

2021 EDITION

Juvenile Law and Practice in Virginia

**Editors: Julie E. McConnell
Crystal S. Shin**



Continuing Legal Education
by the Virginia Law Foundation

VIRGINIA LAWYERS PRACTICE HANDBOOK

JUVENILE LAW AND PRACTICE IN VIRGINIA

Sixth Edition

Editors:

Julie E. McConnell

University of Richmond School of Law
Richmond

Crystal S. Shin

University of Virginia School of Law
Charlottesville

 Virginia CLE®
Publications

TABLE OF CONTENTS

<i>Chapters and Authors</i>	iii
<i>About the Editors and Authors</i>	vii
<i>Acknowledgments</i>	xvii
<i>Preface</i>	xix
<i>Electronic Forms: Instructions and Table</i>	xxiii

CHAPTER 1: AN INTRODUCTION TO THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

1.1	HISTORICAL BACKGROUND.....	1
1.2	UNITED STATES SUPREME COURT DECISIONS.....	9
1.3	ORGANIZATION OF THE JUVENILE CODE.....	14
1.4	PHILOSOPHY OF THE JUVENILE JUSTICE SYSTEM	14
1.5	JURISDICTION	16
1.501	Age Jurisdiction.....	16
1.502	Territorial Jurisdiction (Venue)	17
1.503	Subject Matter Jurisdiction	18
1.504	Duration of Jurisdiction	29
	BIBLIOGRAPHY	31
	ONLINE RESOURCES	33
	APPENDIX 1-1: DC-616 ORDER OF TRANSFER.....	35

CHAPTER 2: THE ROLE OF THE LAWYER IN JUVENILE PROCEEDINGS

2.1	INTRODUCTION.....	37
2.2	THE GUARDIAN AD LITEM	39
2.201	In General.....	39
2.202	Qualification	39
2.203	Appointment	40

TABLE OF CONTENTS

2.204	Fees and Expenses	44
2.205	Virginia Performance Standards and Other Descriptions of Duties	45
2.206	Duties Enumerated on Order of Appointment	49
2.207	Performance Standards for Guardians Ad Litem	50
2.208	Ethical Considerations.....	51
2.209	Rule 8:6 of the Rules of the Virginia Supreme Court.....	61
2.210	Juvenile Justice and Guardian Ad Litem Standards.....	61
2.211	Determining the Best Interests of the Child	64
2.212	Interviewing the Child.....	64
2.213	Gathering Information from Professionals.....	66
2.214	Investigating Child's Family and Home	67
2.215	Representing the Child in Court.....	70
2.3	COUNSEL FOR THE DEPARTMENT OF SOCIAL SERVICES	85
2.301	Introduction.....	85
2.302	Training and Preparing Social Workers	87
2.303	Role of Counsel in Court Proceedings.....	88
2.304	Working with the Guardian Ad Litem.....	101
2.4	COUNSEL FOR PARENTS OR CUSTODIANS.....	102
2.401	Right to Counsel.....	102
2.402	Duties of Counsel	102
2.5	COUNSEL IN DELINQUENCY PROCEEDINGS	105
2.501	In General.....	105
2.502	Ethical Concerns	105
2.503	Rule 8:6 of the Rules of the Virginia Supreme Court.....	106
2.504	Juvenile Justice Standards	106
2.505	Examples of Role Confusion	108
2.506	Timing of Appointment.....	110
2.507	Fees	110
2.508	Duties Before Trial.....	111
2.509	Counsel's Role in the Detention Decision	123
2.510	Transfer or Certification as an Adult.....	124
2.511	The Adjudicatory Hearing	125
2.512	The Disposition Hearing.....	125
2.513	Post-Dispositional Review Hearing.....	126
2.6	COUNSEL IN CHILDREN IN NEED OF SERVICES, CHILDREN IN NEED OF SUPERVISION, AND STATUS OFFENSE CASES	126

TABLE OF CONTENTS

2.7	THE COMMONWEALTH'S ATTORNEY	127
2.701	Introduction	127
2.702	Legal Advisor	127
2.703	Pretrial Role.....	128
2.704	Adjudicatory Role	130
2.705	The Dispositional Hearing.....	130
2.706	Post-Dispositional Proceedings.....	131
APPENDIX 2-1: DC-514 ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM		133
APPENDIX 2-2: STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN.....		135
APPENDIX 2-3: DC-40 LIST OF ALLOWANCES		147
APPENDIX 2-4: DC-540 GUARDIAN AD LITEM CERTIFICATION		149
APPENDIX 2-5: DC-532 CHILD PROTECTIVE ORDER—ABUSE AND NEGLECT		151
APPENDIX 2-6: DC-545 PRELIMINARY CHILD PROTECTIVE ORDER		155
APPENDIX 2-7: DC-546 CHILD PROTECTIVE ORDER.....		159
APPENDIX 2-8: DC-5060 PETITION FOR FOSTER CARE PLACEMENT HEARING—QUALIFIED RESIDENTIAL TREATMENT PROGRAM.....		161
APPENDIX 2-9: LIST OF AVAILABLE SERIES 500 FILLABLE FORMS		163
APPENDIX 2-10: DC-510 SUMMONS.....		165
APPENDIX 2-11: DC-513 ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL.....		167
APPENDIX 2-12: DC-515 WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER (JUVENILE)		169
APPENDIX 2-13: LETTER TO CLIENT'S PARENT OR PARENTS WHEN CLIENT IS DETAINED		171

TABLE OF CONTENTS

APPENDIX 2-14: LETTER TO CLIENT'S PARENT OR PARENTS WHEN CLIENT IS FREE	173
APPENDIX 2-15: INITIAL JUVENILE CLIENT INTERVIEW FORM	175
APPENDIX 2-16: INITIAL PARENT INTERVIEW FORM.....	189
APPENDIX 2-17: MEDICAL RECORDS RELEASE	193
APPENDIX 2-18: REQUEST AND AUTHORIZATION FOR EDUCATIONAL RECORDS	195
 CHAPTER 3: CHILD PSYCHOLOGY AND DEVELOPMENT	
3.1 INTRODUCTION	197
3.2 CHILD DEVELOPMENT.....	197
3.201 General Stages of Childhood	197
3.202 Fetal.....	198
3.203 Infancy.....	198
3.204 Preschool or Early Childhood.....	199
3.205 Middle Childhood.....	200
3.206 Preadolescence or Late Childhood	200
3.3 PUBERTY	201
3.4 ADOLESCENCE.....	202
3.5 COGNITIVE DEVELOPMENT	202
3.6 MORAL DEVELOPMENT	204
3.7 BRAIN DEVELOPMENT DURING ADOLESCENCE	205
3.8 SPECIAL LEGAL ISSUES WITH DELINQUENT YOUTH.....	207
3.801 In General.....	207
3.802 Competency to Stand Trial.....	209
3.803 Culpability.....	210
3.804 Malleability or Amenability to Treatment.....	211
3.9 CONCLUSION.....	211
BIBLIOGRAPHY	213

CHAPTER 4: MENTAL HEALTH AND SUBSTANCE ABUSE DISORDERS

4.1	INTRODUCTION.....	217
4.2	NEURODEVELOPMENTAL DISORDERS	218
4.201	Attention-Deficit Hyperactivity Disorder	218
4.202	Autism Spectrum Disorders.....	219
4.3	DISRUPTIVE BEHAVIOR DISORDERS.....	220
4.301	Oppositional Defiant Disorder.....	220
4.302	Conduct Disorder.....	221
4.4	MOOD DISORDERS.....	223
4.401	Depressive Disorders.....	223
4.402	Bipolar Disorder	225
4.5	ANXIETY DISORDERS	226
4.501	Generalized Anxiety Disorder	226
4.502	Specific Phobias	227
4.503	Panic Disorder	227
4.6	OBSESSIVE-COMPULSIVE DISORDER.....	228
4.7	TRAUMA AND STRESS-RELATED DISORDERS	229
4.701	Adjustment Disorder	229
4.702	Posttraumatic Stress Disorder	229
4.8	EFFECTS OF NEURODEVELOPMENTAL, MOOD, ANXIETY, STRESS-RELATED, AND DISRUPTIVE BEHAVIOR DISORDERS	231
4.9	EATING DISORDERS.....	234
4.901	Anorexia Nervosa	234
4.902	Bulimia Nervosa.....	234
4.10	REACTIVE ATTACHMENT DISORDER	234
4.11	SUBSTANCE USE DISORDERS.....	235
4.1101	The Continuum of Substance Use	235
4.1102	Common Drugs of Abuse During Adolescence.....	237
4.1103	Polysubstance Abuse.....	239
4.1104	Co-occurring Substance Use and Mental Health Disorders.....	240

TABLE OF CONTENTS

4.12	ABUSED AND NEGLECTED CHILDREN	241
4.1201	Incidence and Prevalence of Child Maltreatment.....	241
4.1202	Child Maltreatment, PTSD, and Complex Trauma	242
4.1203	Child Maltreatment and Mental Health	244
4.1204	Child Maltreatment and Substance Abuse.....	245
4.1205	Child Maltreatment and Juvenile Delinquency	246
4.13	SPECIAL LEGAL ISSUES WITH DELINQUENT YOUTHS	247
4.1301	In General.....	247
4.1302	Competency to Stand Trial.....	248
4.1303	Culpability	249
4.1304	Amenability to Treatment	249
4.14	CONCLUSION.....	250
 CHAPTER 5: PRETRIAL PROCEEDINGS		
5.1	INTAKE AND DIVERSION.....	251
5.101	Introduction.....	251
5.102	Initiation of Case by Petition or Otherwise	252
5.103	Prerequisites to Filing Petition Alleging That Child Is in Need of Supervision.....	255
5.104	Youth Justice Diversion Program	255
5.105	Appeal of Intake Officer's Refusal to Authorize Petition	255
5.106	Child's Statements Made at Intake Not Admissible.....	256
5.107	Commonwealth's Attorney's Role in Intake	256
5.108	Child's Attorney's Role.....	256
5.2	DETENTION AND SHELTER CARE.....	257
5.201	General Information and Practices.....	257
5.202	Criteria for Detention	259
5.203	Criteria for Shelter Care.....	261
5.204	Place of Confinement	262
5.205	Procedure for Detention Hearing.....	264
5.206	Attorney's Role in Detention Decision	267
5.207	Time Limitations.....	269
5.208	Mental Health Screening and Assessment.....	270
5.3	DISCOVERY	270
5.301	Introduction.....	270
5.302	General Information	271

TABLE OF CONTENTS

5.303	Time of Motion.....	274
5.304	Time, Place, and Manner of Discovery and Inspection	274
5.305	Failure to Comply.....	274
5.4	MOTION PRACTICE.....	274
5.401	Introduction	274
5.402	Motion to Suppress.....	275
5.403	Motion in Limine	275
5.404	Motion for Severance.....	275
5.405	Motion for Speedy Trial	275
5.406	Motion Concerning Petition and Summons	276
5.407	Motion for Change of Venue and to Transfer Venue.....	276
5.408	Motion for Continuance.....	277
5.409	Motion for Appointed Expert or Investigator	277
5.410	Motion to Dismiss for Double Jeopardy	278
5.411	Motion to Recuse Judge	278
5.412	Motion for Physical or Mental Examination.....	278
5.413	Motion for Competency Evaluation.....	279
5.5	ARRAIGNMENT.....	281
	APPENDIX 5-1: DC-511 PETITION	283
	APPENDIX 5-2: DETENTION ASSESSMENT INSTRUMENT	285
	APPENDIX 5-3: DC-529 DETENTION ORDER.....	287
	APPENDIX 5-4: DC-530 SHELTER CARE ORDER	289
	APPENDIX 5-5: DC-538 PLACEMENT ORDER.....	291
	APPENDIX 5-6: DC-539 RELEASE ORDER.....	293
 CHAPTER 6: POLICE INVESTIGATIONS		
6.1	INTRODUCTION.....	295
6.2	ARREST.....	295
6.201	General Principles	295
6.202	When Child May Be Taken into Immediate Custody.....	296
6.203	Duties of Person Taking Child into Custody	297

TABLE OF CONTENTS

6.204	Counsel's Role in Ensuring Enforcement of Arrest and Detention Statutes.....	302
6.205	Remedy for Violation of Arrest and Detention Statutes.....	302
6.3	INTERROGATION OF JUVENILES; CONFESSIONS.....	302
6.301	In General.....	302
6.302	Voluntariness	303
6.303	<i>Miranda</i> Issues	311
6.304	Violations of Statutes and Rules	321
6.305	Attorney's Role	322
6.4	SEARCH AND SEIZURE ISSUES	330
6.401	General Principles.....	330
6.402	Stops Unique to Children	330
6.403	Search and Seizure Issues.....	332
6.5	IDENTIFICATION ISSUES INVOLVING JUVENILE DEFENDANTS	337
6.501	In General.....	337
6.502	Lineups	337
6.503	Fingerprints	338
6.504	Photographs.....	339
6.505	DNA Samples	339
6.506	Attorney's Role	339
6.507	Preparing for Motions to Suppress	340
6.6	THE COMMONWEALTH'S ATTORNEY	341
6.601	Consultation Between Police and Commonwealth's Attorney.....	341
6.602	Juveniles as Victims	341
 CHAPTER 7: TRANSFER OF JUVENILES FROM THE JUVENILE COURT AND HANDLING JUVENILE CASES IN THE CIRCUIT COURT		
7.1	PURPOSE OF TRANSFER OF JURISDICTION.....	343
7.2	JURISDICTION OF THE JUVENILE COURT OVER DELINQUENCY.....	344
7.201	Exclusive Original Jurisdiction.....	344
7.202	Effect of Previous Transfer	345

TABLE OF CONTENTS

7.3	PHILOSOPHY OF THE JUVENILE CODE	345
7.4	WAIVER OF JUVENILE COURT JURISDICTION BY JUVENILE	347
7.401	Requirements for Valid Waiver	347
7.402	Decision to Waive	347
7.5	CERTIFICATION OR TRANSFER TO THE CIRCUIT COURT FOR TRIAL AS AN ADULT	348
7.501	Age of the Child	348
7.502	Grade or Nature of the Offense	349
7.503	Certification or Transfer Must Be Initiated by Notice or Motion of the Commonwealth's Attorney	349
7.504	Defense Counsel's Role in Influencing the Decision of the Prosecutor.....	350
7.505	Procedural Requirements for Certification or Transfer to the Circuit Court	352
7.6	ROLE OF COUNSEL IN THE TRANSFER PROCESS	353
7.601	Ethical Considerations.....	353
7.602	Relationship with Court Staff.....	354
7.603	School and Medical Records.....	354
7.604	Review of Court Files	356
7.605	Lay Witnesses.....	356
7.606	Expert Witnesses.....	356
7.607	Virginia Department of Juvenile Justice	357
7.7	THE TRANSFER REPORT	357
7.701	Contents of the Report	357
7.702	Transfer Report Must Be in Writing	358
7.703	Filing and Access.....	358
7.8	CHILD'S TESTIMONY AT TRANSFER HEARING	358
7.9	EFFECT OF PROCEDURAL IRREGULARITIES	358
7.10	CERTIFICATION OF JUVENILES FOR TRIAL AS ADULTS PURSUANT TO SECTION 16.1-269.1(B) AND (C).....	359
7.1001	Preparation for Certification Hearings	359
7.1002	Certification Pursuant to Section 16.1-269.1(B).....	360
7.1003	Certification Pursuant to Section 16.1-269.1(C).....	360
7.1004	Judicial Rulings Against Certification.....	362

TABLE OF CONTENTS

7.11	NECESSARY COURT FINDINGS FOR TRANSFER UNDER SECTION 16.1-269.1(A)	362
7.1101	Probable Cause.....	362
7.1102	Age	362
7.1103	Juvenile Is Not a Proper Person to Remain Within the Jurisdiction of the Juvenile Court.....	363
7.1104	Competency to Stand Trial, Mental Illness, and Intellectual Disability	364
7.12	COURT CONCLUSIONS	367
7.13	REVIEW OF DECISION ON TRANSFER OR CERTIFICATION	367
7.1301	Commonwealth's Attorney's Options on Juvenile Court's Refusal to Certify	367
7.1302	Commonwealth's Attorney's Right to Review of Juvenile Court Decision to Retain Jurisdiction After Transfer Hearing	368
7.1303	Defense Methods for Review of Decision to Transfer.....	368
7.1304	Procedure for Review	368
7.1305	Appeal from Circuit Court to Court of Appeals.....	369
7.14	BAIL OR DETENTION PENDING CIRCUIT COURT HEARING	369
7.1401	Bail.....	369
7.1402	Detention Versus Jail	369
7.1403	Speedy Trial Requirements	370
7.15	TRIAL IN JUVENILE COURT IF JURISDICTION IS RETAINED	370
7.1501	Judge.....	370
7.1502	Time Limitations.....	370
7.16	TRIAL IN THE CIRCUIT COURT AS AN ADULT.....	371
7.1601	Strategies for Representing the Juvenile in Adult Criminal Proceedings.....	371
7.1602	Procedure for Determining Guilt or Innocence	374
7.1603	Admissibility of Evidence	374
7.1604	Sentencing	375
7.1605	Capital Cases and Life-Without-Parole Sentences	375
7.1606	Juvenile Dispositions	377
7.1607	Adult Sentencing.....	378

TABLE OF CONTENTS

7.1608	Circuit Court Sentencing in Violent Juvenile Felony Cases	379
7.1609	Serious Offender Review Hearings and Section 19.2-303.....	379
7.17	SEX OFFENDER REGISTRATION	386
7.18	APPEAL.....	386
7.19	VIRGINIA'S STANDARDIZED DISPOSITION MATRIX.....	387
APPENDIX 7-1: DC-517 WAIVER OF JURISDICTION.....		389
APPENDIX 7-2: DC-519 NOTICE OF TRANSFER HEARING.....		391
APPENDIX 7-3: SAMPLE TRANSFER REPORT		393
APPENDIX 7-4: DC-518 TRANSFER/RETENTION ORDER		407
APPENDIX 7-5: DC-575 JUVENILE CASE APPEAL/TRANSFER TRANSMITTAL		409
APPENDIX 7-6: STANDARDIZED DISPOSITION MATRIX		411
 CHAPTER 8: THE ADJUDICATORY HEARING		
8.1	INTRODUCTION.....	413
8.2	PETITION AND NOTICE OF CHARGES	413
8.201	The Petition or Initial Pleading.....	413
8.202	Summons	414
8.203	Service of Summons	415
8.204	Parental Notice.....	416
8.205	Prisoner as Party or Witness.....	416
8.3	SUBPOENAS	416
8.4	PROCEDURE IN CRIMINAL CASES INVOLVING ADULT DEFENDANTS	417
8.5	PHYSICAL AND MENTAL EXAMINATIONS AND COMPETENCE.....	417
8.501	Physical and Mental Examinations	417
8.502	Temporary Placement with Department of Juvenile Justice	418
8.503	Mental Competency.....	418

TABLE OF CONTENTS

8.504	Physical Competency to Commit Sex Offenses	419
8.505	Admission of School Records to Determine Intent	419
8.506	Disorderly Conduct	420
8.6	ADVICE OF TRIAL RIGHTS FOR JUVENILES CHARGED WITH DELINQUENCY	421
8.7	BURDEN OF PROOF AND EVIDENTIARY RULES	422
8.701	Burdens of Proof.....	422
8.702	Evidentiary Rules	422
8.8	PROCEDURES	422
8.9	ADMISSIONS AND GUILTY PLEAS	423
8.901	Possible Pleas and Inquiry into Guilty Plea	423
8.902	Plea Bargaining, Cooperation/Immunity Agreements, and the Decision to Plead Guilty.....	423
8.10	PLEA OF INFANCY	425
8.11	CONTEMPT OF COURT	425
8.12	JURY TRIAL.....	426
8.13	RIGHT TO PUBLIC TRIAL AND PRESENCE OF CHILD.....	426
8.1301	Right to Public Trial in Delinquency Proceedings	426
8.1302	Right to Public Trial in Criminal Proceedings	427
8.1303	Right to Be Present	427
8.1304	Protecting Confidentiality of Closed Proceedings	427
8.1305	Court Reporters and Transcripts	427
8.1306	Right of Victims to Be Present at Trial.....	427
8.14	DOUBLE JEOPARDY	428
	APPENDIX 8-1: DC-512 NOTICE OF HEARING.....	429
 CHAPTER 9: THE DISPOSITION HEARING		
9.1	PHILOSOPHY OF DISPOSITION	431
9.2	VENUE FOR DISPOSITION	434

TABLE OF CONTENTS

9.3	COURT SERVICE UNIT PROCEDURES FOLLOWING THE ADJUDICATORY HEARING.....	434
9.301	Case Assignments	434
9.302	Juvenile Under Court-Ordered Supervision	434
9.4	INFORMATION NECESSARY TO MAKE AN EFFECTIVE DISPOSITION.....	435
9.401	Social History	435
9.402	Court-Ordered Evaluations	438
9.403	Diagnostic Assessment by Department of Juvenile Justice	438
9.404	Child Development Clinic Evaluation.....	438
9.405	Substance Abuse Evaluation	439
9.5	PLACEMENT OF CHILD PENDING DISPOSITION	440
9.6	THE DEFENSE COUNSEL AT DISPOSITION	441
9.601	Role of Counsel	441
9.602	Preparing for the Dispositional Hearing.....	441
9.603	Nature of the Hearing	442
9.604	Social History Report Can and Should Incorporate Counsel's Input.....	442
9.605	Person Who Prepares Report Should Be Present at Hearing	442
9.606	Relationship Between Defense Counsel and Probation Staff.....	442
9.607	Counsel Should Learn About Dispositional Options and Procedures	443
9.608	Reviewing the Social History.....	443
9.609	Interagency Multidisciplinary Teams	444
9.610	Resource Directory	444
9.7	ROLE OF THE PROSECUTOR IN DISPOSITION.....	445
9.8	DISPOSITIONAL HEARINGS	445
9.9	OTHER DISPOSITIONAL CONSIDERATIONS.....	446
9.901	Children's Services Act	446
9.902	Location and Development of Services and Programs	448
9.903	Mandated Insurance Coverage.....	450
9.904	Culturally Effective Services	451

TABLE OF CONTENTS

APPENDIX 9-1: DC-542 ORDER FOR INVESTIGATION AND REPORT	453
APPENDIX 9-2: SAMPLE SOCIAL HISTORY/CANS REPORT.....	455
APPENDIX 9-3: DC-543 CONFIDENTIALITY NOTICE.....	463
APPENDIX 9-4: SAMPLE EVALUATION SUMMARY.....	465
APPENDIX 9-5: EXAMPLE OF PSYCHOLOGICAL EVALUATION.....	489
APPENDIX 9-6: SAMPLE SUBSTANCE ABUSE EVALUATION	493
APPENDIX 9-7: DC-569 ADJUDICATION AND DISPOSITION ORDER—DELINQUENCY	497
APPENDIX 9-8: DEPARTMENT OF JUVENILE JUSTICE YOUTH ASSESSMENT SCREENING INSTRUMENT.....	501
APPENDIX 9-9: CULPEPER COUNTY FAMILY ASSESSMENT AND PLANNING TEAM-IFSP PROGRESS REPORT/ UTILIZATION REVIEW	503
 CHAPTER 10: DISPOSITIONAL ALTERNATIVES	
10.1 DELINQUENCY.....	507
10.2 CHILDREN IN NEED OF SERVICES	516
10.3 CHILDREN IN NEED OF SUPERVISION	517
10.4 STATUS OFFENDERS	517
10.5 “ABUSE AND LOSE” PROVISIONS.....	517
10.501 In General.....	517
10.502 Underlying Offenses or Conduct	517
10.503 Mandatory Loss of Driving Privileges	519
10.504 Report to DMV	520
10.505 Issuance of Restricted License	520
10.506 Withdrawal of License Denial Order	521
10.507 Deferral.....	521
10.508 Other Statutory License Suspensions.....	521

TABLE OF CONTENTS

10.6	ADDITIONAL CONSIDERATIONS	521
10.601	Duration of Commitments	521
10.602	Department of Juvenile Justice Length-of-Stay Guidelines	522
10.603	Cost of Private Placements	522
10.604	Protection of Religious Affiliations	523
10.7	DELINQUENCY DISPOSITIONAL ALTERNATIVES— PROGRAM EXAMPLES	523
10.701	Diversion	523
10.702	Remaining at Home	524
10.703	Parent Participation	525
10.704	Deferral of Disposition	525
10.705	Probation	526
10.706	Drug Court/Behavioral Health Court Dockets	526
10.707	Fines	527
10.708	Driver's License Suspension	527
10.709	Out-of-Home Placement	527
10.710	Post-Dispositional Detention	527
10.711	Commitment to Department of Juvenile Justice	528
10.712	Serious or Habitual Offender Programs	529
10.713	Third-Party Compliance Orders	529
10.714	Parental Responsibility	529
10.715	Aftercare or Parole	529
10.8	CHILD IN NEED OF SERVICES OR SUPERVISION DISPOSITIONS	530
10.9	THE ROLE OF THE COURT AND COUNSEL IN THE CHILDREN'S SERVICES ACT	530
	APPENDIX 10-1: DC-572 JUVENILE COMMITMENT ORDER	537
	APPENDIX 10-2: DC-568 JUVENILE COMMITMENT REVIEW HEARING ORDER	539
	APPENDIX 10-3: DC-576 DRIVER'S LICENSE DENIAL ORDER	541
	APPENDIX 10-4: DC-577 DRIVER'S LICENSE SUSPENSION ORDER AND ENTRY INTO SERVICES PROGRAM (JUVENILE)	545
	APPENDIX 10-5: DC-578 RESTRICTED DRIVER'S LICENSE	549

TABLE OF CONTENTS

APPENDIX 10-6: DC-570 JUVENILE COURT ORDER	551
APPENDIX 10-7: TABLE OF OFFENSES AND DRIVER'S LICENSE SUSPENSIONS BY STATUTE	553
 CHAPTER 11: POST-DISPOSITION PROCEEDINGS AND APPEALS	
11.1 COURT REVIEW OF THE DISPOSITION ORDER	557
11.2 MOTIONS TO RECONSIDER PARTICIPATION IN PROGRAMS.....	558
11.3 SERIOUS OFFENDER REVIEW HEARING.....	558
11.4 REENTRY AND TRANSITION PLANNING	566
11.5 PROCEEDINGS TO REVOKE OR MODIFY ORDERS OF PROBATION, PROTECTIVE SUPERVISION, OR PAROLE	567
11.6 CONTEMPT FOR VIOLATION OF COURT ORDER.....	569
11.7 APPEALS	570
11.701 Juvenile Appeals	570
11.702 Termination of Parental Rights	571
11.8 HABEAS CORPUS AND COLLATERAL REVIEW	572
11.9 LITIGATION CONCERNING CONDITIONS OF CONFINEMENT	572
11.901 Introduction.....	572
11.902 Classification and Separation	573
11.903 Health Care	573
11.904 Access to Counsel	574
11.905 Programs	574
11.906 Training and Supervision of Employees	575
11.907 Environmental Issues	575
11.908 Restraints, Punishments, and Due Process.....	575
11.909 Safety	575
11.910 Conclusion	576
11.10 THE RIGHT TO TREATMENT	576

TABLE OF CONTENTS

APPENDIX 11-1: DC-630 MOTION TO AMEND OR REVIEW ORDER	579
APPENDIX 11-2: DC-511 PETITION	581
APPENDIX 11-3: PETITION PURSUANT TO SECTION 16.1-285.1(F).....	583
APPENDIX 11-4: SERIOUS OFFENDER PROGRESS REPORT.....	585
APPENDIX 11-5: DC-580-NOTICE OF APPEAL.....	591
 CHAPTER 12: GUARDIAN AD LITEM PRACTICE	
12.1 INTRODUCTION.....	593
12.2 OPENING A GAL CASE	593
12.3 CUSTODY AND VISITATION CASES	594
12.301 Initial Court Appearance	594
12.302 Face-to-Face Meetings with the Child	594
12.303 Investigation.....	595
12.304 What to Expect in the Courtroom.....	596
12.305 Recommendations	596
12.306 Written Versus Oral Reports.....	597
12.307 Applicable Law to Custody and Visitation Cases	597
12.4 FOSTER CARE CASES	601
12.401 Introduction and Overview of the Foster Care Timeline	601
12.402 Family Partnership Meetings.....	602
12.403 Face-to-Face Meeting with the Child	603
12.404 Collaboration with the “Team”	603
12.405 What to Expect in the Courtroom.....	604
12.406 Kinship Placement	605
12.407 Residential Placement.....	605
12.408 Additional Training Resources	606
12.5 CHILDREN IN NEED OF SERVICES (CHINServ) AND CHILDREN IN NEED OF SUPERVISION (CHINSup).....	606
12.501 Introduction and Overview of Proceedings	606
12.502 Face-to-Face Time with the Child	607

TABLE OF CONTENTS

12.6	FUNDING	608
12.601	Foster Care Prevention Services	608
12.602	Children's Services Act (CSA) Funds	608
12.7	TRAUMA-INFORMED PRACTICE AND ACES	608
12.8	SELF-CARE AND BURNOUT	611
	APPENDIX 12-1: OPENING FILE CHECKLIST	613
	APPENDIX 12-2: EXAMPLE OF INTRODUCTORY LETTER TO PARENT	615
	APPENDIX 12-3: TEMPORARY/FINAL CUSTODY AND VISITATION ORDER	617
	APPENDIX 12-4: STANDARD JOINT LEGAL CUSTODY TERMS	621
	APPENDIX 12-5: EXAMPLE OF STANDARD VISITATION AND HOLIDAY SCHEDULE	623
	APPENDIX 12-6: EXAMPLES OF DRUG AND ALCOHOL PROVISIONS IN CUSTODY ORDERS	625
	APPENDIX 12-7: EXAMPLES OF ROADMAPS TO TRIAL HOME PLACEMENT	627
	APPENDIX 12-8: NOTICE TO THE DEPARTMENT OF SOCIAL SERVICES FOR FOSTER CARE PREVENTION SERVICES	631
 CHAPTER 13: PHYSICAL AND MEDICAL ASPECTS OF CHILD ABUSE AND NEGLECT		
13.1	INTRODUCTION	633
13.2	STATISTICAL SUMMARY OF CHILD ABUSE AND NEGLECT	633
13.3	RECOGNITION OF CHILD PHYSICAL ABUSE	634
13.301	Soft Tissue Injuries	634
13.302	Burns	637
13.303	Orthopedic Injuries	639

TABLE OF CONTENTS

13.304	Abdominal Injuries.....	641
13.305	Head Injuries	642
13.4	MEDICAL CHILD ABUSE.....	644
13.5	CHILD NEGLECT AND FAILURE TO THRIVE	646
13.6	CHILD SEXUAL ABUSE	647
13.601	Introduction	647
13.602	Epidemiology	648
13.603	Sex Trafficking	649
13.604	Disclosure of Abuse	649
13.605	Family's Reaction to Disclosure.....	649
13.606	Model for Sexual Abuse Evaluation	650
13.607	Potential for Fabrication.....	650
13.7	PHYSICAL EXAM FOR CHILD SEXUAL ABUSE	650
13.701	Generally.....	650
13.702	Anogenital Exams	651
13.703	Alternative Diagnoses	652
13.704	Systematic Identification of Injuries	653
APPENDIX 13-1: ABUSE PHOTOGRAPHS		655
APPENDIX 13-2: DIAGRAM OF FEMALE GENITALIA.....		659
APPENDIX 13-3: DIAGRAM OF MALE GENITALIA.....		661
APPENDIX 13-4: DIAGRAM OF ANAL ANATOMY		663
 CHAPTER 14: ABUSE AND NEGLECT PROCEEDINGS		
14.1	DEFINITION OF ABUSE AND NEGLECT.....	665
14.2	STATUTORY FRAMEWORK FOR INVESTIGATING ABUSE AND NEGLECT	667
14.201	Mandatory Reporting	667
14.202	Immunity for Good-Faith Reporting	669
14.203	Statutory Penalties	669
14.204	Family Assessment or Investigation by Local Child Protective Services	670
14.205	Challenging an Administrative Determination That Report of Child Abuse and Neglect is "Founded"	680

TABLE OF CONTENTS

14.206	Authority to Take Children into Custody	682
14.207	Authority in Trafficking Cases	683
14.3	COURT PROCEEDINGS RELATING TO ABUSE AND NEGLECT	684
14.301	In General	684
14.302	Emergency Removal Order	685
14.303	Preliminary Removal Hearing and Order	687
14.304	Adjudication at the Preliminary Removal Hearing; Scheduling the Disposition Hearing	688
14.305	Preliminary Protective Order	689
14.306	Adjudication at the Preliminary Protective Order Hearing; Scheduling the Disposition Hearing	691
14.307	Dispositional Hearing	692
14.308	Appeals	694
14.309	Determining Where the Child Will Reside	694
14.310	Evidentiary Issues	696
14.311	Obtaining Protection for a Child Through Other Kinds of Proceedings	697
APPENDIX 14-1: DC-620 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT AFFIDAVIT		699
APPENDIX 14-2: DC-526 EMERGENCY REMOVAL ORDER		701
APPENDIX 14-3: DC-544 ORDER FOR COURT-APPOINTED SPECIAL ADVOCATE		705
APPENDIX 14-4: DC-536 TRIAL WITHOUT A LAWYER		707
APPENDIX 14-5: DC-528 PRELIMINARY REMOVAL ORDER		709
APPENDIX 14-6: DC-561 ADJUDICATORY ORDER FOR ABUSE OR NEGLECT CASES		713
APPENDIX 14-7: DC-527 PRELIMINARY CHILD PROTECTIVE ORDER—ABUSE AND NEGLECT		715
APPENDIX 14-8: DC-553 DISPOSITIONAL ORDER FOR UNDERLYING PETITION, FOSTER CARE PLAN		719
APPENDIX 14-9: DC-559(A-C) SUPPLEMENT TO ORDER TRANSFERRING CUSTODY		729

**CHAPTER 15: FOSTER CARE AND TERMINATION OF
PARENTAL RIGHTS**

15.1	FOSTER CARE	733
15.101	How Children Come into Foster Care	733
15.102	The Foster Care Plan	736
15.103	Court Review of the Foster Care Plan.....	740
15.104	Requirement for Permanency Planning.....	742
15.105	Requirement for Review of Foster Care Plan	745
15.106	Restoration of Parental Rights	745
15.107	Adoption Progress Reports.....	746
15.108	Limitations on Placement of Children in Foster Care in Congregate Care Facilities	747
15.2	TERMINATION OF RESIDUAL PARENTAL RIGHTS	749
15.201	In General.....	749
15.202	No Reasonable Likelihood of Rehabilitation in Cases of Serious Child Abuse and Neglect	749
15.203	Failure of Parents to Communicate with Child or Change Conditions That Resulted in Removal.....	750
15.204	Abandonment	751
15.205	Prior Termination of Parental Rights or Intra-family Criminal Conduct by Parent.....	752
15.206	Child's Objection to Termination of Parental Rights	752
15.207	Foster Care Plan with Goal of Termination of Parental Rights Required.....	753
15.208	Authority to File Petition Requesting Termination	753
15.209	Review of Foster Care Plan Combined with Termination Hearing	755
15.210	Consideration of Availability of Adoptive Home.....	755
15.211	Key Issues in Litigating Termination of Residual Parental Rights Cases.....	755
15.212	Order for Involuntary Termination of Residual Parental Rights; Appeal.....	761
15.213	Restoration of Parental Rights	762
15.214	Table of Appellate Cases	763
15.3	PERMANENT FOSTER CARE.....	763
15.301	Agency Authority for Placement.....	763
15.302	Rights of Foster Parents and Child.....	764
15.303	Fostering Futures Program	765

TABLE OF CONTENTS

15.4	INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC)	767
15.401	Background and Purpose.....	767
15.402	Resources.....	767
15.403	Attorney Issues	767
15.5	CHILDREN'S SERVICES ACT	768
15.501	Background and Importance	768
15.502	Structure.....	768
15.503	Eligibility for Services.....	770
15.504	Power of the Court	771
APPENDIX 15-1: DC-534 ORDER FOR VOLUNTARY TERMINATION OF RESIDUAL PARENTAL RIGHTS.....		773
APPENDIX 15-2: DC-562 ORDER FOR CUSTODY TRANSFER TO AGENCY		775
APPENDIX 15-3: DC-554 PETITION FOR FOSTER CARE REVIEW HEARING		779
APPENDIX 15-4: DC-555 FOSTER CARE REVIEW ORDER		781
APPENDIX 15-5: DC-556 PETITION FOR PERMANENCY PLANNING HEARING.....		787
APPENDIX 15-6: DC-557 PERMANENCY PLANNING ORDER.....		791
APPENDIX 15-7: ADOPTION PROGRESS REPORT		797
APPENDIX 15-8: DC-5061 FOSTER CARE PLACEMENT ORDER—QUALIFIED RESIDENTIAL TREATMENT PROGRAM.....		801
APPENDIX 15-9: DC-5062 QUALIFIED RESIDENTIAL TREATMENT PROGRAM (QRTP) PLACEMENT SUPPLEMENTAL ORDER.....		803
APPENDIX 15-10: DC-535 NOTICE OF TERMINATION OF RESIDUAL PARENTAL RIGHTS.....		805
APPENDIX 15-11: DC-531 ORDER FOR INVOLUNTARY TERMINATION OF RESIDUAL PARENTAL RIGHTS.....		807

TABLE OF CONTENTS

APPENDIX 15-12: DC-564 PETITION FOR RESTORATION OF PARENTAL RIGHTS.....	809
APPENDIX 15-13: DC-566 PARENTAL PLACEMENT ORDER FOR RESTORATION OF PARENTAL RIGHTS	811
APPENDIX 15-14: DC-558 PERMANENT FOSTER CARE PLACEMENT ORDER	813
APPENDIX 15-15: DC-595 PETITION FOR REVIEW OF VOLUNTARY CONTINUING SERVICES AND SUPPORT AGREEMENT AND APPROVAL OF CASE PLAN	815
APPENDIX 15-16: DC-596 ORDER APPROVING VOLUNTARY CONTINUING SERVICES AND SUPPORT CASE PLAN	817
 CHAPTER 16: PSYCHIATRIC COMMITMENT OF MINORS	
16.1 INTRODUCTION.....	819
16.2 THE PSYCHIATRIC TREATMENT OF MINORS ACT.....	821
16.201 Jurisdiction and Definitions	821
16.202 Parental Admission of Minors Younger Than 14 and Nonobjecting Minors 14 Years of Age or Older.....	824
16.203 Parental Admission of Objecting Minors 14 Years of Age or Older.....	827
16.204 Issuance and Execution of Emergency Custody Orders.....	830
16.205 Involuntary Temporary Detention	833
16.206 Involuntary Civil Commitment	837
16.207 Mandatory Outpatient Treatment	846
16.208 Appeal of Commitment Order.....	851
16.3 A PRACTICAL ROADMAP	852
16.301 Participants in the Commitment Process	852
16.302 Process from Emergency Custody Order to Temporary Detention Order	854
16.303 Process from Temporary Detention Order to Commitment	857
16.4 PREPARATION FOR THE COMMITMENT HEARING	859
16.401 General Preparation.....	859
16.402 Case Preparation—Obtaining Records	860

TABLE OF CONTENTS

16.403	Case Preparation—Conducting Interviews	862
16.404	Case Preparation—Pre-Hearing Analysis	866
16.405	Additional Strategic Considerations.....	871
APPENDIX 16-1: ATTORNEY CHECKLIST FOR COMMITMENT HEARINGS		875
APPENDIX 16-2: JUVENILE CIVIL COMMITMENT PROCEEDINGS DISTRICT COURT FORMS.....		879
APPENDIX 16-3: SUMMARY OF PSYCHIATRIC COMMITMENT OF MINORS.....		881
 CHAPTER 17: BASIC EDUCATIONAL LAW		
17.1	INTRODUCTION	885
17.2	ACCESSING STUDENTS' EDUCATIONAL RECORDS.....	885
17.3	STANDARDS OF LEARNING AND EVERY STUDENT SUCCEEDS ACT	886
17.301	In General.....	886
17.302	The Standards of Learning (SOLs) and the SOL Tests Generally	887
17.303	The Every Student Succeeds Act	889
17.4	ENROLLMENT	890
17.401	In General.....	890
17.402	General Enrollment Principles.....	890
17.403	Students Living with Non-Parent Relatives	891
17.404	Enrollment of Homeless Students: McKinney-Vento Rights.....	892
17.405	Enrollment and Immigrant Students	893
17.406	Enrollment of Youth in Foster Care	894
17.407	Enrollment and Incarcerated Youth	896
17.5	STUDENT DISCIPLINE.....	899
17.501	Introduction.....	899
17.502	Bullying	902
17.503	Sufficient Cause	902
17.504	Short-Term Versus Long-Term Suspensions	903
17.505	Expulsion.....	904
17.506	Readmission After Expulsion	905

TABLE OF CONTENTS

17.507	Exclusion (Students Expelled or Suspended from Outside the School District).....	905
17.508	Zero Tolerance	906
17.509	Special Circumstances for Mitigation Purposes	907
17.510	Drug Offenses and “Firearms”	908
17.511	Other Weapons	909
17.512	Alternative Schools and Programs	909
17.513	Punishment of Off-Grounds Conduct	911
17.514	Allegations of Gang Activity and the First Amendment.....	911
17.515	Corporal Punishment Prohibited; Reasonable Force Permitted	912
17.516	Investigation by School and Law Enforcement Officials	913
17.517	Procedural Due Process	913
17.518	Contents of Written Notice	915
17.519	Timelines for Notice, Hearings, and Appeals	916
17.520	Requesting Discipline Records	916
17.521	Client Testimony and Fifth Amendment Rights	916
17.522	Judicial Review of a School Board Action	917
17.523	Juvenile Courts and Schools.....	917
17.6	BASIC SPECIAL EDUCATION LAW	918
17.601	Eligibility for Special Education and Related Services	918
17.602	Parental Rights and the Definition of “Parent”	920
17.603	Free Appropriate Public Education (FAPE)	922
17.604	From “Child Find” to Eligibility	923
17.605	The Individualized Education Program (IEP) and IEP Team	926
17.606	The Role of Parental Consent	929
17.607	Placement	930
17.608	Disputes	931
17.7	DISCIPLINE OF STUDENTS WITH DISABILITIES	933
17.701	In General	933
17.702	Disciplinary Changes in Placement	933
17.703	Manifestation Determination Review (MDR)	934
17.704	Services During Removal.....	935
17.705	Weapons, Drugs, Serious Bodily Injuries	936
17.706	Disciplining Students Not Yet Found Eligible for Special Education	936
17.707	Dispute Resolution/Challenging the MDR Decision.....	937
17.8	SECTION 504 OF THE REHABILITATION ACT.....	938

TABLE OF CONTENTS

**CHAPTER 18: USING EDUCATIONAL LAW TO CREATE
BETTER OUTCOMES IN JUVENILE CASES**

18.1	INTRODUCTION	943
18.2	COMMUNICATION BETWEEN SCHOOL AND COURT	944
18.3	INTAKE, DETENTION, AND OTHER PRELIMINARY MATTERS	947
18.301	Introduction.....	947
18.302	Jurisdiction.....	948
18.303	Understanding a Child's School Status at Intake.....	949
18.304	Education Services When Child Is Detained.....	949
18.305	Education Factors in Competency Determination	950
18.4	ADJUDICATION	951
18.401	Preliminary (Pre-Adjudication) Matters.....	951
18.402	Trial	953
18.403	Probation Violations for Failure to Attend School	960
18.5	DISPOSITIONAL ALTERNATIVES.....	961
18.501	General Considerations	961
18.502	Formulating a Disposition Plan	961
18.503	Evidence in the Disposition Hearing	961
18.504	Follow-Up When the Court Orders Participation in Educational Programming for the Child	962
18.6	REENTRY INTO EDUCATIONAL PROGRAMS	962
18.7	ATTENDANCE AND TRUANCY	965
18.701	Introduction.....	965
18.702	Compulsory Attendance Requirements	966
18.703	Truancy and the CHINSup Petition	968
18.704	Diversion.....	970
18.705	Adjudication	972
18.706	Disposition.....	974
18.707	Violation of Court Order to Go to School (Pre- or Post- Disposition).....	976
18.708	Dispositional Alternatives	978

TABLE OF CONTENTS

18.8	EDUCATIONAL RIGHTS OF YOUTH IN FOSTER CARE OR KINSHIP CARE	979
18.801	Children in Foster Care	979
18.802	Students Living with Non-Parent Relatives	980
18.9	ORDERING EDUCATIONAL SERVICES	981
 CHAPTER 19: THE CHILDREN'S SERVICES ACT, PETITIONS FOR SERVICES, AND OTHER PROCEEDINGS		
19.1	THE CHILDREN'S SERVICES ACT	985
19.101	Background and Importance	985
19.102	Structure	989
19.103	Eligibility for Services	990
19.104	Attorney's Role in Obtaining Services	992
19.105	Court's Authority to Order Services Contrary to FAPT and CPMT Recommendation	993
19.2	JUDICIAL PROCEEDINGS TO ORDER SERVICES	994
19.201	History of Section 16.1-278 of the Virginia Code	994
19.202	Jurisdiction and Scope	995
19.203	Examples of Proceedings to Order Services	998
19.3	ORDERING MEDICAL TREATMENT	1000
19.301	Emergency Medical Treatment	1000
19.302	Authorization of Abortion Without Parental Consent	1000
19.303	Other Medical Treatment or Examination	1001
19.304	Role of Guardian Ad Litem	1001
19.4	EMANCIPATION	1002
19.401	Statutory Proceedings	1002
19.402	Effects of Order	1003
19.403	Common Law Emancipation	1003
19.5	CONFIDENTIALITY OF JUVENILE RECORDS AND PROCEEDINGS	1004
19.501	In General	1004
19.502	Police Records	1004
19.503	Juvenile Court and Related Records	1006
19.504	Confidentiality of Proceedings	1008
19.505	Confidentiality of Department of Juvenile Justice Records	1009

TABLE OF CONTENTS

19.506	Effects of Juvenile Adjudication.....	1010
19.507	Expungement	1012
19.508	Reports to School Authorities.....	1013
19.509	DNA Testing.....	1014
19.510	Criminal Street Gang Reporting.....	1014
19.511	Sex Offender Registration	1015
19.6	STANDBY GUARDIANSHIP	1016
APPENDIX 19-1: DC-550 PETITION REQUESTING AUTHORIZATION FOR MEDICAL TREATMENT OF JUVENILE.....		1017
APPENDIX 19-2: DC-551 ORDER AUTHORIZING MEDICAL TREATMENT OF JUVENILE.....		1019
APPENDIX 19-3: DC-503 PETITION FOR COURT APPROVAL OF STANDBY GUARDIAN		1021
APPENDIX 19-4: DC-504 NOTICE OF PETITION FOR COURT APPROVAL OF STANDBY GUARDIAN.....		1023
APPENDIX 19-5: DC-505 ORDER APPROVING STANDBY GUARDIAN.....		1025
APPENDIX 19-6: DC-506 NOTICE OF REVOCATION/STATEMENT OF REFUSAL—STANDBY GUARDIAN.....		1027
APPENDIX 19-7: DC-502A PETITION FOR JUDICIAL AUTHORIZATION OF ABORTION.....		1029
APPENDIX 19-8: DC-502B ADVISEMENT OF RIGHT TO COUNSEL.....		1031
APPENDIX 19-9: DC-502C ACKNOWLEDGEMENT OF RIGHT TO COUNSEL AND APPOINTMENT OF COUNSEL		1033
APPENDIX 19-10: DC-502D ORDER IN PROCEEDING FOR JUDICIAL AUTHORIZATION OF ABORTION.....		1035
APPENDIX 19-11: DC-502E NOTICE OF APPEAL—JUDICIAL AUTHORIZATION OF ABORTION.....		1037

TABLE OF CONTENTS

CHAPTER 20: SPECIAL IMMIGRANT JUVENILE STATUS

20.1	LEGISLATIVE HISTORY OF SPECIAL IMMIGRANT JUVENILE (SIJ) STATUS	1039
20.2	PROCESS FOR GRANTING SIJ STATUS	1039
20.201	Role of USCIS	1039
20.202	Jurisdiction of State Courts to Make Findings and Issue Predicate Orders.....	1040
20.3	CHILDREN WHO SEEK SIJ STATUS	1041
20.301	Entry into United States and Conditions in Country of Origin	1041
20.302	Effect of SIJ Status Determination	1041
	PRACTICE ADVISORY: STRATEGIES FOR OBTAINING SIJS FACTUAL FINDINGS IN VIRGINIA AFTER JULY 1, 2019	1043
	PRACTICE UPDATE: STRATEGIES FOR OBTAINING SIJS FACTUAL FINDINGS IN VIRGINIA AFTER THE 2021 AMENDMENT TO CODE OF VIRGINIA § 16.1-241	1059
	APPENDIX 20-1: CUSTODY PETITION WITH PREEMPTIVE REFERENCE TO § 16.1-241	1067
	APPENDIX 20-2: PROPOSED CUSTODY ORDER	1071
	APPENDIX 20-3: MOTION FOR AN AMENDED ORDER	1075
	TABLE OF AUTHORITIES	1079
	INDEX	I-1

CHAPTER 12

GUARDIAN AD LITEM PRACTICE

12.1 INTRODUCTION

Guardian ad litem (GAL) work is crucial to the safety and protection of children throughout the commonwealth. Because it is often difficult to get practical training and tips for a sustainable and effective GAL practice, the purpose of this chapter is to provide a resource guide for GALs. Every jurisdiction has different policies, but the general skills, principles, and law contained in this chapter should be applicable in every GAL practice in Virginia.

Standards governing and ethics opinions involving GAL practice have been addressed in other chapters in this book. Likewise, the law related to foster care cases and Children in Need of Services (CHINServ) or Children in Need of Supervision (CHINSup) is also addressed in other chapters as well as in the course necessary for GAL certification. Therefore, this chapter will focus on (i) an overview of the court process in cases involving the majority of GAL appointments, namely custody and visitation, foster care, and CHINS; (ii) highlights of the law most often used in cases involving GALs; (iii) practical tips necessary for an effective GAL practice; (iv) why a trauma-informed practice is necessary; and (v) how to avoid burnout through self-care.

12.2 OPENING A GAL CASE

An opening file checklist is helpful so that, regardless of the type of case, the GAL has a standard procedure for opening every file.¹ The opening routine can include the following: conflict checks, letters of introduction² or phone calls of introduction to the parties, criminal record searches, social media searches, and a review of court pleadings. The GAL will then have a baseline understanding of the history of the case and the parties involved before meeting with the parents or the child.

¹ See Appendix 12-1 (Opening File Checklist).

² See Appendix 12-2 (Example of Introductory Letter to Parent).

12.3 CUSTODY AND VISITATION CASES

12.301 Initial Court Appearance. Every juvenile and domestic relations district court has its own policies, so it is important for GALs to develop a good relationship with the clerks and not be afraid to ask questions. While some courts will have an initial “status” or “GAL report” date before scheduling the hearing, other courts only appoint GALs to final hearings in the case. While a GAL is still getting a feel for the practice in a jurisdiction, it is important to clarify what is scheduled to happen on the date listed on the appointment order.

If the initial date on the appointment order is set for a GAL report, review, or status, that is the GAL’s opportunity to inform the court of the positions of the parties and request any temporary relief that may be necessary to protect the safety of the child or stabilize the child’s environment until the court can hear the case on the merits and make a final ruling. For example, at this initial appearance, the GAL can request drug testing of the parents or that foster care prevention services be ordered, and the court can put temporary custody and visitation orders in place. If the recommendation will be for a temporary order, the GAL should bring a draft order to court.³

In order to be in a position to recommend a temporary order at this initial stage, the GAL must speak to both parents in advance of the court appearance and have a face-to-face meeting with the child. While there may not be time to complete a full investigation, it is important to understand the issues that are in dispute, whether there are safety concerns that need to be addressed, and how the child is doing. Additionally, if the parties have worked out an agreement, the GAL can draft the order and present it to the court at that initial court appearance, and the case can be closed.⁴ Of course, the GAL must sign off on whatever the agreement is, which means that the GAL must agree that the order is in the child’s best interest.

12.302 Face-to-Face Meetings with the Child. During face-to-face meetings with children for custody and visitation, the GAL needs to explain his or her role. It is important for children to recognize that their preferences are being heard. It is also important for children to understand that it is the role of the GAL to provide a best interest recommendation to the court and that sometimes what the GAL thinks is best is not what the child may want.

³ See Appendix 12-3 (Temporary/Final Custody and Visitation Order).

⁴ See *Id.*.

Children need to understand that their express wishes will be heard by both the judge and the child's parents *if* that is what the child wants. Some children want their wishes to be known, but some children who feel pressured by both parents do not want their parents to know what they genuinely want. Some children have strong feelings about what their wishes are. For example, some children love going back and forth between homes so that they can have equal time with both parents, while other children want to be "home" in one home and visit the other parent on weekends. Giving children the opportunity to express their wishes while at the same time not putting any pressure on them to make any decisions requires a careful balance. Children need to understand that ultimately the decision is not up to them. It is not a burden any child should carry, and every child should understand that. The GAL will make a best interest recommendation, and the judge will ultimately make the decision.

Depending on the ages of the children it is often helpful to bring coloring books or other fidget or sensory toys. Some children are nervous when talking to a stranger, and drawing or squeezing on a stress ball can help them manage their anxiety. Some children also talk more while walking or playing outside. It is important for the GAL to be flexible and try to gauge what would make the child the most comfortable during this face-to-face time.

GALs should wear comfortable, casual clothing in order to be able to sit on the floor and play with toys or walk in the backyard with children. The more comfortable children are, the easier it will be to get them to open up.

Finally, it is always important to recognize that the GAL is not a therapist. Many children have experienced trauma, and it is not the GAL's role to question children as a therapist would. In cases involving children who are working with a mental health professional, it may be best to have face-to-face time with the therapist present if meeting with the GAL will cause anxiety or undue stress. Of course, this should be discussed beforehand with the parents and therapist.

12.303 Investigation. The parents hold the most important information about the children GALs are appointed to represent. It is important during the initial meeting with each parent to spend a lot of time simply listening. There will be time later to circle back and ask the hard questions that will no doubt be raised by the other parent. If a parent does not feel heard, it will undermine the GAL's credibility and impair his or her ability to do the job. During the initial conversation, it is important to make sure each parent understands the GAL's role and how the investigation will be conducted. That initial conversation should answer questions as to whether the child has any medical, emotional, behavioral, or academic concerns that need to be further

investigated. If any of those concerns are raised, the GAL should decide at the beginning whether records are needed or whether appointments should be made to speak directly to the professionals involved. It is also important during the initial conversation to inform each parent that if they have evidence they want the GAL to see, such as emails, text messages, documents, and the like, they need to get that evidence to the GAL for review in advance of trial. Likewise, if there are people the parents want the GAL to speak to, it is important that they provide the names and email addresses or phone numbers for anyone they think may have information that is germane to the case.

12.304 What to Expect in the Courtroom. In the vast majority of the juvenile and domestic relations district court custody and visitation cases, the GAL will be the only attorney involved in the case. While it is not the GAL's responsibility to put on the case for either of the parents, it is the job of the GAL to make sure that the court hears the independent evidence that is necessary to protect the safety of the child so that the court can make findings that are in the child's best interest. Accordingly, the GAL should subpoena necessary witnesses for the trial. In the final custody and visitation hearing, the GAL will have the opportunity to cross examine both parents during their cases in chief and then to present evidence and provide an oral report to the court with recommendations.

12.305 Recommendations. Recommendations must be based on a best interest analysis under section 20-124.3 of the Virginia Code and should include whether the parties will have joint legal custody or one party will maintain sole custody and which visitation or parenting schedule is in the child's best interest. It is often helpful to specify what joint legal custody means and include in the recommendations ways to ensure the parents are communicating.⁵ The GAL should include in the recommendation a holiday and summer schedule as well. Holidays can be incredibly stressful for children, and having a clear holiday schedule can make them more enjoyable for everyone involved.⁶

The recommendation should also include additional proposed terms that are in the child's best interest, such as therapy for the child, co-parenting counseling for the parents, and when and where the child will be exchanged. Additionally, in cases involving substance abuse by a parent, it is often necessary to include provisions related to alcohol and drugs, including restricting

⁵ See Appendix 12-4 (Standard Joint Legal Custody Terms).

⁶ See Appendix 12-5 (Example of Standard Visitation and Holiday Schedule).

use and providing for testing in order to keep children safe in the care of a parent who struggles with substance abuse.⁷

12.306 Written Versus Oral Reports. Some jurisdictions prefer written reports, while others prefer oral reports. If the jurisdiction prefers a written report, the report needs to be filed five days in advance of any dispositional hearing.⁸ Because of the concerns over hearsay contained in the report, many jurisdictions have moved away from written reports and simply have the GAL provide an oral report and recommendations at either the beginning or the end of trial.

Even if the jurisdiction takes oral reports, it is best not to blindside parents. All parties should know the preliminary recommendations before the hearing that day. The GAL should make sure that all parties understand the recommendation is subject to any additional evidence that may be heard at trial, but everyone involved should have an idea of what the GAL's recommendation will be when they walk into court for trial. If the GAL is working on a case with the other attorneys involved, it is helpful to schedule a phone conference at least a week in advance of trial with those attorneys to share thoughts and provide preliminary recommendations. Alternatively, the GAL may choose to email preliminary written recommendations a week in advance to the attorneys involved. In many cases, the GAL's recommendation can help settle a case.

12.307 Applicable Law to Custody and Visitation Cases.

A. Custody Defined. Virginia Code section 20-124.1 sets forth the definitions of custody that every GAL must understand and be able to convey to parents.

“Sole custody” means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

“Joint custody” means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with

⁷ See Appendix 12-6 (Examples of Alcohol and Drug Provisions in Custody Orders).

⁸ Va. Code § 16.1-274(D); see *Standards to Govern the Performance of Guardians ad Litem for Children*, Item H, www.vsb.org/docs/sections/family/galstandards.pdf.

only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

B. Best Interest Analysis. Virginia Code section 20-124.3 sets forth the best interest factors that the court must consider in determining custody and visitation. These are the same factors that a GAL should take into consideration when making a best interest recommendation for a child.

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

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
2. The age and physical and mental condition of each parent;
3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual, and physical needs of the child;
4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers, and extended family members;
5. The role that each parent has played and will play in the future, in the upbringing and care of the child;
6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;