody. To adjudicate third party visitation, the Court applies the actual harm test, requiring the nonparent to prove by clear and convincing evidence that the denial of visitation would cause the child actual harm. Then, the Court analyzes whether visitation is in the best interests of the child.
2. Third Party Custody: For third party custody, Virginia law only requires that the third party, who must still be a person of legitimate interest, demonstrate that custody with the third party is in the best interests of the child, with no burden to prove actual harm.

B. Third Party Visitation: Objecting, Silent, or Deceased Parent

1. Virginia Court of Appeals held in *Surles v. Mayer* that when one parent objects to third party visitation and the other parent is silent, that silence is not considered acquiescence, and so the third party seeking visitation must still prove actual harm.
2. In Virginia, when one parent requests third party visitation and the other parent objects, then a best-interests analysis is applied; this balances the supreme rights of both parents. However, if both parents object to a third party's visitation, then the third party must prove actual harm absent visitation to overcome the presumption in favor of both parents' decision. *Melton-Parson v. Melton*, 94 Va. Cir. 305 (2016).
3. Therefore, if one parent is deceased and the other parent objects to third party visitation, it can be argued that the deceased parent's inability to approve of or object to third party visitation does not permit the application of the best-interests analysis. This arguably is still true even if there is evidence that the deceased parent might have approved of the visitation, as assuming a silent parent's current position has been found to potentially infringe upon the active and vocal parent's right to care, custody, and control over the children. *See id.*

C. Concerns with Virginia's Current Custody/Visitation Law

1. *See generally* David W. Lannetti, *A Nonparent's Ability to Infringe on the Fundamental Right of Parenting: Reconciling Virginia's Nonparental Child Custody and Visitation Standards*, 30 Regent U. L. Rev. 209 (2017-2018).
2. Custody almost certainly should require a more demanding analysis than visitation, yet Virginia imposes a more stringent standard for determining third party visitation rights than custody rights.

3. Virginia case law provides the basis for this discrepancy, but the more rational system would be to either require a showing of actual harm for both nonparent visitation and custody, or to require actual harm for custody but not visitation.

D. Potential Solutions to Reconcile Current Custody and Visitation Law in Virginia

1. Consistent Interpretation of Virginia Case Law

- a. Interpret “extraordinary reason” prong of the test used in *Bailes v. Sours* for nonparent custody to require the nonparent seeking custody to prove actual harm absent a custody determination in the nonparent’s favor. 231 Va. 96, 340 (1986)
- b. This appears consistent with other Virginia decisions:
 - 1) *South v. South*, No. 0700-04-2, 2005 Va. App. LEXIS 96, at *9-11 (Va. Ct. App. Mar. 8, 2005) (“[T]he correct legal test in custody cases between a parent and non-parents must at a minimum satisfy the standards established for visitation cases.”).
 - 2) *Micus v. Mitchell*, No. 0964-05-2, 2006 Va. App. LEXIS 81, at *9 (Mar. 7, 2006) (explaining that awarding custody to grandmother requires showing that denial of custody would result in actual harm to “Child’s health or welfare”).

2. Possible New Test for Nonparental Custody Determinations

- a. The Virginia Supreme Court could devise a new test that either requires a demonstration of actual harm for both nonparent visitation and custody determinations, or one that requires actual harm for custody and some lower burden for visitation.

3. Possible Statutory Revisions

- a. The General Assembly could directly amend the statute to remedy the imbalance between the nonparent visitation and custody standards.

V. Recent Change to Va. Code § 20-124.2(B2)

- A. Under Va. Code § 20-124.2, subsection B2, when a grandparent petitions a court for visitation of a minor grandchild, and “a natural or adoptive parent of the minor grandchild is deceased or incapacitated, the grandparent who is related to such deceased or incapacitated parent shall be permitted to introduce evidence of such parent’s consent to visitation with the grandparent, in accordance with the rules of evidence.”
- B. Arguments that the Statutory Provision Is Unconstitutional
 1. In cases in which one parent is silent and the other parent objects, the silent parent’s silence is not the equivalent of approval. Therefore, such scenarios result in the application of the actual harm standard, as if both parents objected. A parent’s silence cannot overcome the other parent’s liberty interest in controlling the custody, care, and control of their children. Only when the parents disagree do these interests balance out such that the Court will only need to perform a best-interests analysis.

2. By allowing a grandparent to submit evidence of a silent parent's approval, a grandparent can now compete with a fit parent's decision, weakening the constitutionally required presumption that a fit parent acts in the best interest of the child.
 3. In addition, evidence of prior consent might not be sufficient to demonstrate that the deceased or incapacitated parent would now approve of visitation. Allowing a grandparent to provide evidence of past consent weakens the presumption in favor of parental control over visitation of third parties and infringes upon the active parent's fundamental liberty interest in the custody, care, and control of his or her children.
- C. Arguments that the Statutory Provision Is Constitutional
- a. Allowing grandparents to provide evidence of a deceased or incapacitated parent's consent arguably removes that parent's silence and provides that parent with a voice. As such, there would be no silent parent, and allowing grandparents to admit evidence of consent helps protect the liberty interest of the incapacitated or deceased individual. This additional mechanism for grandparents to argue visitation would not infringe upon the active parent's liberty interest in the custody, care, and control of the child; rather, it would allow grandparents to prove that at least one parent approves of visitation.
 - b. In Virginia, this would allow the application of the best-interests analysis without the need to prove actual harm absent grandparent visitation.

Domestic Violence and Child Abuse

Office of the Commonwealth Attorney

In this presentation:

- 1) Assault and Battery vs. Child Abuse and Neglect
- 2) Corporal Punishment, when is it criminal?
- 3) Class 4 vs. Class 6 Child Abuse

Assault and Battery of a Family or Household Member (Domestic Violence)

- ◊ Virginia Code § 18.2-57.2
- ◊ Any person who commits an assault and battery against a family or household member is guilty of a Class 1 misdemeanor.
- ◊ What is a family or household member?
- ◊ Virginia Code § 16.1-228 defines:
 - (i) the person's spouse
 - (ii) the person's former spouse

Assault and Battery of a Family or Household Member (Domestic Violence)

(iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren

(iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person

(v) any individual who has a child in common with the person

(vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

Abuse and neglect of children

- ◊ Virginia Code § 18.2-371.1
- ◊ Class 4 or Class 6 Felony
- ◊ Subsection A deals with the Class 4 Felony- Serious Injury
- ◊ A. Any parent, guardian, or other person responsible for the care of a child under the age of 18 who by willful act or willful omission or refusal to provide any necessary care for the child's health causes or permits serious injury to the life or health of such child is guilty of a Class 4 felony.

Abuse and neglect of children

♦ “Serious Injury” includes, but not limited to

- (i) disfigurement
- (ii) a fracture
- (iii) a severe burn or laceration
- (iv) Mutilation
- (v) Maiming
- (vi) forced ingestion of dangerous substances
- (vii) life-threatening internal injuries.

Abuse and neglect of children

- ◊ Subsection B deals with the Class 6 Felony- Neglect
- ◊ B. 1. Any parent, guardian, or other person responsible for the care of a child under the age of 18 whose willful act or omission in the care of such child was so gross, wanton, and culpable as to show a reckless disregard for human life is guilty of a Class 6 felony.
- ◊ What does so gross, wanton, and culpable as to show a reckless disregard for human life mean?

Corporal Punishment

◊ When is it criminal?

◊ Woodson v. Commonwealth, 74 Va. App. 685, 2022

-Under the parental privilege, courts do not allow a parent to physically discipline a child if the discipline is “excessive” or “immoderate;” such discipline inflicts, or creates a substantial risk of inflicting, significant harm.

Corporal Punishment

-In the context of the parental privilege to use corporal punishment to discipline children, “significant physical harm” is best understood as involving injuries that are evidenced by something more than mere transient pain or minor temporary marks.

Corporal Punishment

- Court found evidence was insufficient to establish that defendant's conduct in disciplining her children with corporal punishment fell outside parental privilege, in prosecution for assault and battery; no one argued case involved significant physical harm, defendant's use of soft end of belt to hit children was not so unusual, cruel, or degrading without presence of significant injury or other evidence about number or location of strikes

Corporal Punishment

- defendant was of average height and build, and children expressed fear of returning to home but it was unclear whether that fear was linked to defendant in particular or that the fear was a result of the specific instance of corporal punishment defendant administered which was basis for battery charges.

Corporal Punishment

- ◊ Eberhardt v. Commonwealth, 74 Va. App 23, 2021
- ◊ Parent becomes criminally liable when that parent exceeds bounds of moderation and reason in **punishing** his or her child.
- ◊ What constitutes “moderation” and “reason” as applied to the **punishment** of a child is ever changing according to the current period and conditions.

Corporal Punishment

- ◊ Determining whether punishment has been moderate or excessive is for the fact finder to assess based on the attending circumstances, considering the age, size and conduct of the child, the nature of his or her body and the punishment instrument used for the kind of wounds inflicted.

Corporal Punishment

♦ defendant's actions toward his child constituted an unlawful "beating" within meaning of child cruelty statute; in contrast to the actions of co-defendant, who allegedly punched child in the arm three times and was only found guilty of assault and battery, defendant admitted that he punished child for talking in school by striking her ten times with a webbed dog leash, causing child to cry out, and the lashes left numerous linear marks and welts on child's arm, legs, and buttocks, as well as significant bruises

THE

GAP

????????

Transfer and Certification

C. Andrew Rice

Assistant Commonwealth Attorney

Key Terms To Know

- Petitions
- Detention Order – VA Code §§ 16.1-246, 16.1-248.1
- Adjudication
 - Transfer – VA Code §16.1-269.1(A)
 - Certification – VA Code §16.1-269.1(B) and (C)
- Adjudicated delinquent
 - Disposition/Sentencing

What if the juvenile offender turns 21 BEFORE he is charged?

- Virginia Code §16.1-242
- The person shall be proceeded against as an adult.
- Commonwealth can directly indict these individuals.

Transfer to Circuit Court

- VA Code §16.1-269.1(A)
- The juvenile must be 14 years old and charged with a felony offense.
- This is discretionary. The CW must file a motion to transfer requesting the juvenile to be tried as an adult, as well as the appropriate notices pursuant to §§ 16.1-263 and 16.1-264.
- The court must find by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court.

Transfer to Circuit Court

The court to consider the following:

- Juvenile's age
- Seriousness and number of offenses
 - Was the offense committed in a violent, premeditated, or willful manner?
- Was the offense committed against persons or property?
- Whether the maximum punishment for such offense is greater than 20 years.
- Did the offense involve a firearm or dangerous weapon?
- The nature of the juvenile's participation in the offense

Transfer to Circuit Court

The court to consider the following:

- Can the juvenile be retained in the juvenile justice system long enough for effective rehabilitation?
- The record and previous history of the juvenile
- Whether the juvenile previously absconded from juvenile correctional entity (i.e., detention)
- The extent of the juvenile's intellectual disability or mental illness, if any
- The juvenile's school record and education
- The juvenile's mental and emotional maturity
- The juvenile's physical condition and physical maturity

Transfer to Circuit Court: What does this look like?

- 1 – File motion requesting transfer
- 2 – Comply with various notice requirements
- 3 – Preliminary hearing to establish probable cause in JDR
- 4 – If PC established, the judge holds a transfer hearing and considers various factors (VA Code §16.1-269.1(A))

Transfer to Circuit Court: What does this look like?

- 5 – If judge denies transfer, the CW can appeal to CC and the CC judge conducts a transfer hearing
- 6 – If judge grants transfer, the defense can appeal and the CC conducts a transfer hearing
- 7 – If the judge denies transfer, the Commonwealth or Defense may ask for the case to be heard at trial by another judge. 16.1-269.3

Certify to Circuit Court

- Virginia Code 16.1-269.1
- The juvenile must be 16 years old
- (B) The CW shall certify a juvenile if he is charged w/ capital murder, first or second degree murder, lynching, or aggravated malicious wounding.
- (C) The CW may certify a juvenile if we provide notice of intent to certify and the juvenile is charged with felony homicide, malicious wounding by mob, abduction, malicious wounding, poisoning, robbery, carjacking, rape, sodomy, object sexual penetration, or certain distribution offenses.

Certification:

What does this look like?

- 1 – CW files notice of intent to certify
- 2 – the JDR court holds a probable cause hearing
- 3 – if the court finds PC, then the case is certified to the grand jury
- 4 – if the court does not find PC, then the CW may seek a direct indictment in the Circuit Court

Transfer and Certification

C. Andrew Rice

Assistant Commonwealth Attorney

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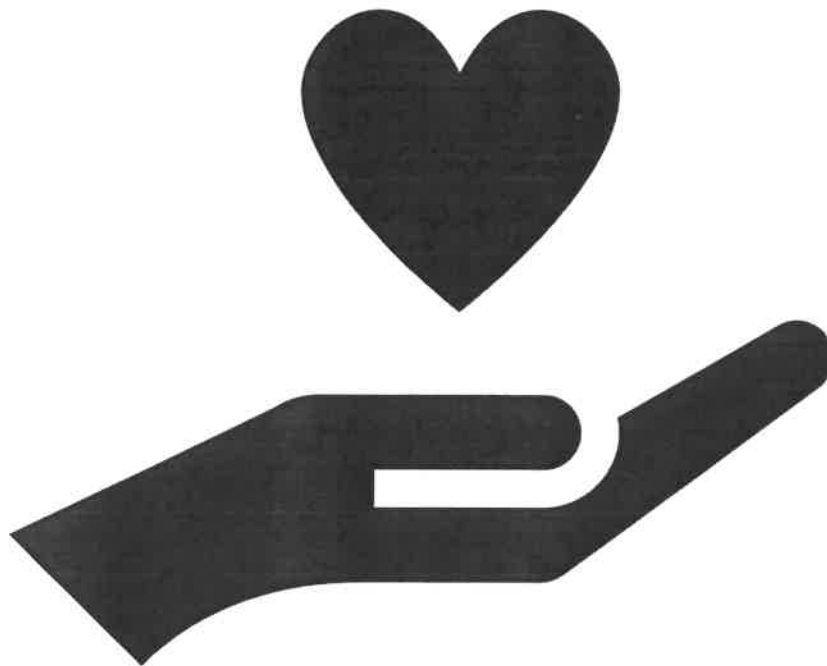
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SERVICES AVAILABLE TO THOSE 18
YEARS OF AGE AND UP

+

(SERVICES FOR UNDER 18 TOO)



MY CHILD IS ABOUT TO BE 18 AND NEEDS HELP!

WHERE DO WE START?

For a myriad of reasons, teens may not be ready to fly solo the second the candles are extinguished from that 18th birthday cake. For some it is merely help with college or job applications and navigating student loans and car insurance. For others- an increasing number- they need more support, support from professionals that can assist with mental and behavioral health issues that will need mitigation for many years to come. Unfortunately, many of the services which are paid for by both government funded and privately funded benefits do not necessarily fit the needs of the young adult- they are not yet designed for that population.

For example, say you represent a young man who is 18 and who has symptoms that present as being on the spectrum, but he has never been officially diagnosed as having autism. He has had an IEP in school to give him more time on tests and but has never been diagnosed as having an intellectual disability ("ID") or other serious developmental delay. He has impulse control issues and is not easily redirected, does have a diagnosis of conduct disorder, and is presently before the court on a car theft charge for which he was arrested at 17. He is on target to graduate with a regular diploma from Renaissance. At home, he needs prompting with his activities of daily living and refuses to assist in household chores. As his counsel, you do not understand why he is the way he is. Thus far, his parents say he has no major mental health diagnosis ("SMHI"). However- his mood suggests he has depressive traits and possibly a personality disorder. He has no interests other than playing on his phone, and frankly- his parents claim they are afraid of him because he can become aggressive when he doesn't get his way or is told what to do. His parents tell you they are about to kick him out and he has burned all of his bridges with the rest of the family. Failure to Launch is not a diagnosis- right? Now what? There is no clear answer- so accept that. But - there is a way to start. ("SDA")

SAME DAY ACCESS ("SDA")

A person in need of a mental health evaluation can access walk-in hours at any CSB throughout Virginia without an appointment, instead of waiting days or even weeks to receive an assessment. SDA marks a dramatic shift from addressing mental health needs only when a crisis occurs to utilizing preventive care to help avoid emergencies and hospital admissions.

In Virginia Beach, SDA is through... VBDHS/Adult Out-Patient Services located at **Pembroke 6**.

**Adult Outpatient Mental Health
Services** (including Same Day Access)
Same Day Access Hours
Monday: 8 a.m. - 2 p.m.

757-385-0511

Tuesday-Thursday: 8 a.m. - 1 p.m.

Friday: 8 a.m. - 12 p.m.

What to expect? Complete an intake and assessment and come up with a preliminary plan for services; receive referrals for additional needed evaluations (if necessary), referral for therapy, medication management, and other services that may be needed, such as substance abuse treatment, and/or referrals to other divisions within DHS that may provide assistance for a particular need where warranted (i.e.) developmental services)

Key Issues to Consider

Mom and Dad" rights end when that 18th candle goes out. The young adult must "do this" all on his/her own. Mom and Dad only have rights where the client "give" the rights- i.e.) signs releases. Mom and Dad can "help" but cannot do unless the young adult appoints them as power of attorney ("POA").

What if there is a concern that the young adult lacks capacity and should not be signing releases or appointing a POA? He or she should be evaluated for capacity in accordance with Virginia Code §64.2-2005- this is different from "competency."

What housing resources are available through DHS?

Housing Resources are limited and depend on diagnosis and funding options.

***Supportive Residential Services (SRS)**

Supportive Residential Services (SRS) provides a continuum of supportive and supervised residential options for adults who have active cases with the Virginia Beach Behavioral Health division to include transitional housing, adult foster care, assisted living facilities, co-occurring transitional housing, and subsidized housing with in-home support. The program also includes behavioral health skill building services that focus on the acquisition of skills in activities of daily living such as personal safety, nutrition, medication management. These services are person-centered and are committed to maximizing individual self-determination, personal choice, and decision-making to enhance the quality of life with full integration into the community. Services provided are determined by person-centered assessments, which become the basis for the specific goals, objectives, and supports necessary for community success and personal fulfillment.

***Project for Assistance in Transition from Homelessness (PATH):** The Project for Assistance in Transition from Homelessness (PATH) program was authorized by the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 and has been an active outreach service under the Virginia Beach Human Services umbrella in Virginia Beach for 20 years. PATH provides services to individuals with serious mental illness, including those with co-occurring substance use disorders, who are experiencing homelessness or are at imminent risk of becoming homeless. PATH

can refer individuals to Behavioral Health Substance Use Services, primary health services, and relevant housing services, such as the **Regional Housing Crisis Hotline**.

PATH provides training to the teams working in shelters, health clinics and to other organizations where homeless require services. PATH can provide presentations for any organization desiring more information on homelessness. **Contact:** Kathleen Brooks-Johnson, Team Leader at (757) 385-0672 (Office) or (757) 636-3160 (Cell)

***Supportive Living Program**

The Supportive Living Program (SLP) serves residents of the City of Virginia Beach who have a diagnosis of Intellectual Disability. Services provided include person-centered planning to assist individuals to develop their abilities as much as possible while residing in community settings throughout the City of Virginia Beach. All components of this program are licensed by the Virginia Department of Behavioral Health and Developmental Services (DBHDS). Intermediate Care Facilities are also certified by the Virginia Department of Health.

***Behavioral Consultation Services**

Behavioral Consultation Services are offered by a certified Positive Behavioral Support Facilitator to assist individuals who have challenging behaviors lead more productive and successful lives. Activities of this service include interviewing and observing the individual, collecting data and developing a behavior plan that best suit the individuals' need. Intervention strategies are structured to identify areas of concern, to understand the meaning of the behavior, and to implement behavior plans designed to reduce problem behaviors and teach essential replacement skills. Persons who support individuals in the program are trained on replacement interventions to ensure success of the individual. All interventions are based on Positive Behavioral Supports and Person-Centered Thinking. Individuals are referred by their support coordinator and this service is provided Monday - Friday, 8:00 am - 5:00 pm.

***Supported Residential Services**

Supportive Living Program (SLP) individuals receive support, assistance and instruction on how to be safe and successful members of the community. Whether it is grocery shopping, managing money, or home safety, SLP will teach the skills necessary to achieve a better quality of life. The program also will coordinate doctor and dental appointments, and assist with medications.

****Mental Health Support Services**

Serves individuals with a diagnosis of intellectual disability and serious mental illness, who need support in major life activities. Individuals must be willing to reach agreement with staff in developing an Individual Service Plan (ISP). Services may include training or reinforcement of skills and appropriate behavior related to health and safety, personal care, activities of daily living, use of community resources. Other services may include monitoring of health, nutrition and physical condition, and assistance with medication management.

Residential Services for Intellectually Disabled Persons

Individuals receive services in group homes located in the City of Virginia Beach. Services are primarily funded via ID Waiver monies. Services may include support and assistance with money management, personal care, participation in recreational and social activities, and coordination of medical and dental care as needed. Overnight awake staffing is provided.

Skilled Nursing Services

Skilled Nursing services are provided as needed to any individual who is receiving Medicaid Waiver Residential Services from the Supportive Living Program. These individuals have chronic complex medical conditions that require long term nursing support to remain in a community-based setting. Nursing staff provide ongoing training and oversight of non-licensed staff.

Intermediate Care Facilities

Intermediate Care Facilities serve persons age 21 or older with a diagnosis of intellectual disability, physical impairments, and chronic health issues, who are residents of Virginia Beach or Health Region V. Services include around the clock awake care, active treatment, leisure and community activities and available 24 hour nursing care. An interdisciplinary team of professionals, along with the individual and their authorized representative or legal guardian, develop a program plan designed to meet their health, safety, and skill needs, provide choice and assist them to engage in a fulfilling lifestyle.

Other Services

The Supportive Living Program employs nurses who educate and consult with individuals and staff on various health issues.

****All referrals to Supportive Living Program services are made through **Developmental Services Case Management** by calling **(757) 385-0600**.

FUNDING?????

Virginia Medicaid

Department of Medical Assistance Services

Virginia's Home and Community Based Services Waiver programs- waivers = funding

Virginia Medicaid provides two types of waivers:

1. Developmental Disability Waivers (DDW)

Virginia has three waivers for individuals with a developmental disability:

- Building Independence for individuals 18 and older,
- Family & Individual Support
- Community Living

Virginia Medicaid administers DD Waivers jointly with the Virginia Department of Behavioral Health and Developmental Services. There is a waiting list for these waivers, and the slots are assigned based on urgency of need. To apply for DD Waiver services, contact your local Community Services Board (CSB). *In Virginia Beach- VBDHS acts as the CSB.*

2. Commonwealth Coordinated Care (CCC) Plus Waiver

The CCC Plus Waiver serves all ages and does not have a waiting list. The waiver provides care in the home and community rather than in a nursing facility or other specialized care medical facility. The CCC Plus Waiver provides

supports and service options for successful living, nursing, respite, assistive technology and environmental modifications.

The Department of Medical Assistance Services (DMAS) oversees the Medicaid Long-term Services and Supports Screening Process in Virginia to evaluate what services may be available to an individual, including services through the CCC Plus waiver.

Social Security Disability

****** In order to qualify for the state benefits – i.e.) the AG Grant (see next section), for the most part (with some limited exceptions), a person must have already been deemed eligible for social security disability. If your child has not already been qualified before the SSA- that will be the first step... to see if they qualify for social security disability.

The Social Security Administration (SSA) administers two programs that provide benefits based on disability: the **Social Security disability insurance Program "Title II"** of the Social Security Act (Act)) and the **Supplemental Security Income (SSI)** program (**Title XVI** of the Act).

Title II provides for payment of disability benefits to disabled individuals who are "insured" under the Act by virtue of their contributions to the Social Security trust fund through the Social Security tax on their earnings, as well as to certain disabled dependents of insured individuals. **Title XVI** provides SSI payments to disabled individuals (including children under age 18) who have limited income and resources.

The Act and SSA's implementing regulations prescribe rules for deciding if an individual is "disabled." SSA's criteria for deciding disability may differ from the criteria applied in other government and private disability programs.

For all individuals applying for disability benefits under Title II, and for adults applying under Title XVI, the definition of disability is the same. ***The law defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.***

Under title XVI, a child under age 18 will be considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments

that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

See link below for potentially qualifying conditions:

<https://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>

Virginia Department for Aging and Rehabilitative Services

AUXILIARY GRANT PROGRAM

An Auxiliary Grant (AG) is a supplement to income for recipients of Supplemental Security Income (SSI) and certain other aged, blind, or disabled individuals residing in an assisted living facility (ALF) licensed by the Virginia Department of Social Services (VDSS) or in an adult foster care (AFC) home approved by a local department of social services (LDSS) or in Supportive Housing (SH) approved by the Department of Behavioral Health and Developmental Services (DBHDS).

This assistance is available through local departments of social services to ensure that AG recipients are able to maintain a standard of living that meets a basic level of need. DARS administers Virginia's AG program.

An individual must be assessed by the local department of social services to determine 1) financial eligibility for an AG and 2) level of care needed. An additional assessment is required for those who meet certain criteria for SH and is evaluated by the local SH provider (i.e. behavioral health or community services board contracted with DBHDS).

Local departments of social services make payments to eligible individuals in an amount equal to the established rate for the setting plus a personal needs allowance per month, minus any income available to the individual from such sources as SSI and Social Security.

However, not all ALFs accept the AG.

The AG program is a state (80%) and locally (20%) funded financial assistance program administered by the Department. The AG rate is determined by the Virginia General Assembly and is adjusted periodically.

Ages 5-21??????

Child & Youth Behavioral Health Services



The Child and Youth Behavioral Health (CYBH) Division serves to enhance the lives of children, adolescents and their families. CYBH offers an array of services designed to assist children and adolescents who are experiencing emotional difficulties, behavior problems and/or substance abuse. The goal of most treatment plans is to help the child succeed while remaining in the family and in school.

Child and Youth Behavioral Services is located at 297 Independence Blvd, Pembroke 6 Building, Suite 300, Virginia Beach, VA 23462 and can be reached by phone at (757) 385-0850

Programs-

After School Therapeutic Day Treatment- The goal of this after school program is to increase the social, educational and psychological development of children in elementary school, grades K-5 that have a mental health diagnosis. This model of service focuses on clinical intervention and support of the child in the community focusing on skill building. The After School Therapeutic Day Treatment classroom provides consistent structure and staff response to maximize behavioral and therapeutic potential for the child.

Case Management- Child and Youth Behavioral Case Management services assists individuals ages 5 – 21, who are still enrolled in a primary or secondary educational setting, in gaining access to needed medical, social, educational and other services. Services include assessing for individual and family needs, planning services, and linking individual to community supports in an effort to promote goals as developed with the child and family. Case Management assists the individual and family to locate, develop or obtain services, resources and public benefits. The case manager assures the coordination of services and service planning with other providers and human service agencies and systems, such as the public school system, local health and human services departments.

Intensive Care Coordination-

Intensive Care Coordination (ICC) provides the coordination of comprehensive community resources and services to children and adolescents who are at risk of entering or who are currently placed in a residential facility. ICC services are short-term services provided to those children and adolescents who would benefit from a higher level of intensity than can be provided by typical case management services. Services and resources may be formal or informal, and can include educational, financial, legal, vocational, medical, psychiatric, psychological, and social support opportunities.

The goal of the ICC service is to maintain the youth in, or transfer the youth to a family based or community-based setting. For youth in a residential setting the goal of ICC is to shorten the time needed at residential placement and decrease the need to re-enter a residential placement after returning to the community.

Intensive Substantive Abuse Treatment-

This program serves adolescents with co-occurring mental health and substance abuse problems. This intensive treatment program meets three hours per week over a minimum of 20 weeks. Parents and guardians attend a weekly family group. The program uses an evidence-based Cognitive Behavioral Therapy approach.

Outpatient Services-

Provides licensed therapists and a board-certified psychiatrist to assist with mental health and substance use problems needs for children, adolescents and their families. Each client is assessed at intake and an individualized treatment plan is created with the client and parent(s) or guardian(s). Outpatient treatment may include individual, family or group therapy; multi-family therapy (several families attend together); individualized substance abuse services; and/or psychiatric evaluation and medication management.

Therapists may also make referrals to programs both in the agency as well as within the community. We utilize a multi-disciplinary team approach including weekly treatment team meetings and clinical supervision on as an needed basis. The outpatient professionals have extensive training in the field of trauma focused care and utilize progressive treatment modalities.

Youth Mobile Crisis Intervention-

The Youth Mobile Crisis Intervention Services Program provides access to immediate behavioral health care delivered in a person-centered manner. Crisis services are available to individuals experiencing acute behavioral health dysfunction requiring immediate clinical attention. The objectives are to prevent the exacerbation of a behavioral/mental health/substance abuse condition; to prevent injury to the person or others; and to provide treatment in the least restrictive setting.

The crisis intervention clinicians make every attempt to offer a crisis assessment within one business day of receiving a referral to the program. Short term crisis counseling is provided in the office and community to include the person's home, school and/or other settings that are appropriate to meeting the needs of the client. All activities are geared toward returning the client/family to pre-crisis level of functioning and to prevent the need for psychiatric hospitalization.

Overview

Virginia Medicaid offers two types of waivers, Developmental Disability (DD) Waivers and the Commonwealth Coordinated Care (CCC) Plus Waiver. Most individuals will access services through three state agencies: their local Department of Social Services (DSS), the Department of Medical Assistance Services (Medicaid), and through their local Department of Health.

The individual will be screened through the local Community Services Board (CSB) or the local Department of Health to determine what types of waiver services he or she may be eligible for. A request for screening should be made to the local CSB to determine if a person qualifies for one of the Developmental Disability Waivers.

1. Developmental Disability (DD) Waivers

Virginia has three waivers that are focused on those individuals that have a diagnosis of developmental disability. The three waivers that provide a continuum of services are:

- Building Independence (BI) for individuals 18 and older
- Family & Individual Support (FIS)
- Community Living (CL)

The DD Waiver Program provides supports and services options for successful living, learning, physical and behavioral health, employment, recreation and community inclusion. This program does have a waiting list and the slots are allocated based on urgency of need. DD Waivers are administered jointly with the Virginia Department of Behavioral Health and Developmental Services (DBHDS).

2. Commonwealth Coordinated Care (CCC) Plus Waiver

Effective July 1, 2017, the Elderly Disabled and Consumer Directed (EDCD) and Technology Assisted waivers were combined into the new *CCC Plus Waiver*. The CCC Plus Waiver is part of Medicaid's managed care program: CCC Plus Health Plan. It serves all ages and does not have a waiting list. The CCC Plus Waiver provides supports and services options for successful living, nursing, respite, assistive technology and environmental modifications.

Additional Resources

- [The ARC of Virginia](#)
- [SOAR365](#)
- [Find a Community Service Board](#)
- **Medicaid's Role for Children with Special Health Care Needs:** [A Look at Eligibility, Services, and Spending](#)
- [VCU Center for Family Involvement](#)
- **Got Transition:** [Youth Health Care Transition](#)

Contact Us

Call Cover Virginia at 1-855-242-8282 (TDD: 1-888-221-1590) or visit our website coverva.org.



DEVELOPMENTAL DISABILITY WAIVERS

Overview

The DD Waiver Program provides supports and services options for successful living, learning, physical and behavioral health, employment, recreation and community inclusion. This program does have a waiting list and the slots are allocated based on urgency of need. DD Waivers are administered jointly with the Virginia Department of Behavioral Health and Developmental Services (DBHDS). Each person who receives a waiver slot will be offered one of these three waivers depending on what kind of supports are needed and what waivers the CSB has available to assign. Each waiver is a little bit different.

Building Independence Waiver

Family and Individual Supports Waiver

Community Living Waiver

Eligibility

- The individual must meet diagnostic eligibility consistent with [Virginia's Definition of Developmental Disability](#).
- The individual must meet the functional criteria for the VA Individual Developmental Disability Eligibility Survey (VIDES). ([VIDES Adult](#), [VIDES Child](#), [VIDES Infant](#))
- The individual must meet financial eligibility. A child does not have to apply or be enrolled in Medicaid when being screened for a waiver. Parent income is never considered for Medicaid Waiver eligibility for a child once he or she has been approved for a waiver slot. To utilize the waiver, the individual must apply and qualify for Medicaid if he or she is not already enrolled in Medicaid.

Covered Services

Regardless of your waiver, everyone has access to the following covered services:

Employment & Day Supports

- Community Engagement
- Community Coaching
- Group Day Services
- Supported Employment

Crisis Supports

- Community-Based Crisis Supports
- Center-Based Crisis Support Services

Residential Options

- Shared Living

Additional Services

- Assistive Technology
- Benefits Planning Services
- Employment and Community Transportation
- Environmental Modifications
- Electronic Home-Based Services
- Personal Emergency Response System (PERS)
- Community Guide
- Transition Services
- Peer Mentor Supports

Apply

To apply for the Developmental Disability Waiver services contact your local [Community Services Board](#). The Community Services Board (CSB) staff will determine if the child:

- meets the definition of a developmental disability and
- meets the functional criteria as assessed on the VIDES screening tool.

Overview

The Commonwealth Coordinated Care (CCC) Plus Waiver [1915 (c)] provides care in the home and community rather than in a nursing facility (NF) or other specialized care medical facility. It delivers services through agency and consumer directed models. This waiver is for:

- adults 65 and older with a medical or nursing need
- Individuals less than 65 with a disability and a medical or nursing need

Eligible Population

The following individuals may be eligible:

- Meet the NF level of care criteria (i.e., they are functionally dependent and have a medical nursing needs); or
- Individuals who are dependent upon technological support and require substantial, ongoing skilled nursing care; and
- The health, safety, welfare of the individual must be safely maintained in the home when the nurse personal care aide is not present; and
- Are determined to be at imminent risk of NF placement; and
- Are determined that community-based care services under the waiver are the critical services that enable the individual to remain at home rather than being placed in a NF

Covered Services

The following services are covered:

- Personal Emergency Response System (PERS), includes Medication Monitoring
- Respite Services (Agency- and Consumer-Directed)
- Services Facilitation
- Transition Services
- Adult Day Health Care
- Assistive Technology (AT)
- Environmental Modifications (EM)
- Personal Care Services (Agency- and Consumer- Directed)
- Private Duty Nursing (RN and LPN)

Apply

To apply for CCC Plus Waiver services, contact your local Department of Social Services. The local Department of Social Services will complete a screening to determine your eligibility for the waiver services. If you are eligible, you will then apply for Medicaid (if you don't already have Medicaid coverage).

Service Limitations

- Personal Care: Soft cap of 56 hours per week, exceptions available based on criteria
- Respite: 480 hours per State fiscal year
- EM: \$5,000 per individual per calendar year
- AT: \$5,000 per individual per calendar year
- Private Duty Nursing: cannot exceed more than 112 hours per week
- Transition Services: \$5,000 per individual per lifetime

Reimbursement Rates

Waiver reimbursement rates can be found on the DMAS website at: <http://www.dmas.virginia.gov/#/longtermwaivers>

Regulatory Basis: 12VAC30-120-900 et seq. (EDCD Waiver) and 12VAC30-120-1700 et seq. (Tech Assisted Waiver) currently. CCC Plus Waiver regulations are currently being written.



VIRGINIA DEPARTMENT FOR AGING
AND REHABILITATIVE SERVICES

Auxiliary Grant Program

What is an Auxiliary Grant?

An Auxiliary Grant is financial assistance for people who receive Supplemental Security Income and certain other aged, blind or disabled individuals who are entering or already living in certain licensed or approved facilities that accept auxiliary grant payments.



Who is eligible?

To be eligible for an Auxiliary Grant in Virginia, you must meet all these conditions:

- Be 65 or over, blind or have another disability
- Reside in a licensed assisted living facility, supportive housing setting or approved adult foster care home
- Be a resident of Virginia for at least 90 days with the intent to remain in Virginia
- Be a citizen of the U.S. or an alien who meets specified criteria
- Have a monthly income less than the approved Auxiliary Grant rate
- Have assets of less than \$2,000 for one person or \$3,000 for a couple
- Have been assessed by an approved evaluator

How do I apply?

You must complete an Application for Benefits, not a Medicaid application. You must also apply for or already receive, Supplemental Security Income.

Submit your application to an eligibility worker at the local department of social services in the city or county where you last lived before entering an institution.

You are responsible for paying for your housing and care until you receive the Auxiliary Grant.





What does the Auxiliary Grant cover?

Room and Board

- Provision of a furnished room in a facility that meets applicable zoning, building and fire safety codes
- Housekeeping services based on the needs of the resident
- Meals and snacks, including extra portions and special diets
- Clean bed linens and towels as needed by the resident and at least weekly

Maintenance and Care

- Assisting with personal hygiene such as bathing, dressing or grooming
- Administering medication including insulin injections
- Providing generic personal toiletries including soap and toilet paper
- Assisting with:
 - Care of personal possessions and personal funds
 - Use of telephone
 - Arranging transportation
 - Getting necessary personal items and clothing
 - Making and keeping appointments
 - Correspondence
- Securing health care and transportation for medical treatment
- Providing social and recreational activities
- General supervision for safety

Personal Needs Allowance

Grant recipients are permitted a monthly personal needs allowance to buy personal items or certain services that the facility may not otherwise provide, including:

- Personal care, such as hair styling or dental care
- Health care, such as medical co-payments, over-the-counter medications or prescriptions not covered by Medicaid
- Personal toiletries, eyeglasses, clothing
- Tobacco products, sodas, snacks

For More Information

For more information about Auxiliary Grants, visit www.dss.virginia.gov/family/as/auxgrant or call DARS' Adult Protective Services Division toll-free at (800) 552-5019.

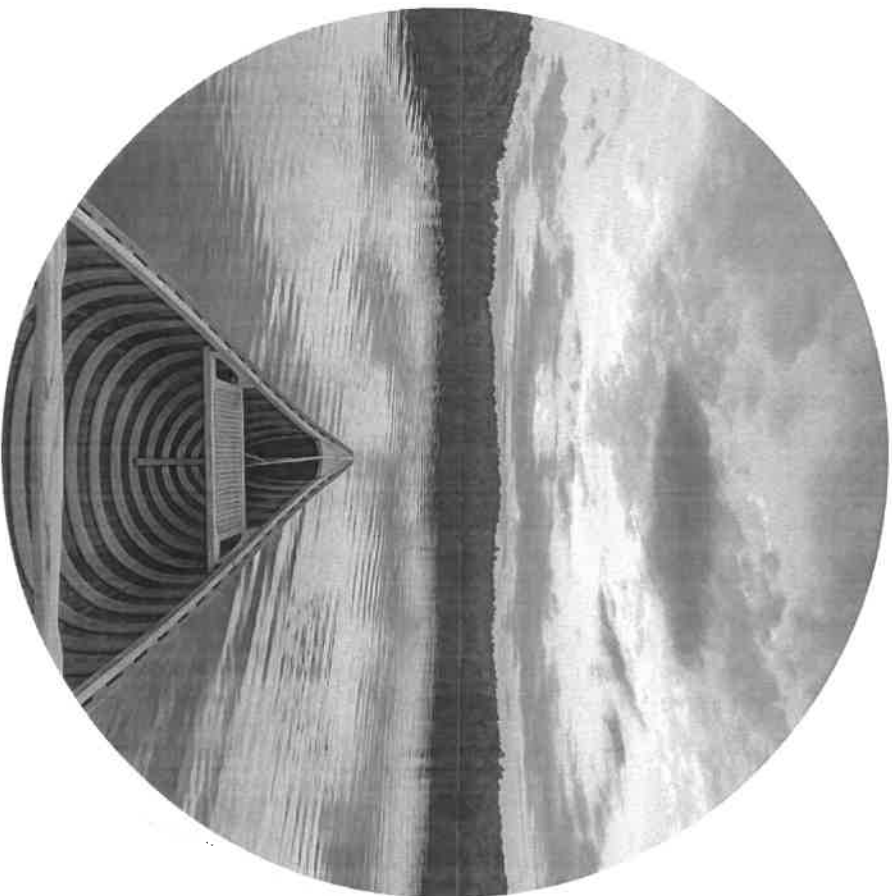
To ask about eligibility, talk to an eligibility worker at your local department of social services. Local offices, their addresses and contact information are listed at www.dss.virginia.gov/localagency.

STOP

ADULT ABUSE

To Report Adult Abuse,
Neglect or Exploitation

Call the toll-free 24-hour
Adult Protective Services
hotline at 888-83ADULT
(888-832-3858).



RELIEF OF CUSTODY

A MULTI-AGENCY PRESENTATION

September 22, 2022

Human Services, Court Services Unit, City
Attorney's Office

DR. KELLY DOOLAN, VBDHS-C&Y, KATIE MCCURDY, COURT
SERVICE UNIT, ELENA ILARDI, ASSOCIATE CITY ATTORNEY,
KYLE MASSEY, VBDHS-COURT LIAISON, DAYNA BANDY, VBDHS-
CSA COORDINATOR

THE HON. ADRIANNE L. BENNETT, PRESIDING JUDGE VBJDR

VIRGINIA BEACH DEPARTMENT OF HUMAN SERVICES' STATEMENT ON RELIEF OF CUSTODY PETITIONS

- It is the position of VBDHS that no family should be required to relinquish custody of their child in order to receive the full complement of services that the child would receive if in foster care. VBDHS offers case management for children with mental and behavioral health issues and works with families to seek funding for services not covered by insurance through the Children's Services Act and other government-funded sources. As a relief of custody is a drastic measure and adds to a child's level of adverse childhood experiences, it should be use as a last resort and only where there is no other option.
- Under Virginia law, a custodian has the right to file a petition for relief of custody, which, if granted, places the child in the custody of another person (a relative or other interested party) or into foster care. It is the position of VBDHS that such petitions should only be used as a last resort when it is clear that the parties have used reasonable efforts to prevent the relief sought and when the relief sought is in the best interest of the child.
- Prior to filing a relief of custody, custodians are referred to VBDHS and a "foster care prevention" case is opened. This means custodians are required to participate in services aimed at preventing the relief of custody. Such services may include, but are not limited to: family counseling, case management services, and a temporary out of home placement through a parental agreement where custody remains with the current custodian.

VIRGINIA CODE

- § 16.1-278.3. Relief of care and custody.
- A. Within 60 days of a hearing on a petition for relief of the care and custody of any child pursuant to § 16.1-277.02 at which the court found (i) good cause for the petitioner's desire to be relieved of a child's care and custody or (ii) that permanent relief of custody and termination of residual parental rights is in the best interest of the child, a dispositional hearing shall be held, if a final order disposing of the matter was not entered at the conclusion of the hearing on the petition held pursuant to § 16.1-277.02.

VIRGINIA CODE

- B. Notice of the dispositional hearing shall be provided to the local department of social services, the guardian *ad litem* for the child, the child if he is at least 12 years of age, and the child's parents, custodian or other person standing *in loco parentis*. However, if a parent's residual parental rights were terminated at the hearing on the petition held pursuant to § 16.1-277.02, no such notice of the hearing pursuant to this section shall be provided to the parent. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian or person standing *in loco parentis* fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that the person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264.

VIRGINIA CODE

- C. The court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection D1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed by the local board of social services or child welfare agency in accordance with § 16.1-281.

VIRGINIA CODE

- D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any child and the court finds by clear and convincing evidence that termination of the parent's parental rights is in the best interest of the child, the court may terminate the parental rights of that parent. If the remaining parent has not petitioned for permanent relief of the care and custody of the child, the remaining parent's parental rights may be terminated in accordance with the provisions of § 16.1-283. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency or (ii) granting custody or guardianship to a person with a legitimate interest. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. Proceedings under this section shall be advanced on the docket so as to provide for their earliest practicable disposition. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

VIRGINIA CODE

- D1. Any order transferring custody of the child to a person with a legitimate interest pursuant to subsection C or D shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a person with a legitimate interest should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.
- E. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian *ad litem* for the child. The court may schedule a hearing on the report with or without the request of a party.
- F. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

TYPES OF CASES

- There are many types of cases in which a child may enter into foster care as a result of a relief of custody or court action that does not filter through Child Protective Services. Here are a few examples:
- 1. A Grandmother adopted three of her grandchildren 10 years ago in Norfolk. She resides in Virginia Beach. Now the children are acting out, defiant, using drugs, and stealing from her. The children may or may not be before the court/diversion. She contacts CPS intake to inquire about relief of custody and is referred to the VB Court Liaison.
- 2. A child is before the court for a sex crime. They have completed treatment but cannot return to the home because the victim child is in the home.

TYPES OF CASES

- 3. A child was adopted out of state and the family is in the military, currently residing in Virginia Beach. The child is receiving case management services through the mental health division and has been in acute care several times and is now in residential treatment. The adoptive family tells the case manager they cannot take the child back into their home.

REFERRAL PROCESS

- The process begins when the family is referred to the Court Liaison. This happens either via CPS Intake, CSU Intake, Juvenile Probation, a direct referral from the court, Case Management, etc.
- The Court Liaison contacts the custodians or meets with them face-to-face and does an assessment while explaining the court process and services. Jurisdiction is also determined (see legal section). If the family is interested in services prior to filing, they are referred to Community Mental Health for case management.
- If the client decides to file, a referral is sent to the VBDHS Prevention Unit to open a case in most instances.



RELIEF OF CUSTODY FROM THE LEGAL PERSPECTIVE

- ***Elena Ilardi, Associate City Attorney**
- **Office of the Virginia Beach City Attorney**



RELIEF OF CUSTODY FROM A STATUTORY PERSPECTIVE

- § 16.1-277.02 Petition for relief of care and custody
 - A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Upon the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a guardian *ad litem* to represent the child in accordance with the provisions of § 16.1-266 and shall schedule the matter for a hearing. Such hearing on the petition may include a partial or final disposition of the matter. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:
 - 1. The child, if he is 12 years of age or older;
 - 2. The guardian *ad litem* for the child;
 - 3. The child's parents, custodian or other person standing *in loco parentis* to the child.
 - 4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.

REFERRAL TO THE LOCAL DEPARTMENT

Why is a ROC necessary? What is the reason?

Is there a less restrictive alternative?

What services and treatment have been provided to the family and by whom prior to the filing of the ROC?

Diligent search for relatives and fictive kin

Family Partnership Meeting

Agency investigation is mandatory and cannot be "delegated to another agency or to the GAL"





Out of home placement?
Long term? Short term?



Residential Treatment?



Intensive In-home Services?



Total severance of legal ties?

**WHAT IS THE
PETITIONER TRYING
TO ACCOMPLISH?**

ROC VS. PARENTAL AGREEMENT (“PA”)

Relief of Custody

- Child is placed in foster care (into the custody of VBDHS)
- Court reviews occur on statutory mandated timeline
- Parents pay child support to the state
- Parents/caretakers/former guardians are expected to **work** the Foster Care Service Plan unless parental rights are terminated
- The ‘15/22’ month rule applies

Parental Agreement

- Child is not in foster care; custody remains with guardian/parent
- No court involvement, review hearings
- A Sliding Scale Co-Payment is borne by the parent/guardian
- Child can receive almost all services child could receive while in foster care through PA- even RTC and VRTC
- “Return to home” must be the goal within 6-12 months
- Parents/former guardians must participate in treatment plan, services and all meetings
- ROC is still an option if PA fails

OTHER OPTIONS

- Relative Placement with services through C&Y (or foster care prevention)
- Fictive Kin Placement with Services through C&Y (or foster care prevention)
- RTC through FAPT and C&Y
- VRTC through FAPT and C&Y
- Case Management through C&Y

QUESTIONS????????????



CASE MANAGEMENT SERVICES

KELLY J. DOOLAN, PH.D., LPC, LMFT

**PROGRAM MANAGER: CASE MANAGEMENT,
INTENSIVE CARE COORDINATION AND
JUVENILE RESTORATION**



CASE MANAGEMENT SERVICES

- **Mental Health Case Management:** this is defined as a service to assist individuals, eligible under the State Plan who reside in a community setting, in gaining access to needed medical, social, educational, and other services. If an individual has co-occurring mental health and substance use disorders, the case manager may include activities to address both, as long as the treatment for the substance abuse condition is intended to positively impact the mental health condition.
- **Population:** The following Department of Behavioral Health and Developmental Services definitions are referred to in the discussion of the appropriate populations for Mental Health Case Management services.

POPULATION DEFINITION

- **Serious Mental Illness (SMI)** - Adults, 18 years of age or older, who have severe and persistent mental or emotional disorders that seriously impair their functioning in such primary aspects of daily living such as personal relations, self-care skills, living arrangements, or employment.
- The population is defined along three dimensions: diagnosis, level of disability, and duration of illness.
- **Serious Emotional Disturbance (SED)** - Serious emotional disturbance in children ages birth through 17 is defined as a serious mental health problem that can be diagnosed under the DSM, or the child must exhibit all of the following:
 - a. Problems in personality development and social functioning that have been exhibited over at least one year's time;
 - b. Problems that are significantly disabling based upon the social functioning of most children that age;
 - c. Problems that have become more disabling over time; and
 - d. Service needs that require significant intervention by more than one agency.
- Children diagnosed with **SED** and a co-occurring substance abuse or developmental disability diagnosis are also eligible for Case Management for Serious Emotional Disturbance.

POPULATION DEFINITION

- At Risk of Serious Emotional Disturbance Children age birth through 7 are considered at risk of developing serious emotional disturbances if they meet at least one of the following criteria:
 - a. The child exhibits behavior or maturity that is significantly different from most children of that age and which is not primarily the result of developmental disabilities;
 - b. Parents, or persons responsible for the child's care, have predisposing factors themselves that could result in the child developing serious emotional or behavioral problems (e.g., inadequate parenting skills, substance abuse, mental illness, or other emotional difficulties, etc.); or
 - c. The child has experienced physical or psychological stressors that have put him or her at risk for serious emotional or behavioral problems (e.g., living in poverty, parental neglect, physical or emotional abuse, etc.).



SERVICE REQUIREMENTS

- **The following services and activities must be provided:**
- Assessment and planning services, to include developing an ISP/TP and referral to other services.
- An assessment must be completed by a qualified mental health case manager to determine the need for services.
- Mandatory monthly case management contact, activity, or communication relevant to the ISP.
- Linking the individual to needed services and supports specified in the ISP/TP.
- Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources.
- Coordinating services and service planning with other agencies and providers involved with the individual.
- Enhancing community integration by contacting other entities to arrange community access and involvement including opportunities to learn community living skills, and use vocational, civic, and recreational services.

SERVICE REQUIREMENTS

- Making collateral contacts (non-therapy), with significant others to promote implementation of the service plan and community adjustment.
- Following up and monitoring to assess ongoing progress and ensuring services are delivered.
- Monitoring service delivery as needed through contacts with service providers as well as periodic site visits and home visits.
- Education and counseling, which guide the individual and develop a supportive relationship that promotes the service plan.
 - Counseling, in this context, is not psychological counseling, examination, or therapy. The case management counseling is defined as problem-solving activities designed to promote community adjustment and to enhance an individual's functional capacity in the community.

REFERRAL TO CYBH CASE MANAGEMENT

- Current operational status due to ongoing COVID precautions:
 - Office hours: Monday, Wednesday 8:00 – 7pm; Tuesday, Thursday, Friday 8:00 – 5pm
 - Office is open for drop off/pick up of paperwork/scripts M-F 8am – 5pm
 - Arrangements may be made in special circumstances for pick outside of these times
 - Skeleton staff to include 1 supervisor, 1 CM, 1 OP and front office staff
 - Psychiatrist available Monday and Wednesday 8:30m- 7pm, Nurse available M- Th
 - Most appointments are conducted via telehealth, face-to-face appointments are available by request on a case-to-case basis
- Contact CYBH front office to schedule intake assessment:
 - 385-0850
 - Front office staff will send (or arrange for pick up) intake documents to guardian for completing, can be scanned and emailed or dropped off at the office
 - Intake scheduled via telehealth session with assigned CM

FUNDING SOURCES

- **Funding for CM**
 - Medicaid – primary source of funding
 - Self pay – if a family does not have Medicaid, they can elect to pay the cost out of pocket \$330.00/month
 - Sliding scale – may qualify for reduced payment, appointment w/fee clerk to determine amount
 - Fee appeal/hardship – is available if the family is unable to cover the cost of the service
- **Funding for referral services:**
 - Medicaid – covers IIHS, ABA, psychological testing
 - FAPT/CSA- an array of services to include virtual residential (parent coaching, mentoring), ICC, RTC, MST, partial hospitalization
 - CIF- can cover short term IIHS, parent coaching and mentoring. However, limited to Compass Youth as vendor

CHILD SERVICES ACT

Dayna Bandy, ACSW, LCSW

CSA Coordinator

VBDHS



CHILDREN'S SERVICES ACT

- The Children's Services Act (CSA) is a law enacted in 1993 to establish a single state pool of funds to support services for eligible youth and their families. State funds, combined with local community funds, are managed by local interagency teams called Community Policy Management Teams (CPMT) and Family Assessment Planning Teams (FAPT). These teams manage receipts and expenditures of funds, service planning, and oversee services to youth in accordance with CSA policy and Virginia Code § 2.2-5206, as well as Virginia Code § 2.2-5208.
- **Five Core Stakeholder**
 - ✓ Social Services – Foster Care and Child Protective Services Ongoing (In Home)
 - ✓ Court Services Unit for the Virginia Beach Juvenile Court
 - ✓ Virginia Beach Public Schools – Special Education Services
 - ✓ Children's Behavioral Health Services for Mental Health and Individuals with Disabilities
 - ✓ Virginia Beach Health Department

ELIGIBLE POPULATION SERVED

- Foster Children
- Children At-Risk of Foster Care (Foster Care Prevention)
- Children with Serious Emotional or Behavioral Issues, who are at Risk of Out-of-Home Placement, at Risk to Themselves or Others – (Children in Need of Services – CHINS)
- Children who cannot be educated in public schools and require a private day or residential education setting

CHINS

Children In Need of Services- CHINS

Children/youth in this category, eligibility is determined based on a

➤ Court Order CHINS- Children In Need of Supervision,
OR

➤ FAPT determined CHINS, Children In Need of Services.

In accordance with the Interagency Guidelines for "Specific Foster Care Services for Children in Need of Services (CHINS)" funded through the Children's Services Act (CSA) eligibility, can be determined by FAPT using the CHINS checklist.

The youth must meet all 4 four (4) Criteria on the checklist to meet eligibility for CSA funding. The CHINS checklist is generally completed for those youth typically referred by the local CSU or the CSB.

- ☐ CHINS determined by Court Order (Requires a CSA Parent Agreement between Parent and CPMT Director of CSU or the Agency providing case management)
- ☐ CHINS determined by FAPT (Requires CHINS Checklist and if out of home placement, a CSA Parental Agreement between Parent and CPMT Agency Director or Designee who provides case management/case support)



RELIEF OF CUSTODY/PARENTAL AGREEMENT

- Parental Agreements give legal authority for CSA funds to be used to place a youth in a state-approved home or licensed facility.
- Under a Parental Agreement, CSA can fund out-of-home placements while the guardians maintain legal custody.
- Parental Agreements are between the guardian and one of our stakeholders (CSU and/or CSB). Schools and DSS are not able to enter into parental agreements.
- Guardians are assessed for a parental copayment as determined in accordance with CPMT policies and procedures and the Code of Virginia.
- Guardians agree to apply for Medicaid, FAMIS, and other public or private funding and resources to assist in paying for services provided.
- Guardians must agree to **actively and consistently** participate in all aspects of assessment, planning, and implementation of services throughout the time the agreement is in effect. This includes participating in FAPT meetings.

RELIEF OF CUSTODY/PARENTAL AGREEMENT

- The act of filing for relief of custody may jeopardize that youths' eligibility to utilize CSA funds as it may nullify the conditions needed for Criterion 4 of the CHINS checklist, thus making the child ineligible for sum-sufficiency.

Criterion 4 (Check One)

The goal of the family ☐ is / ☐ is not to maintain the child at home (for foster care prevention services) or return the child home as soon as appropriate (for parental agreements).

Briefly summarize the facts, including sources and dates of information that the Team used to reach its conclusion:

☐

Recommendation of Team: Child may more appropriately be served through another route.

☐ This child should be referred to the local Department of Social Services.

☐ This child should be referred for evaluation for inpatient psychiatric treatment.

☐ Other: ☐

Conclusion of Team (Check only one)

☐ There are not sufficient facts that this child meets all 4 of the above criteria required for CSA funding.

☐ There are sufficient facts that this child meets all 4 of the above criteria required for CSA funding.

- Engaging,
Empowering, and
Equipping
Families

FOSTER CARE PREVENTION-FAMILY SUPPORT SERVICES

KYLE MASSEY, VBDHS-COURT LIAISON



RELIEF OF CUSTODY

Referrals received from Court, Court Liaison, community providers, and walk-ins

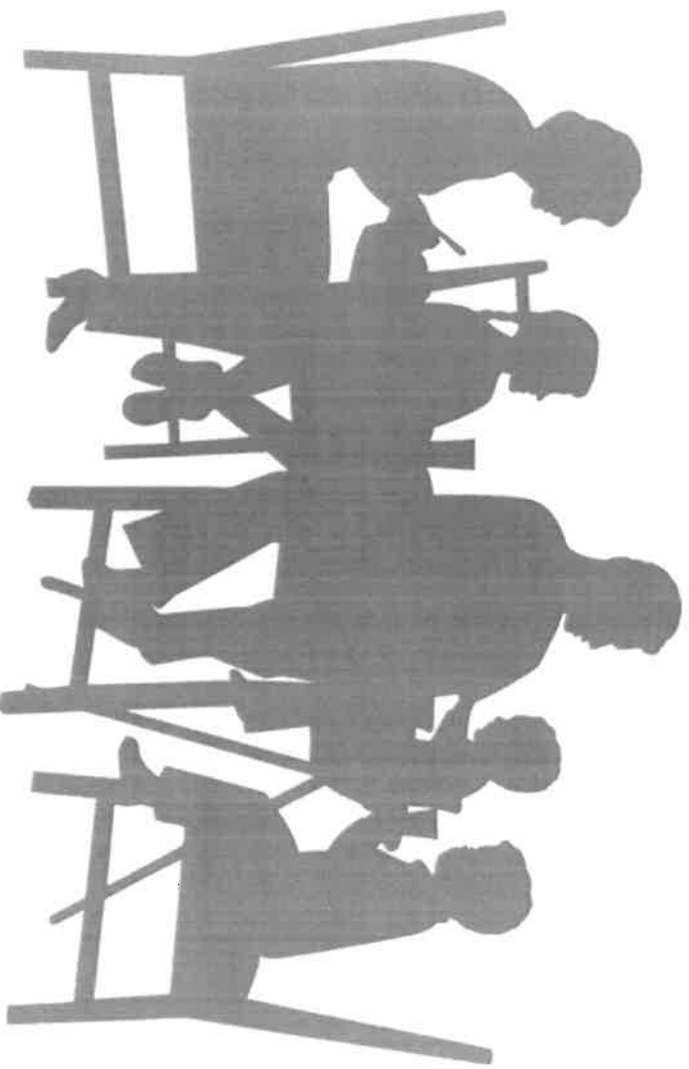
Ideally, referrals are received prior to a relief of custody petition being filed

Families are referred to the Foster Care Prevention/Family Support Team

What is the agency's perspective?

LOCAL AGENCY PERSPECTIVE

- **The goal of prevention services is to strengthen families by ensuring the safety, permanency, and well-being of children.**
- **Primary objectives are to prevent abuse, neglect and family separation. Services are provided with the goal of family stabilization.**



AGENCY PRACTICE MODEL

The Virginia Children's Practice Model embraces family engagement and acknowledges that all children deserve to be safe and raised by their families when possible. It recognizes the following:

- **Families are experts on themselves and all families have strengths**
- **Families should be treated with respect and have the right to say what happens with them**
- **It is our role to help support and strengthen a family's capacity to provide care of their children in the context of their own communities**
- **All children deserve permanent families and permanent connections**
- **Children should have family settings and that out-of-home placements should be temporary and pursued when no capable kinship connections exist**
- **Families deserve to interact with skilled and trained professionals who work collaboratively with community providers and stakeholders to support children and families**
- **Agencies must collect and track outcome data for the purpose of continuous quality improvement and data driven informed practice approaches**

WHAT CAN A FAMILY EXPECT FROM THE LOCAL AGENCY?

- Family assessments
- Service referrals to competent providers
- Relative searches to identify supports
- Collaboration with community providers
- Family Partnership Meetings (FPM)
- Team Consultation Meetings (TCM)

OVERVIEW OF FOSTER CARE PREVENTION AND FAMILY SUPPORT

- Family Strengths
- Linkage to Services
- Community Partnerships
- Trauma Informed Care
- Equal Access
- Exploration of Relatives and Family Supports

COURT SERVICE UNIT

Katie McCurdy
Deputy Director
Virginia Beach Court Service Unit



IMPORTANT JUVENILE INTAKE OPERATIONAL INFORMATION

- Intake Hours are 8-3:00 Monday through Friday
- Intake stops taking Preliminary Protective Orders at 2pm as that is the latest they can currently be added to the docket
- Intake can be reached for questions at 757-385-4361
- Intake Supervisor is Katie McCurdy and she can be reached at 757-385-4361

CHINS

- When someone comes to file a CHINS runaway, Juvenile Intake will request the police report number and when the runaway was reported to the police. In addition, Juvenile Intake will need to know the runaway history.
- Child in Need of Services- The Virginia Code requires that all community resources be exhausted prior to filing a CHINS complaint. Juvenile Intake will request a copy of a letter on letterhead from the service provider showing that the youth has missed 2 appointments. The youth will have needed to know of the appointments and the parent must have still kept the appointments. This information needs to be documented in the letter provided to Intake.

(Virginia Code Section 16.1-260(D))

FILING PETITIONS

- Juvenile Intake is not able to provide anyone with demographic information. The petitioner needs to have all the information for the respondent/juvenile which they would like to file the petition against.
- Juvenile's Name (First and Last and if possible Middle)
- Date of Birth of Juvenile
- Juvenile's Address
- Juvenile's Mother and Father's names, their addresses, and Dates of Birth
- If the petitioner does not have this information they need to make a report with the Virginia Beach Police Department.
- If it is a Felony Offense, even with the above-listed information a report will need to be made with the Virginia Beach Police Department as all Felony Offenses have to be filed through the Virginia Beach Police Department.

DIVERSION

- All criminal matters/truancy matters are screened to determine if they are eligible for Diversion with Juvenile Intake.

MISC

- **GUARDIAN AD LITEM**
 - *Upon the filing of a petition for a relief of custody, the court will appoint a GAL for the child. Guardian ad litem (GAL) means "guardian for the suit." A guardian ad litem in Virginia is an attorney appointed by a judge to assist the court in determining the circumstances of a matter before the court. It is the responsibility of the guardian ad litem to provide independent recommendations to the court about the child's best interests, which can be different from advocating for what the child wants, and to bring balance to the decision-making process. The GAL may conduct interviews and investigate, file reports with the court, and participate in court hearings, teamings, family partnership meetings, or mediation sessions. The GAL has the right to talk to the child's medical providers, mental health providers, teachers, and any other person or child (such as a sibling) who may have information relevant to the proceeding.*
- **Filing child support petitions if the ROC is granted.**
 - In the event the petition is granted, DHS, must file a petition for child support against the biological or adopted parents. This is a separate case which will be transferred to the Division of Child Support Enforcement (DCSE) Docket. Child support is based upon statutory guidelines.

CONCLUSION

•Questions?

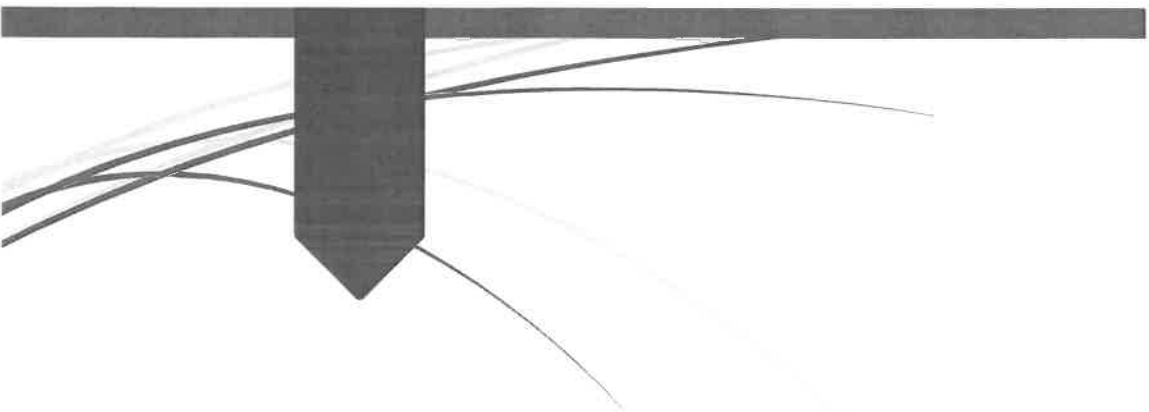


BEHIND THE SCENES CONTRIBUTORS

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- Ninah Pearson, Child and Family Wellbeing Program Manager
- Pamela Poindexter, MSW, Human Services Supervisor, Wellbeing Programs, Family Support
- Dayna Bandy, ACSW, LCSW CSA Coordinator
- Kelly J. Doolan, Ph.D., LPC, LMFT, Child & Youth Services
- Katie McCurdy, Intake Supervisor
- J. Kyle Massey, Court Liaison, Department of Human Services

Thank you for your hard work!

Human Trafficking in Virginia Beach



Relevant Statutes

► §18.2-357 Receiving Money from Earnings of Prostitution – Pandering

1. Receiving money/valuable thing; and
2. From someone engaged in prostitution; and
3. Knowing those earnings came from the act of prostitution.

► Punished as class 4 felony. This is a guidelines offense. (class 3 if prostitute is under 18)

► §18.2-357.1 Commercial Sex Trafficking

1. Pandering AND;
2. (A) By soliciting, inviting, recruiting, encouraging, or causes/attempts to cause person to engage in prostitution – Class 5
3. (B) Through the use of force, intimidation, or deception – class 4
4. (C) Prostitute is under 18 years old – class 3

Relevant Statutes

➡ §18.2-355: Taking, detaining person for prostitution: Human Trafficking

1. Taking against will to bawdy place for the purpose of engaging in prostitution;
2. Taking against will to detain for marriage or to be defiled (raped)
3. Parent allows child to be taken for prostitution or illegal intercourse
4. Minor taken to bawdy place and forced to prostitute

➡ Punishment for 1-3 is treated as Pandering Class 4. 4 is treated as pandering class 3.

➡ §18.2-356 Receiving Money for procuring persons

1. Procuring or placing in a house of prostitution for the purpose of causing such to engage in unlawful sexual acts
2. Causing person to engaged in forced labor/services/prostitution/ or manufacture obscene material or child pornography

➡ Punished as a class 4 felony for an adult. Class 3 if a minor

Relevant Statutes

- **§18.2-346.01 Prostitution; solicitation; commercial exploitation of a minor**
 1. Solicitation of an adult is class 1 misdemeanor
 2. Solicitation of a minor 16-17 years old is a class 6 felony
 3. Solicitation of minor under 16 is a class 5 felony
- **§18.2-361.1 Victims of Sex Trafficking; Affirmative Defense**
 1. “Victim of sex trafficking” - Any person charged with a qualifying offense (18.2-346 or 18.2-347) who committed act at as a result of being solicited, invited, recruited, encouraged, forced, intimidated, or deceived to do acts of prostitution or unlawful sex acts for money
 2. Affirmative defense to prosecution for qualifying offense if victim of sex trafficking

Related Statutes

- ─ §18.2-347 Keeping, residing in, or frequenting a bawdy place
- ─ §18.2-346 Prostitution
- ─ §18.2-349 Using Vehicles to promote prostitution or unlawful sexual intercourse
- ─ §18.2-348 Aiding prostitution or illicit sexual intercourse, etc.
- ─ §18.2-361 Crimes against Nature
- ─ §18.2-248 Possession with the intent to sell schedule I/II drugs
- ─ §18.2-250 Possession schedule I/II drugs
- ─ §18.2-374.1/§18.2-374.1:1 Production of Child Pornography
- ─ §18.2-61 Rape (and other sex based offenses)
- ─ §18.2-47 Abduction

What to look for:

From the Offender

- "Security"/brother/friend/boyfriend
 - They typically admit to knowing the victim but not what she does
 - Or if they know what she does they are there to protect her
- They are present directly before and immediately after appointment
- They have the phones, messages to set up appointments, photos for ads, etc...
- Provide the food, hotel, car, clothes
- Multiple phones for different sides
 - 1. Personal between them and victim
 - 2. Business acting as victim to set up

From the Victim

- Insecure, vulnerable, quiet
- Only one phone, no money, no transportation, no identifying documents
- In love with guy she's with. Gives him money to help him out.
- Branding – symbols/tattoos/specific hair cut/clothing
- Drug use
- No family
- Not local/run away
- Odd bruising
- Know very little about advertisements

Victim Mindset

- ▶ Victims are typically groomed. Some for a long period of time. They don't know how far they are in until they are in too deep.
- ▶ Start as girlfriend. Lavished with gifts, trips, clothes, new phones, etc... Pulled away from family. Over time isolated from friends, school, family. Only one that truly loves them.
- ▶ Then one day they need a favor – "sleep with this guy. He'll pay us \$500. That's enough to get us through. Didn't I tell you you are too pretty for just me." Drugs are introduced along the way. Other girls are now in the picture. "We're all in this together." "If you really loved me you would...". "You can't go back to your parents. Look at what you've done/become. Only I will love you now. You can't leave me"
- ▶ They become brain washed. They feel hopeless and unloved or unworthy. Easier to take the punishment for the offender because it will build trust and they will be promoted.
- ▶ The offender has complete Mind Control. Offender has information control, thought control, emotional control, and resource control.
- ▶ Victims often suffer physical and psychological problems (depression, PTSD, anxiety, fall victim to domestically abusive relationships)
- ▶ Victims can feel empowered. At home/with foster family, they have rules. With the Offender, they feel they have more freedom. They get to drink/do drugs/party.

Common barriers:

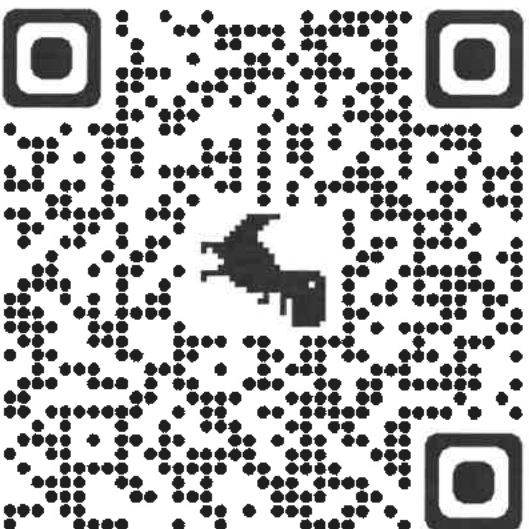
- ▶ Human Trafficking is more than just sex.
 - ▶ Forced labor/servitude
 - ▶ Not just juvenile victims
- ▶ Defense wants best options for client which may be easier to take deal for drug charge and not have testify
- ▶ No family support or backing for victims. Putting them back on streets, foster care, hostile environments they ran from to begin with
- ▶ Walking a victim through a case/prosecution preparation can trigger reactions that send the victim running back. NEED KID GLOVES
- ▶ Doctors get involved and we are limited on what we can know if they don't sign releases.
- ▶ Victims don't see themselves as victims. They will say they choose this. It was their decision, etc...
- ▶ Stockholm Syndrome is real.
- ▶ Victims are too high to remember details. Victims are too young to know where they are/were/going.



Common barriers:

- Lack of trust for Law Enforcement and the Judicial System.
- The Victim may agree to testify and then change their minds. This can happen several times for one case.
- Lack of options to place the victim. Often times a detention facility is the only option to place the victim for their own safety.
- Language barrier and/or in the country illegally. Does not trust Government Authorities.
- Offender may have a friend/child they keep separate from Victim to help in controlling them.
- The Victim can have STD's or other health related issues derived from their way of life.
- Often times there is not just one barrier to overcome. All of the above bullet points can manifest themselves in one Victim/case.

Additional Information



HUMAN TRAFFICKING I

exploiting a person through force, fraud, or coercion.

sex trafficking, forced labor, and domestic servitude.

happening everywhere, even in the United States, and victims can be U.S. Citizens or of any nationality, age, socioeconomic status, or gender.

any person under the age of 18 involved in a commercial sex act.

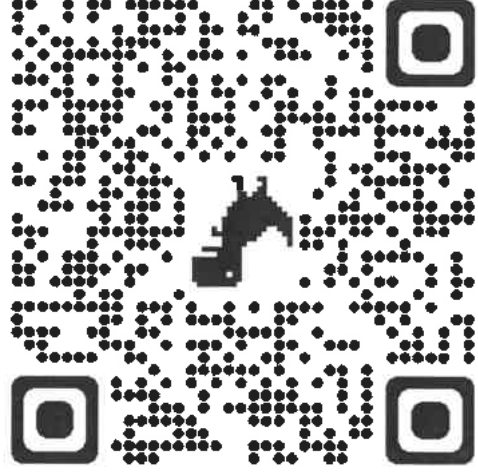
HUMAN TRAFFICKING

Below is the QR code at the end of the HT Power Point.

It takes you to the Homeland Security Blue Campaign, which is all about Human Trafficking. https://www.dhs.gov/blue-campaign/course_changes_ppt

Scan the QR Code with your phone camera and it will take you to the link.

The site it takes you to has a lot of info and a small video scenario with quiz that shows different aspects of Human Trafficking. It only takes a few minutes to go through all the scenarios.



VBBA/VBJDRG ETHICS 2022



WHAT ARE WE DOING TODAY?

- We have a FUN FILLED two hour ETHICAL PARTY happening!
- Awesome 30 minute introduction and summary of rules implicated with a SUPER COOL Power Point Presentation!
- 90 AMAZING minutes of Hypotheticals with OUR PANEL and YOUR COMMENTS!!!

VBBA/VBJDRC ANNUAL CLE 2022

HOT TOPICS

- Ethical issues to consider based on common problems faced in VBJDRC due to changing laws, changing LEOs, and changing times
- Introduction of Rules and a Panel Discussion

- Materials and Hypotheticals by:

Bretta Z. Lewis, Esq.

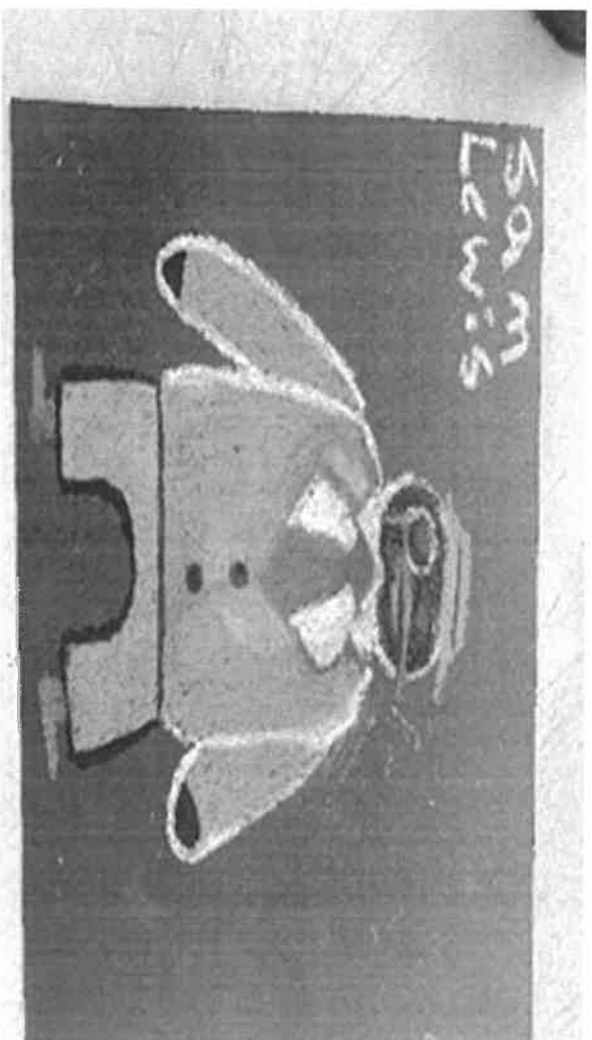
Wolcott Rivers Gates,

200 Bendix Road, Suite 300

MANY THANKS TO:

- Our fearless, tireless, and wonderful
Chairwoman Christianna Cunningham
- Our distinguished panel:
 - The Honorable Cheshire I'Anson
Eveleigh
 - The Honorable Jay Normile

AND THANKS TO YOU, GALS AND CACS
WHO ARE OVERWORKED, UNDERPAID,
AND OFTEN MALIGNED



PREAMBLE

- NEW LEO SUBMITTED BY BAR COUNCIL
- LEO 1897
- REPLY ALL
- NOT A RULE VIOLATION TO REPLY ALL
- IMPLICATES RULE 4.2 REGARDING
COMMUNICATIONS WITH REPRESENTED
PARTIES

RULE 1.8 – PROHIBITED TRANSACTIONS

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
 - (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - (3) the client consents in writing thereto.

(b) A lawyer shall not use information protected under Rule 1.6 for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.



GENEVIEVE

RULE 1.10 - IMPUTED DISQUALIFICATION

a) While lawyers are associated in a firm, none of them shall represent a client when the lawyer knows or reasonably should know that any one of them practicing alone would be prohibited from doing so by Rules 1.6, 1.7, 1.9, or 2.10(e).

IMPUTED QUALIFICATIONS CONT'D

- (b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:
- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
 - (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

WAIVERS ARE POSSIBLE

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

RULE 1.15 – SAFEKEEPING PROPERTY

- TRUST ACCOUNTS**
- CLIENT PROPERTY**
- NO COMMINGLING**
- TAKE EARNED MONEY PROMPTLY**

1.2(C) – SCOPE OF REPRESENTATION – COUNSELING A CLIENT

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may

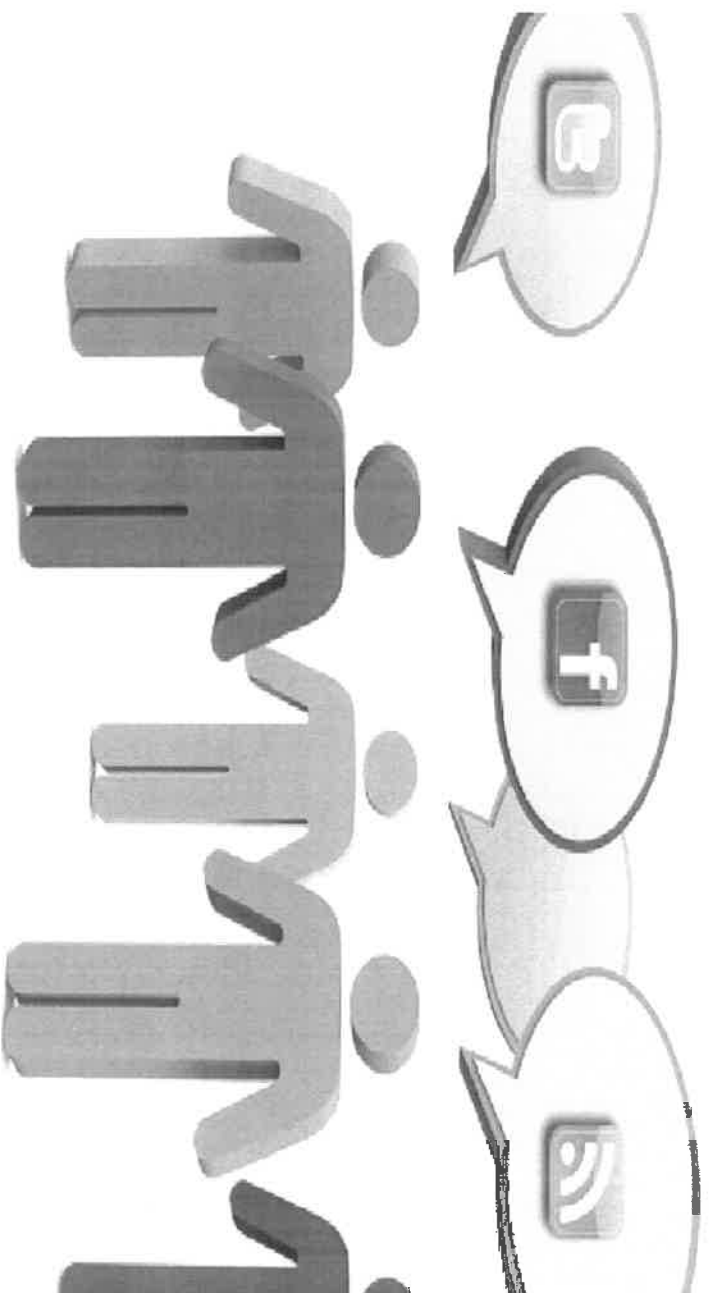
A LAWYER MAY:

- (1) discuss the legal consequences of any proposed course of conduct with a client;
- (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law; and
- (3) counsel or assist a client regarding conduct expressly permitted by state or other applicable law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law

LEGAL? SURE. GOOD IDEA IN A OR
CUSTODY CASE? HMMMMMM



NOW FOR HYPOTHETICALS



VBBA/VBJDRC ANNUAL CLE 9/22/2006 – HOT TOPICS IN ETHICS

RULES MINI-HANDBOOK

Preamble: Proposed LEO 1897 – “Reply All” as it relates to Rule 4.2

Please see Handout for discussion

1. Rule 1.8 - Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information protected under Rule 1.6 for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

2. Rule 1.10 - Imputed Disqualification: General Rule

(a) While lawyers are associated in a firm, none of them shall represent a client when the lawyer knows or reasonably should know that any one of them practicing alone would be prohibited from doing so by Rules 1.6, 1.7, 1.9, or 2.10(e).

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The imputed prohibition of improper transactions is governed by Rule 1.8(k).

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

3. Rule 1.15 – Safekeeping Property

- (a) Depositing Funds.
- (1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.
- (2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.
- (3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:
- (i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or
- (ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.
- (b) Specific Duties. A lawyer shall:
- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;
- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;
- (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and
- (5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.
- (c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:
- (1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.
- (2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.
- (3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail

to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(iii)) and the client ledger balance ((d)(3)(ii)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

Comment

[1] A lawyer must hold property of others with the care required of a professional fiduciary. Securities must be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. For purposes of this Rule, the term "fiduciary" includes personal representative, trustee, receiver, guardian, committee, custodian, and attorney-in-fact. All property that is the property of clients or third persons must be kept separate from the lawyer's business and personal property and, if funds, in one or more trust accounts. Separate trust accounts may be warranted when administering estate funds or acting in similar fiduciary capacities.

[2] Separation of the funds of a client from those of the lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

[2a] In relation to (b)(5), consent can be inferred from the engagement agreement or any consequential agreement between the lawyer and the client regarding the disbursement of fees, i.e., when earned fees are routinely withdrawn from the lawyer's trust account upon an accounting to the client, when costs and expenses of litigation are routinely withdrawn, or when other fees/costs or expenses are agreed upon in advance.

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the

lawyer should suggest means for prompt resolution of the dispute, such as arbitration or mediation. The undisputed portion of the funds shall be promptly distributed.

4. 1.2(C) – Scope of Representation – Counseling a Client

- (c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may:
- (1) discuss the legal consequences of any proposed course of conduct with a client;
 - (2) counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law; and
 - (3) counsel or assist a client regarding conduct expressly permitted by state or other applicable law that conflicts with federal law, provided that the lawyer counsels the client about the potential legal consequence of the client's proposed course of conduct under applicable federal law

VBBA/VBJDRC ANNUAL CLE 9/22/2006 – HOT TOPICS IN ETHICS

Hypotheticals

1. The Tainted Camper and the Mountain Vacation (30-45 minutes)

Client Larry Lothario retains lawyer Olga Outdoors. By way of background, Larry and Olga previously met at a campground on a church retreat a few years back and the families both enjoyed the trip immensely. Olga and her husband and kids admired Larry's camper, which was all decked out with the latest technology and glamping accessories.

Unfortunately, the values shared by all at the church retreat escaped Larry at some point, and he began a tumultuous affair with his neighbor, Lucy Loosemorals. Lucy and Larry often escaped to the camper for romantic interludes, and Larry's wife, Hannah Henpeck, grew suspicious of all of Larry's constant multi-hour sudden trips to Wal-Mart to "run errands." She noticed that Larry often came home with his clothes disheveled and that when he would return after hours of "errands," he usually only had batteries or a new toothbrush. Unbeknownst to Larry or Lucy, Hannah eventually put a recording device in the camper and when she reviewed the tapes, she learned of his extramarital endeavors.

During the discussion of marital assets, Larry shares with Olga that he needs to get rid of the camper because Lucy becomes enraged every time she looks at it, and she has told him that if he wants to settle the case amicably, or have any chance of shared custody, she never wants to see the camper again. Olga wants to help her client, so she offers to take the trailer and park it at her office, which has a huge parking lot and is way out of Hannah's usual path.

Since the camper is just sitting there, Olga and her family decide to take it with them and use it for a mountain vacation. On the vacation, Olga's puppy has several accidents in the camper, but Olga cleans it up and you can't really smell it as long as the windows are open. Sometimes, when Olga and her husband fight, she goes to the camper to cool off. She has decided to keep some of her work clothes and personal items in the camper to make it more convenient.

Questions (Hint: Rule 1.8 and 1.15 are implicated here):

1. Has Olga done anything wrong in offering to keep the camper for Larry?
2. Has Olga done anything wrong by using the camper?
3. What if Larry offers to let Olga use it in exchange for storage?
4. What if Olga buys the camper? Can Larry give her a great discount since he needs to get rid of it to appease Hannah and have a chance at shared custody?
5. What happens if Larry finally finds a buyer for the camper, but the buyer takes a look inside and asks, "What's that smell?"
6. Has Olga done anything wrong by keeping her personal items in the camper?

7. Switching gears, if you represent Hannah...
- What rule should be nagging at you when Hannah comes to you with the recording and why?
 - What if Hannah tells you that she only put the recording device into the camper because she was worried about people breaking into the camper to sleep or that she suspected that her teen sons were going in there to party? Does that change your answer?
 - Regardless of (a) and (b) above, do you present the recording at trial to prove adultery?

2. Elizabeth, the GAL and the firm of Charles, Charles, and Charles (20-30 minutes)

A. Attorney Elizabeth Mountbatten had a solo practice for several years and focused on domestic issues and Guardian *Ad Litem* practice. During that time she represented the interests of a young boy, William, who was age 2 when Elizabeth was first appointed. The case was in and out of court for years, and Elizabeth developed a splendid rapport with young William, whose mother was tragically killed in an auto accident and whose father was awarded custody thereafter, but the maternal grandmother, Camilla, had joint custody. Eventually, Elizabeth grew weary of the solo practice and decided to join the law firm of Charles, Charles, and Charles. Her work chum, Harry Styles, who had been at the firm for several years, had represented Camilla in a prior incarnation of the custody case involving William, but the case was inactive for several years before Elizabeth joined the firm. About a year after Elizabeth made the switch, Camilla, now represented by attorney Joe Jonas, filed for primary custody after William's father decided to relocate with the child over her objection. The Court reappointed Elizabeth, who quickly realized that she had an issue because Harry had been at her firm last time the case was in court and now she was going to be reinvolved with the case.

Questions (Hint: Rule 1.10 is implicated here):

- What should Elizabeth do? Does she have to decline the representation?
- Since Camilla has a different lawyer now, does Elizabeth even have to bring up the issue to the attorneys representing the parties?
- Elizabeth is saving the Court Order to her file and stumbles upon the electronic file containing all of Harry's letters and notes from his representation of Camilla. Can she read them to refresh her recollection or to gain insight into Camilla's position?
- If she comes across letters Harry wrote to her or to opposing counsel, can she look at those since they are not confidential and they were already sent to her?
- If Elizabeth decides not to look at the file, can she ask Harry to provide her with copies of the letters that were sent to her and to opposing counsel?

3. Mommy MaryJane (20-30 minutes)

Mommy MaryJane has 3 kids under the age of 8, and she retains you to represent her in a Child Protective Services case involving "lack of supervision" allegations that arose when her children were roaming in the neighborhood unsupervised. On a warm summer day in 2022, the neighbors called police, concerned because the children were seen at the neighborhood pool and running around the neighborhood, but nobody could find an adult that appeared to be supervising them. The police responded, located where the children reside, took them home, and called CPS. CPS noted that the house was quite messy and that the kids were dirty and chaotic and opened a family assessment that eventually became an investigation.

MaryJane confides in you that when CPS became involved, she had been asleep at 2 p.m. while her kids were napping and when her kids woke up, she did not hear them because she had smoked a bunch of weed before she decided to take a nap of her own. CPS is unaware of her drug use and has not asked for a drug test, but they have recommended services including a parenting class and a "clean and healthy home" workshop.

MaryJane tells you that she doesn't see any problem with her smoking weed because it's legal, and that she does not smoke in the house with the children present. She emphasizes that she always waits until the children are asleep before she smokes, and that she always goes outside. She tells you that when it's raining or when the kids are stirring, she eats weed gummies instead of going outside and smoking, since she wants to be sure they are safe and not exposed to the smoke. After all, she says, how is it different from drinking a glass of wine at dinner, which many parents do with their kids present?

Questions (Hint – Rule 1.2):

- A. How do you address MaryJane's interactions with CPS since they do not know that she smokes weed? Can you counsel her to hide it from them?
- B. Given that marijuana is legal in Virginia with respect to private personal use, how do you counsel her regarding what may happen if the case goes to Court?
- C. Since this is just a CPS case at the moment, are you obligated to talk with MaryJane about where she is buying the marijuana, whether she is breaking Federal law, or whether she is otherwise conducting herself in a way that could prejudice her in a potential court case?
- D. If the case goes to court and CPS asks for a drug test, what do you do, knowing what you know?
- E. Since marijuana is legal in Virginia, what argument do you make and why?
- F. Are there competence and diligence issues here since CPS is involved?

TO: Virginia State Bar Executive Committee and Council
FROM: Emily F. Hedrick, Senior Assistant Ethics Counsel
DATE: June 16, 2022
RE: Proposed Legal Ethics Opinion 1897 – Rule 4.2 – Replying all to an email when opposing party is copied

This proposed opinion addresses whether a lawyer who receives an email from opposing counsel, with the opposing party copied in the "to" or "cc" field, violates Rule 4.2 when he replies all to the email. The committee concludes that this conduct does not violate Rule 4.2 because the sending lawyer has given implied consent to the communication with her client by including the client on the email. A lawyer who does not wish to give such consent should separately communicate with her client, such as by forwarding the email to the client.

Comments

When the proposed opinion was released for public comment, 16 comments were received, including one "no comment" letter from the Local Government Attorneys of Virginia. The comments were largely in support of the opinion, and of the need to address this question in an LEO, and the committee did not make any changes to the opinion based on the comments.

**LEGAL ETHICS OPINION 1897, RULE 4.2-REPLYING ALL TO AN
EMAIL WHEN THE OPPOSING PARTY IS COPIED**

QUESTION PRESENTED

The question presented is whether a lawyer who receives an email from opposing counsel, with the opposing party copied, violates Rule 4.2 if he replies all to the email, sending the response to both the sending lawyer and her client.

SHORT ANSWER

The committee concludes that the answer is no. Rule 4.2 is not violated. A lawyer who includes their client in the "to" or "cc" field of an email has given implied consent to a reply-all response by opposing counsel.

Applicable Rule of Professional Conduct

Rule 4.2 Communication With Persons Represented By Counsel
In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.