
RECENT CHILDREN’S POLICY AND LEGISLATIVE
DEVELOPMENTS IN VIRGINIA: A BRIEF HISTORY, A
BRIGHT FUTURE

By the Honorable Christopher K. Peace and Amy L. Woolard***

* Christopher K. Peace represents the 97th District of the Virginia House of Delegates, which includes part of Hanover, King William, and all of New Kent County, Virginia. Peace serves on the Appropriations, Health Welfare and Institutions, and General Laws (Vice Chair) Committees. He is Chairman of the General Laws Subcommittee on Housing, Chair of the Appropriations Sub-committee on Transportation, and Chairman of the Commission on Youth. Del. Peace is also an attorney at Christopher K. Peace, LLC.

** Amy L. Woolard is Senior Policy Attorney with Voices for Virginia’s Children, a statewide, independent policy research and advocacy organization focused on children’s issues in the Commonwealth.

INTRODUCTION

Virginia's 1.86 million children¹ comprise approximately 23 percent of the Commonwealth's citizenry—a significant portion of the population in more ways than sheer numbers can reflect.² They will grow up to be the teachers, engineers, artists, parents, inventors, entrepreneurs and leaders who will make Virginia's continued prosperity their life's work. Still, nearly 16 percent of those children, or 288,000, live in poverty.³ More than 630,000—about 34 percent⁴—live in “low-income” families, defined as families with incomes below 200 percent of the federal poverty level.⁵

Virginia's challenge in the area of human services is perennially to identify and implement efficient, effective means to serve children and families in need and generate positive outcomes. Through an increasing attention to evidence-based best practices, the Commonwealth's human services—and especially children's services—have evolved in recent years toward a more community-based, family-centered, prevention- and early intervention-focused approach. Particularly in the areas of child welfare, behavioral health, juvenile justice and early childhood care, recent policy developments within children's services in Virginia—often achieved through inter-agency partnerships and cooperative efforts between the state legislative and executive branches, along with community partners and advocates—have improved the ways in which state and local government support Virginia's children and families in need.

In this piece, we will outline the structural and policy developments implemented in Virginia in recent years that set the stage for a sea change in children's services in Virginia. Part I will outline institutional, second-order

¹ Annie E. Casey Found., *Child Population*, KIDS COUNT DATA CTR., <http://datacenter.kidscount.org/data/tables/6212-child-population?loc=48&loct=2#detailed/2/any/false/36,868,867,133,38/any/12931,12932> (last updated Feb. 2015).

² Annie E. Casey Found., *Total Population by Child and Adult Populations*, KIDS COUNT DATA CTR., <http://datacenter.kidscount.org/data/tables/99-total-population-by-child-and-adult#detailed/1/any/false/869,36,868,867,133/39,40,41/416,417> (last updated Feb. 2015).

³ Annie E. Casey Found., *Children (Ages 0-17) Living In Poverty*, KIDS COUNT DATA CTR., <http://datacenter.kidscount.org/data/tables/5879-children-ages-0-17-living-in-poverty?loc=48#detailed/2/any/false/36,868,867,133,38/any/12494,12493> (last updated Feb. 2015).

⁴ Annie E. Casey Found., *Children Below 200 Percent Poverty (Virginia)*, KIDS COUNT DATA CTR., <http://datacenter.kidscount.org/data/tables/47-children-below-200-percent-poverty?loc=1&loct=2#detailed/2/48/false/869,36,868,867,133/any/329,330> (last updated Feb. 2015).

⁵ The 2015 Federal Poverty Guidelines place the poverty line at annual income of \$20,090 for a family of three. At 200% of this level, “low income” would mean a family of three with annual income of \$40,180 or less. OFFICE OF THE ASSISTANT SEC'Y FOR PLANNING AND EVALUATION, 2015 POVERTY GUIDELINES (Jan. 22, 2015), <http://aspe.hhs.gov/2015-poverty-guidelines>; *supra* note 3.

change strategies that aimed to restructure the Commonwealth's focus toward family- and community-based care, as well as goals of "breaking down silos" between the agencies that serve children to create innovative partnerships that design multi-systemic solutions. Part II will detail the ways in which Virginia's policies, supported by these institutional strategies, have shifted toward evidence-based best practices and research to improve programming, and how recent legislation has been used to facilitate that shift.

I. RECENT INSTITUTIONAL ADVANCES IN CHILDREN'S SERVICES

This section will highlight four integral structural efforts within children's services that have embodied Virginia's prioritization of the needs of children: the "Children's Transformation," an effort to fundamentally change the Commonwealth's child welfare system more toward family care; the larger role of the Children's Services Act (CSA) in using a multidisciplinary, prevention-based, systems of care approach to children's services; the increased presence of the Commission on Youth, a legislative commission focused on children's issues; and the establishment by Governor Terry McAuliffe of the "Children's Cabinet"—a policy-shaping administrative body focused on the needs of children.

A. The "Children's Transformation"

In 2006, Virginia was unfortunately renowned for placing exceedingly high numbers of youth in foster care in congregate care settings and residential institutions—nearly 24 percent of all youth in care.⁶ At that time, newly elected Governor Tim Kaine and first lady Anne Holton, who was a juvenile court judge, initiated a partnership with the Annie E. Casey Foundation (Casey) and the Division of Family Services within the Virginia Department of Social Services to address the challenges of the child welfare system and lead a transformation.

In December 2007, Virginia's child-serving agencies launched the Children's Services System Transformation (Transformation) initiative. What became known as the For Keeps Initiative, this collaborative effort focused on finding permanent families for children aging out of foster care with three overarching goals:

⁶ VA. DEP'T. OF SOC. SERVS., FOSTER CARE (FC) RELATED REPORTS (2006), *available at* <http://www.dss.virginia.gov/geninfo/reports/children/fc.cgi> (see monthly snapshots).

1. Adopt a statewide philosophy in support of “family-focused, child-centered, community-based care with a focus on permanence for all children,”
2. Implement a standard practice model focused on permanence, thereby increasing the number of relative and non-relative foster parents, and
3. Implement rigorous outcome measurements to ensure quality and enhance accountability.⁷

Further, the Virginia Children's Services System Practice Model (Practice Model) was developed to shift practice to achieve better outcomes for youth and families.⁸ The Practice Model set forth a vision for the services that are delivered by all child-serving agencies across the Commonwealth to be incorporated in all decision making addressing interactions with children and families. The Practice Model states that:

1. All children and youth deserve a safe environment.
2. We believe in family, child, and youth-driven practice.
3. Children do best when raised in families.
4. All children and youth need and deserve a permanent family.
5. We believe in partnering with others to support child and family success in a system that is family-focused, child-centered, and community-based.
6. How we do our work is as important as the work we do.⁹

To accomplish the goal of structural reform, Virginia proceeded with a “two-track” approach to transformation due to Virginia’s state-supervised, locally-administered social services system. The first track looked at the state-level policies and practices and how they affected the local social services delivery system, including working across multiple state agencies and the court system. The second track focused on the local delivery system; this involved identifying a core group of cities and counties to “test drive” some of the strategies identified by Casey.¹⁰

At the state level, multiple policies and budget areas needed to change, including an increase in foster family reimbursements; additional funding to recruit, train, and support foster, kinship, and adoptive parents who care for children in the child welfare system; and changing local match rates in the Comprehensive Services Act (now Children’s Services Act) system, to em-

⁷ *Foster Care Reform in Virginia: A Place to Call Home*, VOICES FOR VA.’S CHILDREN, (Jan. 2008), <http://vakids.org/pubs/foster%20care/Foster%20Care%20in%20Virginia-%20A%20Place%20to%20Call%20Home.pdf>.

⁸ *Virginia Children’s Services Practice Model*, VA. DEP’T. OF SOC. SERVS., https://www.dss.virginia.gov/about/cs_pm.pdf (last visited Sept. 20, 2015).

⁹ *Id.*

¹⁰ *Back on Track: Transforming Virginia’s Child Welfare System*, ANNIE E. CASEY FOUND., (2010), <http://www.aecf.org/m/resourcedoc/AECF-BackonTrack-2010.pdf>.

phasize caring for children in their communities and supporting service provision to biological families instead of removing children and placing them into congregate care. This included a 50 percent reduction in the match rate for community-based services.¹¹

At the local level, 13 counties were identified for the Council on Reform (CORE) to serve as the change leaders needed to make the Children's Transformation occur throughout Virginia.¹² Additionally, those same 13 agencies accounted for over 50% of all the children in care in Virginia.¹³

In 2010, legislation was adopted by the Virginia General Assembly requiring the Governor, in conjunction with the Department of Social Services and other appropriate executive branch agencies, to develop a plan to reduce the number of children in foster care by 25 percent by 2020.¹⁴ The plan provided for the placement of children currently in foster care as well as children entering foster care in safe, appropriate, permanent living arrangements.¹⁵ Overall, Virginia reduced the percentage of children in congregate care by almost 50 percent from 2007-2010 alone, and saved the state of Virginia nearly \$100 million in expenditures through the Children's Services Act (CSA).¹⁶

Since the implementation of this combined effort, the number of children in Virginia's foster care system steadily declined, from 8067 children as of June 30, 2006, to 5219 children as of July 1, 2015.¹⁷ During the same period, local departments of social services reduced their reliance on congregate care settings, which includes group homes, institutions and other non-family-based care placements. Youth in care realize much better outcomes when living in family-based settings—if not with their families of origin, then most especially in relative or kinship care.¹⁸ From the implementation of the Children's Transformation in December of 2007, youth placed in congregate care arrangements decreased from approximately 25 percent of

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Act of Apr. 7, 2010, ch. 192, 2010 Va. Acts 265 (requiring a plan to reduce the number of children in foster care by 25 percent within 10 years).

¹⁵ *Id.*

¹⁶ *Supra* note 12, at 13.

¹⁷ *Supra* note 8 (see monthly snapshot for corresponding dates).

¹⁸ *See, e.g.,* Tiffany Conway & Rutlege Q. Hutson, *Is Kinship Care Good for Kids?*, CTR. FOR LAW AND SOC. POLICY, 1–3 (Mar. 2, 2007), <http://www.clasp.org/admin/site/publications/files/0347.pdf>.

all placements to approximately 15.5 percent of all placements in July 2015.¹⁹

B. Children's Services Act (CSA) and Blended Funding Streams

In 1992, the Virginia General Assembly passed the Comprehensive Services Act for At-Risk Youth and Families,²⁰ now known as the Children's Services Act (CSA),²¹ This legislation was the result of a study of children's services in Virginia which revealed that, although children had multiple needs, the services required to address those needs were limited by the system and agency through which the youth originally entered the process, e.g., social services, juvenile justice, or education.²² Additionally, four different state agencies (Education, Social Services, Juvenile Justice, and Behavioral Health) identified more than 14,000 cases that actually only represented approximately 5,000 children.²³ The study revealed that Virginia relied on a fragmented service delivery system, which fostered duplication of services and casework, and generated local incentives for serving youth in the most restrictive and expensive settings.²⁴ The General Assembly set out to correct these problems through the enactment of the CSA.

Accordingly, as with Virginia's human services and education agencies, the CSA is state-supervised by the Office of Children's Services, but locally administered.²⁵ It is comprised of eight specific funding streams that are

¹⁹ *Children's Services System Transformation*, VOICES FOR VA.'S CHILDREN, <http://vakids.org/our-work/foster-care-adoption/childrens-transformation> (last visited Sept. 20, 2015); *supra* note 8 (see outcomes data for corresponding dates).

²⁰ VA. CODE ANN. § 2.2-5200 (2015) (originally enacted as Comprehensive Services Act For At-Risk Youth and Families, Ch. 880, H.B. 935, 1947 (Va. Acts 1992)).

²¹ The *Children's Services Act*, before July 1, 2015, was known as the *Comprehensive Services Act*. Through the Virginia Commission on Youth, Senator Barbara Favola (D-Arlington) introduced SB850 during the 2015 legislative session, which was passed by the General Assembly, signed by Gov. McAuliffe, and enacted on July 1, 2015. The bill changed the name of the law to the *Children's Services Act* to place a greater emphasis on its purpose, and likewise changed the name of its overseeing agency to the Office of Children's Services from the Office of Comprehensive Services. *Comprehensive Services Act Becomes the Children's Services Act on July 1*, VA. DEP'T OF SOC. SERVS., http://www.dss.virginia.gov/files/division/pa/news_releases/2015/Comprehensive_Services_July_1_2015.pdf (last visited Sept, 20, 2015).

²² Refers to a 1990 study conducted by the Virginia Department of Planning and Budget, entitled A Study of Children's Residential Services. See Kim McGaughey, Exec. Dir., Office of Comprehensive Servs. For At-Risk Youth & Families, Presentation to Behavioral Health Care Subcommittee Joint Commission on Health Care (June 13, 2007) available at http://services.dlas.virginia.gov/user_db/fmjchc.aspx?viewid=562.

²³ *Id.*

²⁴ *Id.*

²⁵ VA. CODE ANN. § 2.2-5201 (2015).

“blended and braided” to fund the CSA.²⁶ Local agencies utilize collaborative arrangements to deliver non-duplicative services to at-risk youth in the least restrictive settings possible.²⁷ At the state level, the State Executive Council (SEC) is the appointed entity responsible for policy and program oversight as well as management of CSA funds.²⁸ The SEC is comprised of legislators, state government agency heads from the five child-serving agencies, three local government officials, parent representatives, and public and private providers.²⁹ The SEC meets quarterly via open meetings, and accepts public comment at each meeting.³⁰

While the SEC provides leadership and policy guidance, localities are responsible for administering the program and making service-delivery decisions.³¹ The CSA creates two local teams of professionals that review requests for services under this funding stream: the Family Assessment and Planning Team (FAPT) and the Community Policy and Management Team (CPMT).³² The goal of the FAPT is to consider the strengths and needs of the individual youth and families, decide what services to provide, and prepare a service plan with input from families. Some localities may opt to use a collaborative, multidisciplinary team process approved by the SEC in lieu of a FAPT. The CPMT coordinates agency efforts, manages the available funds, and provides oversight to ensure eligible youth and their families receive help. Both teams include parents, staff from Community Services Boards (local/regional behavioral health authorities), court services units, the local departments of health and social services, the local public schools and private providers. In some localities, these teams go by different names and may also include other members.

Youth for whom CSA services are mandated by law fall into two groups:

1. Youth in foster care and those deemed to be imminently at-risk for placement into foster care; and
2. Youth who are special education eligible and have an Individualized Education Program (IEP) requiring they receive education in a private day or residential school setting.³³

²⁶ *Student & School Support*, VA. DEP'T. OF EDUC., http://www.doe.virginia.gov/support/comprehensive_services_act/ (last visited Oct. 18, 2015).

²⁷ *See id.*; VA. CODE ANN. § 2.2-5211 (2015).

²⁸ VA. CODE ANN. § 2.2-2648

²⁹ *Id.*

³⁰ *Id.*

³¹ *See id.*; VA. CODE ANN. § 2.2-5211 (2015).

³² VA. CODE ANN. § 2.2-5211 (2015).

³³ VA. CODE ANN. § 2.2-5212 (2013).

These particular criteria are codified in state law as eligible for CSA funding based on the federal mandates Virginia follows and resulting funding the state receives to serve those youth.³⁴ Localities are also permitted to use CSA funds to serve other populations of youth, as well, including those children with persistent or significant behavioral health needs and youth involved with the juvenile justice system.³⁵

Since its inception, Virginia's use of its Children's Services Act has evolved to place greater emphasis on prevention and early intervention, and improved the methods by which agencies collaborate to address the multi-systemic needs of youth.³⁶ Through interagency cooperation and the use of multi-disciplinary teams, localities can connect children and families to the most appropriate, comprehensive services they need in the least restrictive environment, thus helping to assure the continuum of support from home to school and back again.

C. The Virginia Commission on Youth

The Virginia Commission on Youth is a bipartisan legislative commission of the Virginia General Assembly comprised of six members of the House of Delegates, three members of the Senate of Virginia and three citizen members appointed by the Governor.³⁷ Section 30-174 of the Code of Virginia establishes the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families."³⁸ The Commission also is directed to "...encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services."³⁹

The Commission was established by the 1989 General Assembly Session in response to a two-year study examining issues related to chronic status offenders and began operations in 1991.⁴⁰ The Commission conducts studies through research and data analysis, and establishment of subcommittees, task forces and/or advisory groups that provide specific subject expertise and guidance.

³⁴ *Id.*

³⁵ *Id.*

³⁶ VA. CODE ANN. § 2.2-5200 (2015).

³⁷ VA. CODE ANN. § 30-174 (2004).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *About the Youth Commission*, VA. COMM'N ON YOUTH, vcoy.virginia.gov/about.asp (last visited Sept. 21, 2015).

The Commission strives to develop legislative recommendations that not only reflect consensus among key agencies and organizations, but also protect the Commonwealth's most valuable asset, the youth of Virginia. The work of the Commission greatly contributes to the General Assembly's ability to make sound policy decisions. The Commission works closely with the executive branch, local government officials, and other relevant stakeholders to identify best practices, engage families, and support policies that research reveals yield the greatest returns.

The Commission on Youth consistently recommends legislation that moves Virginia forward in its ability to serve children and families in need, and generates research and analysis that supports those initiatives.

D. The Children's Cabinet

In August 2014, Governor Terry McAuliffe signed Executive Order 21, establishing Virginia's Children's Cabinet.⁴¹ The Children's Cabinet is co-chaired by the Secretary of Health and Human Resources and the Secretary of Education. Ex-officio membership of the Children's Cabinet also includes Lt. Governor Ralph Northam, First Lady Dorothy McAuliffe, Secretary of Commerce and Trade Maurice Jones, and Secretary of Public Safety and Homeland Security Brian Moran.⁴²

The Children's Cabinet was created to provide coordinated oversight across child and family-serving systems, facilitate connections between state and local partners, and promote positive outcomes in five priority areas. These areas are:

1. Beyond the barriers: Schools in high-poverty communities face numerous systemic societal barriers. Opportunities for increased support will be identified for Virginia's most vulnerable children and their families.
2. Raising the foundation: High-quality early childcare along with increased access to pre-K, and educational programs lay the foundation for academic achievement. Childcare providers must be held accountable to provide quality childcare so that Virginia's youngest children will thrive and obtain the necessary skills to contribute to our communities.
3. Access to basics: Access to healthcare, housing, and proper nutrition is critical to ensure the healthy growth, development, and well-being of children and their families.
4. Triumph over transitions: Services for youth who are transitioning out of Virginia's juvenile justice, mental health, and foster care systems will be ad-

⁴¹ Va. Exec. Order No. 2014-21, Champions for Virginia's Children: Virginia Children's Cabinet (Aug. 11, 2014), <https://governor.virginia.gov/media/3326/eo-21ada.pdf>.

⁴² VA. DEP'T OF EDUC., 2014-2015 CHILDREN'S CABINET ANNUAL REPORT (June 1, 2015) <http://education.virginia.gov/media/3895/2014-2015-childrens-cabinet-annual-report-final2.pdf>.

dressed. Best practices will be determined, and replication will be encouraged. Factors leading to youth entering the juvenile justice system will be identified to reduce the impact of incarceration. Issues related to educational and work transitions from pre-school to K-12 education, and K-12 education to college and/or the workforce, will also be examined.

5. Working parents, building families: Policies and services that encourage workforce development efforts for parents through education, credential training, career development, and employment will be addressed.⁴³

All of these initiatives have pushed change and development of policy and programs. From working at a local level to recommending legislation for statewide programs, Virginia's restructuring over the last few decades have put the focus back on the youth of the Commonwealth.

II. RECENT POLICY AND LEGISLATIVE ADVANCES IN VA. CHILDREN'S SERVICES

Over the past 10 years, there has been a shift in mindset regarding the provision of services to Virginia's children. While not perfect, this shift reflects consensus regarding the benefits of serving Virginia's children in their communities, the value of partnering with families, and a focus on preventive programs versus more intensive services that only start once the child and/or family are in crisis. These efforts are discussed below.

A. Improving Access to Mental Health Services

1. Funding Regional Child Psychiatry and Children's Crisis Services

Nationwide, it is estimated that one in five children needs mental health treatment, and only one in five of those kids ever receives it.⁴⁴ As many as 130,000 children and adolescents in Virginia has a serious mental health disorder.⁴⁵ Psychiatric crises left untreated lead to costly hospitalizations that separate children from their families, and can cause further treatment needs that would not have been necessary with earlier intervention. Strengthening Virginia's mental health system for children has been a criti-

⁴³ *Id.*

⁴⁴ *Children's Mental Health: New Report*, CTRS. FOR DISEASE CONTROL, <http://www.cdc.gov/features/childrensmentalhealth/> (last visited Sept. 20, 2015); *Mental Health Myths and Facts*, MENTALHEALTH.GOV, <http://www.mentalhealth.gov/basics/myths-facts/> (last visited Sept. 20, 2015).

⁴⁵ *The Campaign for Children's Mental Health*, 1IN5KIDS.ORG, <http://1in5kids.org/wp-content/uploads/2015/01/Senate-budget-amendment-one-pgr.pdf> (last visited Sept. 20, 2015).

cal part of overall behavioral health system reform over the past decade.⁴⁶ Virginia's mental health delivery model, while still complex and multifaceted, is evolving rapidly.

A 2011 report to the General Assembly (Item 304.M.) described the services needed to meet the needs of children with mental health concerns.⁴⁷ Of all the services, crisis response services including mobile crisis services and crisis stabilization services were the least available in the Commonwealth.⁴⁸ Rural localities are particularly challenged in providing these services. Child psychiatry, an integral part of all crisis response services, was also one of the highest needed services.

In fiscal year (FY) 2013, three health planning regions (Southwest, Central Virginia, and Richmond) were awarded funding totaling \$1.5 million to provide child psychiatry, crisis stabilization, and mobile crisis services to children with behavioral health needs.⁴⁹ In FY 2014, an additional \$1.9 million was appropriated to make these crisis services available in the two remaining regions of the Commonwealth—Northern Virginia and Hampton Roads.⁵⁰ The 2015 General Assembly added \$2 million to the prior years' funding to expand child psychiatry and children's crisis services and to increase capacity in each of the five health planning regions across the state to serve children in additional localities.⁵¹

Because of these critical services, the regions were able to keep children with their families so that the children could continue attending school and maintain family and community connections. By implementing a regional approach, Virginia facilitated sharing of resources, collaboration with private providers, and flexibility in service delivery. The greatest improvements have been seen in access to child psychiatry services through face-to-face visits, tele-psychiatry, and consultations between psychiatrists and pe-

⁴⁶ *Treatment of Children with Mental Illness*, NAT'L INST. OF MENTAL HEALTH (2009), http://www.nimh.nih.gov/health/publications/treatment-of-children-with-mental-illness-fact-sheet/NIMH-Treatment-Children-Mental-Illness-FAQ_34669.pdf.

⁴⁷ *See A Plan for Community-Based Children's Behavioral Health Services in Virginia*, VA. DEP'T OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVS. (2011), <http://www.dbhds.virginia.gov/library/document-library/cfs%20child%20and%20family%20-%20plan%20for%20behavioral%20health%20services.pdf>.

⁴⁸ *Id.* at 15.

⁴⁹ Ashley Everette, Pol'y Analyst, Voices for Va.'s Children, Presentation to the Behavioral Healthcare Subcommittee of the Joint Commission on Health Care (Aug. 20, 2014), *available at* <http://jchc.virginia.gov/5%20Voices%20for%20Va%20Children%20Ms.%20Everette.pdf>.

⁵⁰ *Id.*

⁵¹ *2015 Post-Session Legislative Update*, NAT'L ALLIANCE ON MENTAL ILLNESS VA., <http://nami.virginia.org/FINAL%20Legislative%20Update%202015.pdf> (last visited Sept. 30, 2015).

diatricians/primary care practitioners.⁵² The number of children receiving child psychiatry services increased to 2,189 in FY 2014 from 520 in FY 2013.⁵³ The 2015 General Assembly also appropriated \$550,154 in the second year of the biennium to add 11 direct care staff at the Commonwealth Center for Children and Adolescents, Virginia's only acute care mental health facility for youth under the age of 18 years.⁵⁴

2. Allowing Parent Referrals for Accessing Services Under the Children's Services Act (CSA)

The 2015 General Assembly adopted legislation⁵⁵ requiring local Children's Services Act (CSA) teams to create new policy and procedures to allow a parent or guardian to directly refer their child/family to the local Family Assessment and Policy Team (FAPT) or a local multi-disciplinary team for services.⁵⁶ This allows families with service needs that have not previously been involved with other child-serving agencies (including local schools, Community Services Boards, and local departments of social services) to access FAPT for an assessment.⁵⁷ This policy change aims to empower families to seek out access to preventive services, less intensive services or approaches, or even step-down services available in their community. While local FAPTs were created to facilitate local agency collaboration and better identification of available services and supports that best address all of a child's needs, parents and family members are often the "experts" on their children. Providing direct access to the FAPT teams will offer another "door" of access that could allow for earlier intervention that includes parents and family as true partners in the process.

3. Addressing Behavioral Health Needs of Juvenile Offenders

Recent studies indicate that up to 70 percent of youth in the juvenile justice system meet the criteria for at least one mental health diagnosis such as

⁵² VA. DEP'T OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVS., REPORT ON FUNDING FOR CHILD PSYCHIATRY AND CHILDREN'S CRISIS RESPONSE SERVICES (ITEM 315.W. 2014 APPROPRIATION ACT) 23, (2014) available at <http://www.dbhds.virginia.gov/library/document-library/ocfs%20315%20w%202014%20crisis%20report.pdf>.

⁵³ *Id.* at 15.

⁵⁴ VA. LEGISLATIVE INFO. SYS, GOVERNOR' SUMMARY OF AMENDMENTS TO THE 2014-2016 BUDGET (HEALTH & HUMAN RESOURCES) 68, (2015) available at <http://lis.virginia.gov/151/bud/FinalSum/HHR.PDF>.

⁵⁵ H.B. 2083, 2015 Reg. Sess. (Va. 2015), available at <http://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0305+pdf>.

⁵⁶ *In Review: Local Governments Prevailed on Important Issues During 2015 Legislative Session*, VA. MUN. LEAGUE (Mar. 13, 2015), <http://www.vml.org/sites/default/files/eNewsMarch1315.pdf>.

⁵⁷ *Id.*

major depression, bipolar disorder, or anxiety conditions.⁵⁸ Many of these youth enter the juvenile justice system because their issues are unrecognized or untreated, and/or community services are not available to serve them.⁵⁹ Research also shows that youth with mental health concerns can often become worse if they are inappropriately treated or confined without treatment.⁶⁰ Over the past decade, Virginia has re-visited its juvenile justice policies based upon research that showed confining youth in large, secure juvenile facilities was costly (in Virginia, in excess of \$150,000 per youth annually in FY 2014) and actually increased the likelihood of recidivism.⁶¹ Virginia's Department of Juvenile Justice (DJJ) recently adopted a collaborative and community-based response to the needs of these youth to help break this cycle and reduce the likelihood that these youth will enter the criminal justice system.⁶²

In 2013, the Commission on Youth studied mental health assessments for juvenile offenders.⁶³ As a result of the study, \$1.6 million was appropriated to DJJ for each year in the 2014 Biennial Budget to support mental health and substance abuse evaluation and treatment services for juveniles under state probation or parole.⁶⁴ The Commission also adopted legislation to ensure judges have a completed social history prior to disposition for juveniles who may be committed to DJJ and to require the creation of a model social history report and guidelines to better assist the courts in making informed dispositional decisions.⁶⁵

DJJ has also implemented policies to better serve juveniles in their communities. These initiatives include: trauma-informed care; transformation teams; community placement programs; family engagement; re-entry re-

⁵⁸ See *Better Solutions for Youth with Mental Health Needs in the Juvenile Justice System 2*, MENTAL HEALTH AND JUVENILE JUSTICE COLLABORATIVE FOR CHANGE, (2014) <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-Mental-Health-FINAL.pdf>.

⁵⁹ *Id.*

⁶⁰ See *id.* at 3.

⁶¹ See VA. DEP'T OF JUVENILE JUSTICE, DATA RESOURCE GUIDE: FISCAL YEAR 2014, 101, Spec. Sess. I, at 66; *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, JUSTICE POLICY INST., http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf (last visited Sept. 30, 2015).

⁶² See generally VA. DEP'T OF JUVENILE JUSTICE, DATA, VIRGINIA DEPARTMENT OF JUVENILE JUSTICE RE-ENTRY INITIATIVE FOUR-YEAR STRATEGIC PLAN EXECUTIVE SUMMARY, (2010) available at http://www.djj.virginia.gov/pdf/Admin/ReentryExecutiveSummary_12142010.pdf.

⁶³ See VA. COMM'N ON YOUTH, MENTAL HEALTH ASSESSMENTS FOR JUVENILE OFFENDERS 196, 2013 Sess., (2014) available at <http://vcoy.virginia.gov/pdf/FINAL%20REPORT.pdf>.

⁶⁴ H.B. 5002, 101st Va. Gen. Assemb., Spec. Sess. I (Va. 2014).

⁶⁵ Act of Feb. 27, 2014, Ch. 20, 2014 Va. Acts 183 (amending §§ 16.1-272, 16.1-273, 16.1-278.7, and 16.1-278.8 of the Code of Virginia, relating to commitment of juveniles to the Department of Juvenile Justice; consideration of social history); see also Act of March 17, 2014, Ch. 249, 2014 Va. Acts 128.

form; and targeting resources to juveniles based on highest risk.⁶⁶ Between FY 2005 and 2014 DJJ closed four juvenile correctional centers (JCC), JCC capacity fell by 455 beds (42 percent), JCC average daily population fell by 464 residents (44 percent); and intakes have decreased by 24,026 cases since FY 2005 (35 percent).⁶⁷

Based upon recidivism research, in August 2015 the Board of Juvenile Justice voted to revise its length-of-stay guidelines for indeterminately sentenced youth, to emphasize factors other than severity of charges (including strengths and community ties) and bring youth sentences more in line with best practices and the rehabilitative goals of the juvenile system.⁶⁸

B. Improving Virginia's Child Welfare System

1. Reducing the Number of Youth Placed in Foster or Congregate Care

While foster care is an essential protection for some children, removing a child from his or her family can have traumatic effects. Research over the past decade has revealed the longer a child remains in foster care and the more placements a child experiences, the worse the outcomes are for that child.⁶⁹ Some children removed from their parents could remain at home if families had access to appropriate support services. In response to these issues, Virginia has increased efforts to address, and even prevent, the problems families encounter that result from bringing children into the custody of social services.⁷⁰ Virginia has also worked to move children entering fos-

⁶⁶ VA. BD. OF JUVENILE JUSTICE, JAN. 6, 2015 MEETING MINUTES 6-8 (2015), available at http://www.djj.virginia.gov/pdf/BJJ/board_minutes_January_6_2015_final.pdf.

⁶⁷ Compare VA. DEP'T OF JUVENILE JUSTICE, DATA RESOURCE GUIDE FISCAL YEAR 2014 9, 20, 29, available at http://www.djj.virginia.gov/pdf/AboutDJJ/DRG/FY2014_DRG.pdf, with VA. DEP'T OF JUVENILE JUSTICE, DATA RESOURCE GUIDE FISCAL YEAR 2007 20, 99, available at http://www.djj.virginia.gov/pdf/AboutDJJ/DRG/FY2007_DRG.pdf (containing data for 2005).

⁶⁸ See Zoe Schein, *Virginia's New Guidelines Call for Shorter Lengths of Stay*, NAT'L JUVENILE JUSTICE NETWORK (Aug. 12, 2015), <http://www.njjn.org/article/virginias-new-guidelines-call-for-shorter-lengths-of-stay>.

⁶⁹ U.S. DEP'T OF HEALTH AND HUMAN SERVS., CHILD WELFARE OUTCOMES 2008-2011 REPORT TO CONGRESS 28 (2012), available at http://www.acf.hhs.gov/sites/default/files/cb/cwo08_11.pdf.

⁷⁰ See generally VA. COMM'N ON YOUTH, 2014 EXECUTIVE SUMMARY, Rep. Doc. No. 30 at 7 (2015) available at <http://vcoy.virginia.gov/pdf/2014%20Executive%20Summary.pdf> (requesting the Department of Social Services to review existing policies and practices related to early prevention services); VA. COMM'N ON YOUTH, BARRIERS TO KINSHIP CARE IN VIRGINIA, Rep. Doc. No. 17 at 8, 21 (2011) available at <http://vcoy.virginia.gov/reports.asp> (researching the amount of children diverted from foster care through kinship providers); VA. COMM'N ON YOUTH, COLLECTION OF EVIDENCE-BASED PRACTICES FOR CHILDREN AND ADOLESCENTS WITH MENTAL HEALTH TREATMENT NEEDS, H. Doc. No. 7 at 230-32 (2013) available at http://vcoy.virginia.gov/pdf/Collection_HouseDoc7041513withcover.pdf (describing different treatments for juveniles with mental health issues).

ter care to permanency⁷¹ as quickly as possible. These efforts not only reduce the foster care population but also lead to better outcomes for children. The Commonwealth's focus has been multifaceted, and efforts have included plans to reduce the number of children entering care, shortening length of stay for those in care, and improving permanency outcomes to reduce returns to care, as well as strategies for sustaining efforts over time.⁷²

Thanks to the combined effects of the Children's Transformation, a greater emphasis on relative care, strategies to use trauma-informed care and differential response, and increased attention to "family find" and post-adoptions services, the number of children in Virginia's foster care system has steadily declined, from 8067 children as of June 30, 2006, to 5219 children as of July 1, 2015.⁷³

During the same period, local departments of social services reduced their reliance on congregate care settings, which includes group homes, institutions, and other non-family-based care placements.⁷⁴ Youth in care realize much better outcomes when living in family-based settings, most especially in relative or kinship care.⁷⁵ From the implementation of the Children's Transformation in December of 2007, the percent of youth placed in congregate care arrangements decreased from approximately 25 percent of all placements to just over 15 percent of all placements in July 2015.⁷⁶

2. Increasing the Use of Kinship Care

Informal kinship care, also known as foster care diversion, in Virginia is defined as "a strategy to prevent foster care placement by engaging caregivers in a process to identify relatives who can provide short term care for their children."⁷⁷ In a kinship diversion case, though practice currently varies across the Commonwealth, parents can identify suitable relatives who are able to take care of a child in need, often through a direct transfer of

⁷¹ *Achieving and Maintaining Permanency – Overview*, CHILD WELFARE INFORMATION GATEWAY, <https://www.childwelfare.gov/topics/permanency/overview/> (last visited Aug. 21, 2015).

⁷² See *A Portrait of Virginia's Child Welfare System*, VOICES FOR VA.'S CHILDREN (May 2011), http://vakids.org/pubs/foster%20care/portrait-va-kids-welfare_05-11.pdf.

⁷³ *Children Services System Tracking*, VOICES FOR VA.'S CHILDREN, <http://vakids.org/our-work/foster-care-adoption/childrens-transformation> (last visited Aug. 25, 2015).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Child and Family Services Manual 10*, VA. DEP'T OF SOCIAL SERVS. (2012), http://www.dss.virginia.gov/files/division/dfs/ca_fc_prevention/early_prevention/manual/section_01.pdf.

custody.⁷⁸ Kinship care offers a viable option for children who might otherwise enter foster care because they are unable to continue living at home due to a family crisis such as a parent's illness, incarceration, lack of housing, insufficient income, abuse or neglect.⁷⁹

Virginia also maintains a "formal" kinship care practice that involves licensing relatives as foster families in order to care for their related children.⁸⁰ The Commonwealth has not taken full advantage of this option, however, with only just under 5 percent of all youth in foster care placed formally with relatives.⁸¹ State and local departments often cite Virginia's strict "barrier crime" laws, as well as reliance on diversion and custody transfer as reasons for underutilizing formal kinship care.⁸² Policy advocates often point to the lack of a "subsidized custody" or "relative guardianship" program in Virginia as yet another barrier to increasing use of formal kinship care options.⁸³

Children in kinship care arrangements experience less trauma, have positive perceptions of their placements, and have fewer behavioral problems than children in foster care.⁸⁴ Virginia has incorporated policies, underscored in federal law,⁸⁵ that strive to preserve families by requiring that family members be considered first when out-of-home placements are sought.

In a survey conducted by the Virginia Department of Social Services (DSS) in 2010, 94 percent of responding local departments of social services stated that they diverted children from foster care, indicating that informal kinship care is a widespread prevention practice in Virginia.⁸⁶ DSS estimates based on the 2010 survey, that 1,600 children annually are di-

⁷⁸ See Leah Hamaker, *Definition of Kinship Caregivers* 17, 19, VA. COMM'N ON YOUTH (2012), http://vcoy.virginia.gov/documents/101712_Kinship%20Definition.pdf.

⁷⁹ VA. COMM'N ON YOUTH, SCHOOL ENROLLMENT PRACTICES FOR VIRGINIA'S KINSHIP CAREGIVERS, Rep. Doc. No. 135, available at [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD1352012/\\$file/RD135.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD1352012/$file/RD135.pdf).

⁸⁰ *Supra* note 67, at 11.

⁸¹ See VA. COMM'N ON YOUTH, BARRIERS TO KINSHIP CARE IN VIRGINIA, Rep. Doc. No. 17 at 12, (Sept. 25, 2011), available at [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD172012/\\$file/RD17.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD172012/$file/RD17.pdf).

⁸² *Id.* at 13.

⁸³ *Id.* at 20.

⁸⁴ See *Elders as Resources: Intergenerational Strategies Series*, ANNIE E. CASEY FOUND. (June 5, 2005), <http://www.aecf.org/resources/communities-for-all-ages-planning-across-generations/>.

⁸⁵ 42 U.S.C. § 671(a)(19) (2014).

⁸⁶ 2012 *Legislative Agenda: Voices champions public policies that improve the lives of Virginia's children*, VOICES FOR VA.'S CHILDREN (2012), <http://www.vakids.org/pubs/Action/draft%202012%20legislative%20agenda.pdf>.

verted into kinship care.⁸⁷ Virginia is in the process of improving tracking of children placed in kinship care, as well as requiring local departments to report on the well being and permanency of children placed in kinship arrangements.

Recommendations for improvements on this practice are due to the Governor and the General Assembly by January of 2016, as part of a bill passed by the General Assembly during the 2014 session and supported by advocacy groups and policy experts such as the Virginia Poverty Law Center, Voices for Virginia's Children, and FACES of Virginia Families.⁸⁸

3. Increasing Adoptions

The purpose of adoption is to place children who have permanently and legally separated from their birth parents with a new family. As of 2013, only 73 percent of Virginia's foster care children exit foster care with a permanent family.⁸⁹ During the same time period, however, Virginia's public adoptions increased from 525 to 709, a rate of increase of more than 35 percent.⁹⁰

Virginia engaged in a major adoption initiative in January 2013, Virginia Adopts, an effort designed and shepherded by then-Secretary of the Commonwealth, Janet Vestal Kelly.⁹¹ This effort included the "Campaign for 1000," which was dedicated to matching 1000 families with 1000 children who were waiting to be adopted.⁹² Virginia Adopts focused on improving recruitment for adoptive families as well as ensuring adequate post-adoption services. By December 2013, 1008 children had been matched with an adoptive family.⁹³ One important finding from this campaign was that an average family entering the foster care system with the purpose of adoption will do so only after they have been approached about foster care adoption an average of eight times.⁹⁴ Adoptive family recruitment and suc-

⁸⁷ *Id.*

⁸⁸ S.B. 284, 2014 Gen. Assemb., Reg. Sess. (Va. 2014).

⁸⁹ Presentation, *VAdopts: Campaign for 1,000*, VA. COMM'N ON YOUTH (Sept. 20, 2015), <http://vcoy.virginia.gov/pdf/Virginia%20Adopts.pdf>.

⁹⁰ *Adoption*, VIRGINIA PERFORMS (July 20, 2015), <http://vaperforms.virginia.gov/indicators/healthfamily/adoption.php>.

⁹¹ *Campaign for 1,000 VAdopts: Campaign in Review 2013* 3, 6, VA. DEP'T OF SOC. SERVS., (Nov. 22, 2013) available at https://www.dss.virginia.gov/files/division/dfs/ap/intro_page/publications/vadopts-campaignreview2013-lowres.pdf.

⁹² *Id.*

⁹³ See Press Release, Va. Dep't of Soc. Servs., "Virginia Adopts: Campaign for 1,000" Exceeds Goal (Dec. 2013), available at https://www.dss.virginia.gov/files/division/pa/news_releases/2013/VAdopt_Social_Services_recognition_December_2013.pdf.

⁹⁴ *Id.* at 7.

successful matching requires, of course, a great deal of local effort and resources. As a legacy of the Virginia Adopts campaign, DSS has increased its emphasis on the foster care adoption program, and continues to gather data and feedback from prospective adoptive parents and local departments to improve efforts.

4. Restoration of Parental Rights

In 2012, the Commission on Youth studied the issue of restoration of parental rights in the child welfare context.⁹⁵ The Commission adopted a recommendation to introduce legislation in the 2013 General Assembly session to create a procedure for restoring parental rights to a parent whose rights to his or her child have previously been terminated through a child welfare action.⁹⁶ Conditions included in this legislation require that the child is at least 14 years of age and has not achieved his permanency goal.⁹⁷ This legislation was unanimously passed by both the House and Senate.

Foster care is intended to be a temporary safety net for children who are abused or neglected. Ideally, children exit foster care by reunifying with a birth parent, living with a guardian, or being adopted. However, the child welfare system does not locate a family for every child. A procedure for the restoration of parental rights provides the courts with a tool to provide another avenue to permanency for these youth, through reunification with their parents in the situations where it is safe and in the best interests of the child.

5. Strengthening Transitional Services for Youth In and Aging Out of Foster Care

In 2008, Congress passed and President George W. Bush signed into law the Fostering Connections to Success and Increasing Adoptions Act (“Fostering Connections”),⁹⁸ an ambitious piece of child welfare legislation that directed states to level the playing field for youth in foster care in several critical ways, most notably in the realms of K-12 education and transition to adulthood.

⁹⁵ See VA. COMM’N ON YOUTH, RESTORATION OF PARENTAL RIGHTS, Rep. Doc. No. 12 at 20, (2002) available at <http://vcoy.virginia.gov/pdf/Restoration%20of%20Parental%20RightsFINAL0114.pdf>.

⁹⁶ *Id.* at 2.

⁹⁷ VA. CODE ANN. § 16.1-283.2 (2013).

⁹⁸ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949.

a. School Enrollment

Virginia tackled implementation of the education provisions of Fostering Connections beginning in 2009, establishing a working partnership between state and local education agencies and state and local social services.⁹⁹ This section of Fostering Connections aimed to decrease both the number of placements and the number of school changes youth in foster care experienced as a result of being placed in care. The law was modeled on the McKinney-Vento Education Act,¹⁰⁰ and allowed flexibility for youth to remain in their schools of origin despite a foster care placement outside that school's boundaries unless in their best interests to transfer to the school connected to the new placement.

Child welfare policy advocates from the Legal Aid Justice Center, Voices for Virginia's Children, and the Virginia Poverty Law Center consulted the partnership and helped them develop what became a model policy that many other states adopted.¹⁰¹ The collaboration produced joint guidance for school enrollment of youth in foster care, a "Best Interests Determination" model and related documentation, and a newly designed school enrollment form that eased bureaucratic burdens on local school administrations, social services, foster parents, and youth.¹⁰²

b. Transitional Services for Youth Aging Out of Care

A second critical piece of Fostering Connections provides an option to draw down additional federal child welfare funds for states who increase the breadth of transitional services offered to youth aging out of foster care and offer those supports up to age 21.¹⁰³ It also provides additional federal funding to states for adoption assistance to families who adopt youth ages 16 and older out of foster care—a funding support otherwise limited to a narrow group of "special needs" adoptions.¹⁰⁴ While Virginia boasts the lowest rate of youth in foster care of all the states,¹⁰⁵ the Commonwealth has

⁹⁹ *Fostering Connections Act*, VOICES FOR VA.'S KIDS, <http://vakids.org/our-work/foster-care-adoption/fostering-connections-act> (last visited Sept. 30, 2015).

¹⁰⁰ 42 U.S.C. §§11301-11304.

¹⁰¹ VA. DEP'T OF EDUC. & VA. DEP'T OF SOC. SERV., FOSTERING CONNECTIONS: JOINT GUIDANCE SCHOOL, STABILITY OF CHILDREN IN FOSTER CARE, at 4 (rev. 2013) *available at* http://www.doe.virginia.gov/support/student_family/foster_care_students/fostering_connections_guidance.pdf.

¹⁰² *Id.*

¹⁰³ U.S. DEP'T OF HOUS. AND URBAN DEV. OFFICE OF POLICY DEV. AND RESEARCH, HOUSING FOR YOUTH AGING OUT OF FOSTER CARE 10 (2014) *available at* www.huduser.org/publications/pdf/youth_hsg_main_report.pdf.

¹⁰⁴ *Id.* at 9.

¹⁰⁵ *Adoption*, VIRGINIA PERFORMS (July 20, 2015), <http://vaperforms.virginia.gov/indicators/health>

ranked last or next-to-last of states in achieving permanency for those youth before they “age out” of foster care at age 18.¹⁰⁶ Youth “age out” of care in Virginia when they turn age 18 before they have either been reunified with their parents, placed in the custody of relatives, or legally adopted out of care.¹⁰⁷ Youth who do age out of care without adequate services and supports face higher risks than their peers of homelessness, unemployment, school dropout, poor health, and potential criminal justice involvement.¹⁰⁸

Around half the states have opted in to this portion of Fostering Connections addressing the needs of older youth, but despite our “aging out crisis,” Virginia has yet to do so (but not for lack of trying).¹⁰⁹ The measure was first introduced by Governor Bob McDonnell as part of his Virginia Adopts campaign.¹¹⁰ His administration emphasized permanency for youth in care, but included in his outgoing budget the transition program to age 21 to ensure that no youth in foster care was “failed twice” by the Commonwealth (first when no permanent family connection was made, and again when no adequate transitional supports were offered).¹¹¹

When Governor McAuliffe took office in early 2014, he also took up the challenge of securing permanent families for youth in foster care, and supported the Fostering Connections option to strengthen services up to 21 for youth aging out of care. The Fostering Connections proposal enjoyed broad bipartisan, bicameral support during both the 2014 and 2015 General Assembly sessions, but was ultimately removed from Gov. McDonnell and Gov. McAuliffe’s introduced budgets for those years during final budget negotiations by the General Assembly.¹¹²

The Fostering Connections option to increase transitional services for older youth finds its roots in the data and research most commonly embedded in “the Midwest Study,” a research effort out of Chapin Hall that examined outcomes for youth aging out of care when additional supports were

family/adoption.php.

¹⁰⁶ *Foster Care*, VIRGINIA PERFORMS (July 20, 2015), <http://vaperforms.virginia.gov/indicators/health/family/fosterCare.php>.

¹⁰⁷ *See id.*; *supra* note 107.

¹⁰⁸ *Foster Care*, VIRGINIA PERFORMS (July 20, 2015), <http://vaperforms.virginia.gov/indicators/health/family/fosterCare.php>.

¹⁰⁹ *Medicaid Eligibility for Youth “Aging Out” of Foster Care*, VOICES FOR VA.’S CHILDREN, (Jan. 17, 2014), <http://vakids.org/topics/child-welfare-legislative-agenda-older-youth-kinship-care>.

¹¹⁰ *Supra* note 81.

¹¹¹ H.B. 30, 2014 Gen. Assemb. Reg. Sess. (Va. 2014); S.B. 277, 2014 Gen. Assemb. Reg. Sess. (Va. 2014).

¹¹² Dave Ress, *Move to Expand Services for Virginia Foster Care Kids is Killed*, DAILY PRESS (Feb. 24, 2015), <http://www.dailypress.com/news/politics/dp-nws-ga-foster-budget-20150224-story.html>.

provided versus withheld and determined that such transition services produced positive results.¹¹³ It is rare for a piece of federal legislation to address these particular and practical needs of youth in foster care, and a broad coalition of advocates, attorneys, social services professionals, direct service providers, parents, and youth continue their campaign for Virginia to prioritize youth in foster care and adopt this federal option.

c. Health Care

While the larger transition supports offered by Fostering Connections remain elusive in Virginia, youth aging out of foster care found the Commonwealth an—perhaps unlikely—ally in implementing another federal law: the Affordable Care Act (“the ACA”).¹¹⁴ There may be intense political disagreement over the ACA generally, but one provision did not raise many hackles: the law provides Medicaid eligibility up to age 26 for youth who age out of foster care.¹¹⁵ The provision was designed to mirror a similar provision within the law allowing youth to stay on their parents’ health insurance plans up to age 26, in recognition of the wrenching fact that youth who age out of care are not legally connected to parents in order to access their private insurance.¹¹⁶

The Center for Medicaid Services (CMS) also interpreted this portion of the ACA as allowing (but not mandating) states to offer this Medicaid eligibility to youth who age out of any state’s foster care system, not solely the state in which they originally exited care.¹¹⁷ National policy advocacy organizations such as First Focus, as well as Virginia-based policy organization Voices for Virginia’s Children, identified this option as a policy priority, as many older youth in foster care move between states as they seek housing, employment and higher education as adults.¹¹⁸ Youth who age out of foster care may move between states, but, however, they do not leave behind the

¹¹³ Mark E. Courtney, et. al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19* 71-72 (Univ. of Chicago Chapin Hall Ctr. for Children, Working Paper, 2005).

¹¹⁴ Patient Protection and Affordable Care Act of 2010, 111 Pub. L. No. 148, 124 Stat. 119 (codified as amended in 42 U.S.C. § 18001).

¹¹⁵ Shadi Houshyar, *Medicaid to 26 for Former Foster Youth: An Update on the State Option and State Efforts to Ensure Coverage for All Young People Irrespective of Where They Aged Out of Care* 1, 10, STATE POLICY ADVOCACY & REFORM CENTER (Oct. 2014) <http://childwelfaresparc.org/wp-content/uploads/2014/10/Medicaid-to-26-for-Former-Foster-Youth7.pdf>.

¹¹⁶ Dina Emam & Olivia Golden, *The Affordable Care Act and Youth Aging Out of Foster Care: New Opportunities and Strategies for Action* 1, STATE POLICY ADVOCACY AND REFORM CENTER (Apr. 2014), <http://www.clasp.org/resources-and-publications/publication-1/The-Affordable-Care-Act-and-Youth-Aging-Out-of-Foster-Care.pdf>; see Patient Protection and Affordable Care Act § 2714, 42 U.S.C. 18001 (2010); see also Patient Protection and Affordable Care Act § 2004, 42 U.S.C. 18001 (2010).

¹¹⁷ *Supra* note 99, at 3.

¹¹⁸ *Id.* at 7–8.

difficulties of obtaining health care and insurance when crossing those borders.

To date, only 12 states have adopted this option, including Virginia, which did so through successful budget language put forth by Senator Janet Howell and Delegate Jennifer McClellan.¹¹⁹ The provision went into effect when the budget was enacted on July 1, 2014.¹²⁰ Voices for Virginia's Children and other advocates continue to advance further policies to improve implementation of the broader ACA option for youth who age out of care, including proposals to streamline the enrollment process and collect data on accessing services.

CONCLUSION

Virginia has made great strides over the past decade in adapting its approach to children's services towards prevention and earlier intervention with a focus on family- and community-based care. Additionally, institutional advances such as the Children's Transformation, the shift in Children's Services Act philosophy towards systems of care, the reinvigoration of the Virginia Commission on Youth, and the creation of the Children's Cabinet have signaled a greater prioritization by state government of the needs of Virginia's most vulnerable children and families. The state and local agencies tasked with delivering human services have all improved their attention to "user experience" to address the challenges and lessons to be learned from how parents and children access and move through systems with varying success. Finally, legislative and administrative policy changes—though sometimes incremental—have improved not only the ways agencies and families work together, but also the ways multiple agencies collaborate to design a more holistic plan to better the lives of youth in their care. All of these reform initiatives provide an opportunity for Virginia's youth to have a brighter future.

¹¹⁹ *Supra* note 118.

¹²⁰ H.B. 5002, 2014 Gen. Assemb., 1st Spec. Sess., (Va. 2014), available at <http://lis.virginia.gov/142/bud/budsum/HB5002enr.pdf>; Houshyar, *supra* note 99, at 3, 8; see also Amendment 301 #18s of Senator Howell, available at <http://leg2.state.va.us/WebData/14amend30.nsf/4da5825decb101e085256c7d006d2628/9623c2d980e5554c85257c62004d92b0?OpenDocument>; Amendment 301 #6h of Delegate McClellan, available at <http://leg2.state.va.us/WebData/14amend30.nsf/ff91ad2c149ed43d85256c7d006d2623/ca2854b297cbf73e85257c620055a101?OpenDocument>.