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Annual Survey of Virginia Law: Legal Issues Involving Children

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LEGAL ISSUES INVOLVING CHILDREN

*Robert E. Shepherd, Jr.**

I. INTRODUCTION

In the past year, several significant developments affecting children and the legal system have occurred: first, the General Assembly's enactment of Family Court legislation introduced under the auspices of the Supreme Court of Virginia and the Judicial Council; second, the reaffirmation of the Comprehensive Services Act, a state-wide, community-based, inter-agency system of delivering services to children, youth and their families; third, the adoption of a number of bills which address the growing problem of violence by juveniles; and fourth, an increasing number of decisions concerning transfer of juveniles to the circuit courts to be tried as adults, which also reflects greater youth participation in serious crime. The 1993 legislative session further saw the enactment of significant bills based on the work of the Commission on the Reduction of the Incidence of Sexual Assault Victimization in Virginia.¹ Other developments were less far reaching, although the continuing, legislatively-mandated Commission on Youth's study of serious and violent juvenile crime will probably have a major impact based on the Commission's recommendations for dealing with the high profile problem.

II. THE FAMILY COURT

The Family Court movement in Virginia, the history of which was fully described in the 1992 Annual Survey of Virginia Law,² culminated in the Judicial Council's Report to the Governor and General Assembly recommending the creation of a Family Court system in Virginia.³ In 1993, the General Assembly passed two ma-

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1. See Report of the Comm'n on the Reduction of Sexual Assault Victimization in Virginia, S. Doc. No. 31 (1993).

2. See Robert E. Shepherd, Jr., *Legal Issues Involving Children: Annual Survey of Virginia Law*, 26 U. RICH. L. REV. 797, 797-99 (1992).

3. Report of the Judicial Council of Virginia on the Family Court Project, S. Doc. No. 22 at 50-52 (1993).

for bills to implement the Judicial Council's recommendation. The first bill incorporated the structural changes necessary to establish a Family Court system commencing January 1, 1995.⁴ The second bill simply amended a number of Virginia Code sections to conform with the structural changes, primarily changing the term "juvenile and domestic relations district court" to "family court."⁵ The bills met with surprisingly little legislative resistance and passed both houses by fairly wide margins. However, the 1994 Session will have to wrestle with the more difficult issue of providing the necessary resources to implement the 1993 enactments, including determining the number of judges, court service unit employees, mediators, clerks, and the like. Chief Justice Harry L. Carrico of the Supreme Court of Virginia has appointed a Family Court Planning Advisory Committee to carry out planning and implementation.⁶

The legislation transfers jurisdiction over suits for divorce, annulling or affirming marriage, separate maintenance, equitable distribution, adoption, records of birth, change of name ancillary to other actions, and judicial review of certain school board and hearing officer actions to the new family court. The new legislation also gives the family court exclusive original jurisdiction over custody, visitation and support matters, termination of parental rights, the determination of parentage, and suits for obtaining treatment or services required by law. The juvenile and circuit courts currently share jurisdiction over these matters.⁷ Appeals from these categories of cases previously within circuit court jurisdiction, and most other cases currently in the juvenile court, will be true appeals on the record to the court of appeals.⁸ The family court will have exclusive original jurisdiction over delinquency, status offenses, children in need of services or supervision, mental commitments, juvenile traffic infractions, and certain adult criminal violations against children or within the family. In light of the right to trial by jury

4. Act of Apr. 7, 1993, ch. 929, 1993 Va. Acts 1422 (codified at VA. CODE ANN. § 16.1-230 (Cum. Supp. 1993)) (effective January 1, 1995).

5. Act of Apr. 7, 1993, ch. 930, 1993 Va. Acts 1464 (codified at VA. CODE ANN. § 16.1-226 (Cum. Supp. 1993)).

6. The Advisory Committee will: 1) draft rules for adoption by the Virginia Supreme Court to govern proceedings in the new court 2) develop a training plan for the judges and personnel of the new court, 3) identify the resources needed to implement the new structure, and 4) delineate procedures, needs for forms, and facilitate transition to the new court.

7. VA. CODE ANN. § 16.1-241 (Cum. Supp. 1993)(effective Jan. 1, 1995).

8. *Id.* § 16.1-296.2 (effective Jan. 1, 1995).

and the significant liberty interests involved,⁹ appeals in these cases will continue to be taken on a *de novo* basis to the circuit court.

On January 1, 1995, current juvenile and domestic relations district courts (JDR) in each locality will become family courts, and those judges currently serving in the JDR courts, will become family court judges.¹⁰ Circuit court judges who volunteer to do so may be designated by the Chief Justice to sit as family court judges on a case-by-case basis when dockets are congested.¹¹ The fees for family court cases will remain the same as they are under current law. Trial by jury is preserved for issues out of chancery, but the circuit court's jury list, processes, and facilities will be utilized in the rare instances where a jury trial is requested.¹² Commissioners in chancery will not be utilized in the family court.

The family court is intended to provide a single court for the trial of all legal matters relative to the functioning of the family in a user friendly fashion much like the current JDR district courts, where hearings are held with less delay, especially on *pendente lite* determinations of support and custody. The family court is also intended to be less adversarial, with significant emphasis on the use of alternative dispute resolution, especially mediation, in family controversies.¹³ This emphasis on mediation is reinforced by the enactment of separate 1993 legislation encouraging the use of alternative dispute resolution methods in all civil matters.¹⁴

III. COMPREHENSIVE SERVICES ACT FOR AT-RISK YOUTH AND FAMILIES

The enactment by the 1992 Session of the Virginia General Assembly of the Comprehensive Services Act for At-Risk Youth and Families¹⁵ marked a major and historic commitment to the more effective delivery of governmental services to Virginia's children and youth. The 1993 General Assembly reaffirmed its financial

9. *Id.* § 16.1-296.

10. *Id.* §§ 16.1-69.8, 16.1-69.9:01 (effective Jan. 1, 1995).

11. *Id.* §§ 16.1-69.35(8), 17-17.2 (effective Jan. 1, 1995).

12. *Id.* § 8.01-353.01 (effective Jan. 1, 1995).

13. *Id.* §§ 16.1-272.1 to 272.2 (effective Jan. 1, 1995).

14. *Id.* §§ 8.01-576.4 to 576.12.

15. Acts of Apr. 15, 1992, chs. 837, 880, 1992 Va. Acts 1560, 1647 (codified at VA. CODE ANN. §§ 2.1-7, 9-6.25:1, 16.1-276.5, -286, -294, 22.1-101.1, 37.1-197.1, 63.1-55, -248.6, 66-14, -35 (Cum. Supp. 1992)).

support for this important legislation.¹⁶ In addition, it established a basis for determining rates for the purchase of services,¹⁷ and emphasized that prevention and early intervention are key elements in the implementation of the act.¹⁸ Further, the legislature required that juvenile courts consider the recommendations of family assessment and planning teams, but provided that the court may make any other disposition authorized by law.¹⁹ The resulting further institutionalization of the Comprehensive Services Act, coupled with the creation of the family court system, heralds a significant new commitment by Virginia to its children and families.

IV. JUVENILE DELINQUENCY AND NON-CRIMINAL MISBEHAVIOR

Legislation affecting delinquency proceedings enacted by the 1993 Virginia General Assembly included: limiting the use of temporary lock-ups and court holding facilities for juveniles,²⁰ authorizing the State Board of Youth and Family Services to restrict the number of juveniles housed in detention homes,²¹ making escape from a juvenile detention facility a Class 1 misdemeanor,²² and providing for a study by the Commission on Youth of recommendations made by the Detention Home Task Force.²³ Also, persons receiving support services or public assistance cannot be denied the right by court intake to file a petition in juvenile court in order to establish, modify, or enforce child support.²⁴

16. Funding formulas were established by amending and reenacting the forth and fifth enactments of Chapter 837 of the Acts of Assembly of 1992 and by adding a sixth enactment. Acts of Mar. 15 & Mar. 17, 1993, chs. 232, 283, 1993 Va. Acts 251, 317.

17. VA. CODE ANN. §§ 2.1-759.1, 11-45, 22.1-218 (Cum. Supp. 1993).

18. S.J. Res. 203, Va. Gen. Assembly (Reg. Sess. 1993).

19. VA. CODE ANN. § 2.1-757 (Cum. Supp. 1993).

20. Act of Mar. 22, 1993, ch. 435, 1993 Va. Acts 510 (codified at VA. CODE ANN. §§ 16.1-228, -249 (Cum. Supp. 1993)) (March 22, 1993)..

21. Act of Mar. 28, 1993, ch. 666, 1993 Va. Acts 931 (codified at VA. CODE ANN. § 16.1-311 (Cum. Supp. 1993)). The same bill allows localities and others operating juvenile facilities to develop boot camp incarceration programs subject to minimum standards established by the State Board. *Id.*

22. Act of Mar. 23, 1993, ch. 840, 1993 Va. Acts 1214 (codified at VA. CODE ANN. § 18.2-477.1 (Cum. Supp. 1993)). The Fourth Circuit Court of Appeals in *United States v. Minger*, 976 F.2d 185 (4th Cir. 1992), concluded that escape from the Oak Hill Youth Center, a secure juvenile detention center located in Maryland and operated by the District of Columbia, constituted escape from a "place of confinement" within the meaning of the Assimilative Crimes Act and the Maryland Code.

23. H.J. Res. 446, Va. Gen. Assembly (Reg. Sess. 1993).

24. Act of Apr. 7, 1993, chs. 929, 981, 1993 Va. Acts 1604 (codified at VA. CODE ANN. § 16.1-260 (Cum. Supp. 1993)).

In the past year, two bills and two resolutions were enacted, and an unusually large number of cases involving serious juvenile crimes and transfers to circuit courts for trial as adults were decided. One bill was designed to clarify the meanings of "mental illness" and "mental retardation" in the transfer statute, as well as the concept of competency to stand trial. However, the bill as enacted actually did something quite different from what its sponsor and supporters intended.²⁵ As enacted, the legislation removed "criminally insane" and "mentally retarded" from Code of Virginia section 16.1-269 as barriers to transfer, failed to re-insert these conditions as factors to be considered by the judge in deciding whether to grant a Commonwealth motion for transfer, and included competency to stand trial as a necessary finding for transfer.²⁶ However, it is a logical assumption that the presence of mental illness or retardation would be relevant to the court's discretionary decision on transfer despite the inadvertent omission of such factors from the legislation.

Two cases have addressed the need for a circuit court to render a decision within twenty-one days on an appeal from a juvenile court's decision to transfer the juvenile or to retain jurisdiction after a Commonwealth motion for transfer. In *Bea v. Commonwealth*,²⁷ a youth appealed his transfer to the circuit court to be tried as an adult. The circuit court failed to act on the appeal within twenty-one days as required by Code of Virginia section 16.1-269(E), and the court of appeals concluded that such failure deprived the circuit court of jurisdiction over both the case and the juvenile. In the later case of *In re Baskins*,²⁸ the court reached the same conclusion under similar circumstances, ruling that the twenty-one day appeal period began with the physical receipt of the juvenile court file by the circuit court and the granting of a writ of prohibition against any further action by the circuit court in the absence of jurisdiction.²⁹ In *Anderson v. Commonwealth*,³⁰ a juvenile transferred to a circuit court for trial as an adult was also

25. Act of Feb. 17, 1993, ch. 6, 1993 Va. Acts 4 (codified at VA. CODE ANN. § 16.1-269 (Cum. Supp. 1993)).

26. VA. CODE ANN. § 16.1-269 (Cum. Supp. 1993). A child is presumed to be competent and the burden is on the party alleging incompetency to rebut the presumption by a preponderance of the evidence. The transfer report prepared by the court staff shall address the question of competency. *Id.*

27. 14 Va. App. 977, 420 S.E.2d 255 (1992).

28. 430 S.E.2d 555 (1993).

29. Section 16.1-269(E) of the Code of Virginia was amended at the 1993 General Assembly Session to require that the appeal be heard within "a reasonable period of time" instead

judged to have the right to a mental health expert of her own choosing after the court designated a Commonwealth expert to determine her mental condition and capacity.

Similarly, in *Russell v. Commonwealth*,³¹ the court concluded that a circuit court erred in granting the Commonwealth's appeal from a juvenile court's refusal to grant transfer because of the youth's mental retardation in the absence of an express finding of fact under Code of Virginia section 16.4-269(A)³² that the juvenile was not actually mentally retarded.

*Wright v. Commonwealth*³³ is the second juvenile capital case to reach the Virginia Supreme Court in the past two years.³⁴ The court dealt explicitly with the constitutionality of the ultimate penalty for a seventeen-year-old minor by simply citing the United States Supreme Court's decision in *Stanford v. Kentucky*.³⁵ The court also upheld Wright's transfer to the circuit court, concluding that the transfer hearing need not focus on moral responsibility or psychological maturity. Furthermore, the court held that there was no right to the appointment of a guardian *ad litem* in addition to counsel for the youth³⁶ and that the juvenile court need not inquire *sua sponte* into the presence of "criminal insanity."³⁷ The court also rejected attacks on the admissibility of Wright's confession, by concluding that it was knowingly, intelligently, and voluntarily

of twenty-one days, but that amendment also mandates a hearing. VA. CODE ANN. § 16.1-269(E) (Cum. Supp. 1993).

30. 15 Va. App. 226, 421 S.E.2d 900 (1992), *reh'g en banc granted* Nov. 18, 1992. The court pointed to the critical importance of the decision whether a juvenile will be tried as such in the juvenile court or as an adult in the criminal court. *Id.* at 229-30, 421 S.E.2d at 902.

31. 432 S.E.2d (Va. Ct. App. 1993).

32. VA. CODE ANN. § 15.4-269(A) (Repl. Vol. 1988).

33. 245 Va. 177, 427 S.E.2d 379 (1993).

34. See *Thomas v. Commonwealth*, 244 Va. 1, 419 S.E.2d 606 (1992), *cert. denied* 113 S. Ct. 421 (1992), (discussed in Robert E. Shepherd, Jr., *Legal Issues Involving Children: Annual Survey of Virginia Law*, 26 U. RICH. L. REV. 797, 806-07 (1992)). Another juvenile capital murder case was decided during the year. In *Rea v. Commonwealth*, 14 Va. App. 940, 421 S.E.2d 464 (1992), the youth was not sentenced to death and the sole issue on appeal was a double jeopardy claim that had no relationship to the defendant's status as a juvenile. *Id.*

35. 492 U.S. 361 (1989).

36. *Wright*, 245 Va. at 183, 427 S.E.2d at 384.

37. *Id.*

given.³⁸ Wright thus became the second juvenile in recent Virginia history to occupy a place on death row.³⁹

In *Broadnax v. Commonwealth*,⁴⁰ the court of appeals concluded that a circuit court erred in granting the Commonwealth's appeal of the juvenile judge's denial of transfer in the absence of a *de novo* hearing on the transfer question, and ruled that such error was of constitutional dimensions.⁴¹ The court stated that in the absence of compliance with this due process requirement, the circuit court never acquired jurisdiction over the juvenile's case.⁴² The General Assembly further clarified this question by amending Code of Virginia section 16.1-269 to require a hearing to take further evidence on any appeal of the transfer decision.⁴³

The Assembly continued the comprehensive study of serious juvenile offenders by the Virginia Commission on Youth for an additional year⁴⁴ and called for the creation of a Select Committee to continue the legislative study of school crime and violence.⁴⁵ Legislation also provides for the inclusion of a victim impact statement, prepared after adjudication and before disposition in delinquency cases, in the court's social history, upon the motion of the Commonwealth with the consent of the victim, or upon the court's own motion.⁴⁶

The aptly named "abuse and lose" drunk driving dispositional section of the juvenile code was amended in two respects. First, if a juvenile is convicted of driving while intoxicated with another juvenile as a passenger, the court shall impose the additional statutory fine of \$200 to \$2500 and order community service as provided

38. *Id.* at 186, 427 S.E.2d at 386.

39. A recent examination of issues concerning the juvenile death penalty in Virginia may be found in Kevin Clunis & Nicholas VanBuskirk, *Applying the Virginia Capital Statute to Juveniles*, 5 Cap. Def. Dig. 42 (1993).

40. 427 S.E.2d 741 (1993), *reh'g granted*, 427 S.E.2d 741, 744 (1993).

41. *Id.* at 744.

42. *Id.*

43. Act of Apr. 7, 1993, ch. 908, 1993 Va. Acts 1374 (codified at VA. CODE ANN. § 16.1-269(E) (Cum. Supp. 1993)). In *Commonwealth v. Adcock*, 28 Va. Cir. 216 (Amherst Cir. Ct. 1992), the court seemed to view the role of the circuit court as limited to determining whether the juvenile court complied with the statute, and then reviewing the record before deciding whether to allow the Commonwealth to go forward in the circuit court. *Id.* at 218-19. There does not seem to have been any hearing on the issues addressed in the statute.

44. H.J. Res. 431, Va. Gen. Assembly (Reg. Sess. 1993).

45. H.J. Res. 832, Va. Gen. Assembly (Reg. Sess. 1993).

46. Act of Mar. 26, 1993, ch. 603, 1993 Va. Acts 756 (codified at VA. CODE ANN. § 16.1-273 (Cum. Supp. 1993)).

in Code of Virginia section 18.2-270.⁴⁷ Second, if a juvenile's delinquent offense involves possession of a concealed handgun or a particular type of semi-automatic shotgun capable of holding multiple shells, known as a "streetsweeper," the abuse and lose provisions will be triggered, denying driving privileges or postponing the youth's ability to apply for a driver's license.⁴⁸

The adjudication of a juvenile as delinquent for certain sexual assault offenses will subject a youth to human immunodeficiency virus testing at the request of the Commonwealth's Attorney.⁴⁹ A parent who violates a court order under Code of Virginia section 16.1-278.8(3) by refusing to submit to certain probation conditions or to participate in certain programs, may be subject to juvenile court discipline.⁵⁰ Further amendments clarified that bond is not required on an appeal from the juvenile and domestic relations district court unless the order appealed establishes a support arrearage or suspends the payment of support during appeal.⁵¹

Broadening access to juvenile records was a fertile issue for legislation and litigation during the past year. Serious or Habitual Offender Comprehensive Action Programs (SHOCAP) were established in Virginia localities.⁵² In those localities choosing to initiate such a program, various public agencies are authorized to share information regarding juveniles adjudicated as delinquent of certain serious felonies, or who have been found guilty at least three times for other felonies or for Class 1 misdemeanors.⁵³ Other bills provided for the forwarding of a wider range of juvenile conviction records to the Central Criminal Records Exchange and greater access to those records for firearms purchases and other purposes.⁵⁴ In addition, they made explicit adult probation officers' ability to utilize juvenile court records in preparing presentence reports in felony cases,⁵⁵ and mandated written notice by the juvenile court to the juvenile's school division if he or she is convicted of weapons offenses, serious offenses against the person, drug offenses, arson,

47. VA. CODE ANN. § 16.1-278.9 (Cum. Supp. 1993).

48. *Id.*

49. *Id.* § 18.2-62.

50. *Id.* § 16.1-292.

51. *Id.* §§ 16.1-107, -296.

52. *Id.* §§ 16.1-330.1 to 330.2.

53. *Id.* § 16.1-330.1A.

54. *Id.* §§ 16.1-299, -301, -306-307, 18.2-308.2, 19.2-388, -390.

55. *Id.* § 19.2-299.

or burglary.⁵⁶ The legislature further provided a statutory scheme regarding school's handling of records regarding expelled students.⁵⁷ Further legislation clarified the juvenile court's ability to expunge all juvenile delinquency records when a juvenile has been found innocent or the proceedings were otherwise dismissed⁵⁸ and allowed disclosure to the victims at their request of the delinquency charges brought, the court's findings, and the ultimate disposition in a felony delinquency case.⁵⁹

The United States Court of Appeals for the Fourth Circuit permitted the use of a conviction of a seventeen-year-old to subsequently determine career criminal status because the youth was an adult under North Carolina law at the time of the conviction.⁶⁰ In the other case, the court permitted utilization of certain state juvenile adjudications under the federal sentencing guidelines.⁶¹ A Virginia senate joint resolution called on the Commission on Youth to conduct a comprehensive study on the confidentiality of juvenile records.⁶²

Other delinquency-related legislation authorized the Department of Youth and Family Services to develop work programs for youths committed to the department;⁶³ provided that a substitute juvenile judge might issue driver's licenses to youths;⁶⁴ clarified that any court with a traffic school, not just general district courts, can require a person to attend;⁶⁵ made the possession or transportation of a handgun by a juvenile a misdemeanor with certain specified exceptions;⁶⁶ broadened the proscription of tobacco products sales to children;⁶⁷ increased the penalties for furnishing knives or handguns to juveniles;⁶⁸ and authorized localities to fine persons fourteen years of age or younger twenty-five dollars for riding a bicycle without wearing a protective helmet.⁶⁹

56. *Id.* § 16.1-305.1 (effective July 1, 1994).

57. *Id.* §§ 16.1-305.1, -309, 22.1-132.1, -278, -289.

58. *Id.* § 16.1-306.

59. *Id.* § 16.1-309.1.

60. *United States v. Lender*, 985 F.2d 151 (4th Cir. 1993).

61. *United States v. Inglesi*, 988 F.2d 500 (4th Cir. 1993).

62. S.J. Res. 205, Va. Gen. Assembly (Reg. Sess. 1993).

63. VA. CODE ANN. §§ 66-3, -25.1 (Cum. Supp. 1993).

64. *Id.* § 46.2-336.

65. *Id.* § 46.2-1314.

66. *Id.* §§ 16.1-228, 18.2-308.7.

67. *Id.* § 18.2-371.2.

68. *Id.* § 18.2-309.

69. *Id.* § 46.2-906.1.

The Supreme Court of the United States upheld Immigration and Naturalization Services (INS) regulation dealing with the detention of alien juveniles in *Reno v. Flores*.⁷⁰ The regulation permits the detention of alien youths under circumstances where an adult would be released under bond or personal recognizance if the juvenile is "unaccompanied."⁷¹ The court defined the liberty interest involved in very narrow terms, and concluded that the regulation comported with substantive and procedural due process requirements and did not exceed the statutory authority of the Attorney General.⁷²

V. ABUSE AND NEGLECT, FOSTER CARE, AND TERMINATION OF PARENTAL RIGHTS

A. *Guardian ad litem*

The Virginia Court of Appeals decided another significant case concerning the scope of a child's right to a guardian *ad litem* during litigation. In *Verrocchio v. Verrocchio*,⁷³ the court ruled that a circuit court, in the absence of specific statutory authority, had the right to appoint a guardian *ad litem* to protect the interests of a child during a custody hearing that was part of a divorce suit. The court determined that "a finding that the appointment of a guardian *ad litem* is necessary and would be in the child's best interest is an essential prerequisite."⁷⁴ In *Doe v. Doe*,⁷⁵ the court of appeals concluded that an infant's due process rights had been impaired by the denial of a continuance requested by her guardian *ad litem* in order to properly ascertain the relevant facts. The court once again pointed to the unique role and responsibilities of a guardian in representing a child's interests.⁷⁶ The General Assembly recognized the same policy considerations in directing the Commission on Youth, with the assistance of the Executive Secretary of the Virginia Supreme Court, the Department of Criminal Justice Services and the Family Law Section of the Virginia State Bar to study "the role of guardians ad litem and issues of courtroom environ-

70. 113 S. Ct. 1439 (1993).

71. *Id.* at 1443.

72. *Id.* at 1451-52.

73. 429 S.E.2d 482 (Va. Ct. App. 1993).

74. *Id.* at 487.

75. 15 Va. App. 242, 421 S.E.2d 913 (1992).

76. *Id.* at 245, 421 S.E.2d at 915.

ment, including the use of closed circuit testimony, in child sexual abuse cases."⁷⁷

B. *Abuse and Neglect*

The legislature took the first step towards reversing the demise of the 1991 childhood sexual abuse statute, caused by the Virginia Supreme Court's decision in *Starnes v. Cayouette*.⁷⁸ In *Starnes*, the court held that the statute's provision permitting retroactive revival of civil sexual abuse claims previously barred by a statute of limitations was a denial of due process. During the 1993 General Assembly, a resolution was passed to amend the Virginia Constitution to permit such retroactive revival of claims for intentional torts against a minor.⁷⁹

Legislation was adopted permitting volunteers for Big Brothers/Big Sisters to secure criminal history, driving, and child abuse central registry records without charge;⁸⁰ mandating the reporting, within seventy-two hours, of suspected child abuse or neglect by any private child care worker;⁸¹ establishing better reporting of the results of child abuse investigations by departments of social services to military authorities where the suspected abuser is an active military duty member;⁸² defining more precise procedures in connection with appeals from local findings of child abuse;⁸³ and providing for the stay of any appeal of a finding of child abuse during the pendency of a criminal prosecution arising out of the abuse.⁸⁴

The General Assembly finally closed two long-standing issues. Legislation providing for an autopsy of an infant under eighteen months of age whose death is allegedly attributable to Sudden Infant Death Syndrome was passed.⁸⁵ Additional enactments addressed: investigations of suspected child abuse by employees of hospitals, institutions, and school systems, providing for special

77. H.J. Res. 490, Va. Gen. Assembly (1993 Gen. Sess.).

78. 244 Va. 202, 419 S.E.2d 669 (1992).

79. S.J. Res. 280, Va. Gen. Assembly (Reg. Sess. 1993). The amendment to Article IV, Section 14, of the Virginia Constitution must also be passed by the 1994 General Assembly. *Id.*

80. VA. CODE ANN. §§ 19.2-389, 46.2-208, 63.1-248.8 (Cum. Supp. 1993).

81. *Id.* § 63.1-248.3.

82. *Id.* § 63.1-248.6.

83. *Id.* § 63.1-248.6:1.

84. *Id.* §§ 2.1-384, 63.1-248.6:1.

85. *Id.* 32.1-263, -283, -285, 54.1-2807.

designation and training of child protective service workers handling such investigations; the adoption of regulations by the Board of Social Services to govern such investigations; the establishment of investigation monitoring procedures; and the creation of a committee to advise Social Services of the results of investigations regarding non-family child abuse by employees of such institutions.⁸⁶

Legislation concerning child abuse proceedings, which originated in the study of the Commission on the Reduction of Sexual Assault, accomplished several objectives. The legislation provides that no child shall be deemed incompetent to testify solely by reason of age.⁸⁷ In addition, the legislature further broadened the statute allowing: closed preliminary hearings in a wider range of sexual offenses against children;⁸⁸ a minor victim, his parents or guardians, and the parents and spouse of a homicide victim in a criminal case, to remain in the courtroom unless they are to be called as a material witness;⁸⁹ the introduction of evidence of repeated psychological or physical abuse of an accused by a victim in a criminal case alleging personal injury or death committed by the victim;⁹⁰ and further abrogation of the husband-wife privilege in criminal cases to permit testimony in more sexual abuse cases.⁹¹

The court of appeals ruled in *McManus v. Commonwealth*⁹² that evidence of an out-of-court complaint by an alleged rape victim was admissible at trial even though the five-year-old victim did not testify, because evidence of such complaint is corroborative of the occurrence of the crime, and not simply of the testimony of the victim. The General Assembly broadened the recent complaint hearsay exception to include prosecutions for any criminal sexual assault, and not just rape, for the purpose of corroborating the testimony of the complaining witness.⁹³

A number of criminal offenses involving abuse or neglect of children were amended, including Section 18.2-371.1 of the Code of Virginia which was revised to criminalize acts or omissions in the

86. *Id.* §§ 63.1-248.6 to -248.7.

87. *Id.* § 8.01-396.1.

88. *Id.* § 18.2-67.8.

89. *Id.* § 19.2-265.01.

90. *Id.* § 19.2-270.6.

91. *Id.* § 19.2-271.2.

92. 429 S.E.2d 475 (Va. Ct. App. 1993).

93. Act of Mar. 25, 1993, ch. 592, 1993 Va. Acts 746 (codified at VA. CODE ANN. § 19.2-268.2 (Cum. Supp. 1993)).

care of children that are in reckless disregard for human life.⁹⁴ Contributing to the delinquency of a minor, a Class 1 misdemeanor, now includes consensual sexual intercourse by an adult with a child fifteen years of age or older who is not the adult's spouse, child, or grandchild.⁹⁵ Other amendments included: substituting "child" for "female" in the abduction statute,⁹⁶ adding a prohibition against the use of an animate object to the "object sexual penetration" statute,⁹⁷ adding a definition of "carnal knowledge" to the carnal knowledge of minors statutes,⁹⁸ making another carnal knowledge statute gender neutral,⁹⁹ providing for a substantial fine as in the penalty for aggravated sexual battery,¹⁰⁰ adding offenses against children and an enhanced penalty to the crimes against nature statute,¹⁰¹ making adultery or fornication by a grandparent with any minor grandchild an offense,¹⁰² and broadening the definition of child pornography to include a person's own child within the victims of the offense.¹⁰³ In *Shull v. Commonwealth*¹⁰⁴ the court of appeals concluded that an act of oral sodomy committed by a woman on a thirteen-year-old boy constituted "carnal knowledge" under Code of Virginia section 18.2-63.¹⁰⁵

The General Assembly established or continued several studies focused on child abuse issues. The Commission on Youth was directed to study the feasibility of establishing a mandatory ten-year follow-up service for juvenile sexual offenders.¹⁰⁶ The study regarding the Reduction of Sexual Assault Victimization in Virginia was continued for an additional year.¹⁰⁷ In addition, several state executive departments were directed to collaborate on developing sexual abuse prevention programs and to report to the Commission on the Reduction of Sexual Assault Victimization and the General Assembly.¹⁰⁸ Also, the Department of Health Professions, along with

94. VA. CODE ANN. § 18.2-371.1 (Cum. Supp. 1993).

95. *Id.* § 18.2-371.

96. *Id.* § 18.2-48.

97. *Id.* § 18.2-53.1, -67.2, -67.5, -67.10.

98. *Id.* §§ 18.2-63, -64.1.

99. *Id.* § 18.2-66.

100. *Id.* § 18.2-67.3.

101. *Id.* § 18.2-361.

102. *Id.* § 18.2-366.

103. *Id.* § 18.2-374.1:1.

104. 431 S.E.2d 924 (Va. Ct. App. 1993).

105. *Id.* at 925-26. See VA. CODE ANN. § 18.2-63 (Cum. Supp. 1993).

106. H.J. Res. 467, Va. Gen. Assembly (Reg. Sess. 1993).

107. S.J. Res. 277, Va. Gen. Assembly (Reg. Sess. 1993).

108. S.J. Res. 285, Va. Gen. Assembly (Reg. Sess. 1993).

other state agencies, was requested to develop a plan for certification of providers of mental health and counseling services to sexual assault victims and offenders.¹⁰⁹

C. Foster Care and Termination of Residual Parental Rights

In *Unknown Father of Baby Girl Janet v. Division of Social Services of Lynchburg*,¹¹⁰ the court of appeals ruled that where the unknown father of a child born out of wedlock had failed to communicate with the infant for more than twelve months after her foster care placement and where his identity was not reasonably ascertainable, there was no requirement of either actual or constructive notice to the father, especially where notice by publication was given.¹¹¹ The Supreme Court of Virginia concluded in *Loudoun County Department of Social Services v. Etzold*¹¹² on appeal of an award of custody of a child to the Department of Social Services, that a case originating in a juvenile and domestic relations district court prior to its designation as an experimental family court did not "originate" in a family court. Therefore, the appeal should have gone to the circuit court rather than to the court of appeals.¹¹³

The Virginia Commission on Youth's 1992 study of the needs of children of incarcerated parents generated several other studies and directives. They include: a study by the Department of Criminal Justice Services to gather data regarding the number of inmates with minor children;¹¹⁴ a mandate for the Department of Social Services in collaboration with the Department of Corrections to develop information for parent inmates to explain custody and foster care laws;¹¹⁵ a direction to the Department of Criminal Justice Services to develop training standards for law enforcement officers concerning policies and procedures regarding the care and subsequent placement of minor children physically present when their parents and custodians are taken into custody;¹¹⁶ a request for several agencies to develop and provide in-service training for

109. S.J. Res. 339, Va. Gen. Assembly (Reg. Sess. 1993). This recommendation resulted from a study by the Department of Health Professions found in S. Doc. No. 17, (1993).

110. 15 Va. App. 110, 422 S.E.2d 407 (1992).

111. *Id.* at 119, 422 S.E.2d at 412.

112. 245 Va. 80, 425 S.E.2d 800 (1993).

113. *Id.* at 83, 425 S.E.2d at 803.

114. S.J. Res. 204, Va. Gen. Assembly (Reg. Sess. 1993).

115. S.J. Res. 206, Va. Gen. Assembly (Reg. Sess. 1993).

116. S.J. Res. 216, Va. Gen. Assembly (Reg. Sess. 1993).

professionals regarding the impact of parental incarceration on children;¹¹⁷ a further request that agencies formulate age-appropriate materials explaining the criminal justice system for children of incarcerated parents;¹¹⁸ and a similar request that agencies develop information explaining the criminal justice system and sources of public aid for caretakers of children whose parent is incarcerated.¹¹⁹

The Joint Subcommittee Studying the Problems of Maternal and Prenatal Drug Exposure and Abuse and the Impact on Subsidized Adoption and Foster Care was continued for another year.¹²⁰ The same subcommittee, along with the Department of Social Services, was requested to examine the issue of kinship foster care.¹²¹ The Department of Social Services will study the impact of providing the continued foster care payments and services to youths over eighteen who are successfully pursuing educational, vocational training and treatment goals.¹²² The Department of Social Services was also requested to formulate a plan which would provide mandatory parenting classes for child abusers.¹²³

VI. ADOPTION

Few changes in impact adoption law occurred during the past year. The Virginia Court of Appeals ruled in *Lyle v. Eskridge*¹²⁴ that the same standards for determining whether a parent is withholding consent to adoption contrary to the best interests of the child apply when the parent in question is a minor. In *Lyle*, the child's father was sixteen years old when he refused to consent to adoption of the child by the unwed mother's parents, and the court concluded that the same standards to test such refusal for both minor and adult parents apply and that those standards were not met in this case.¹²⁵

The General Assembly amended the provisions regarding parental placement of children for adoption. The amendments broaden

117. H.J. Res. 413, Va. Gen. Assembly (Reg. Sess. 1993).

118. H.J. Res. 425, Va. Gen. Assembly (Reg. Sess. 1993).

119. H.J. Res. 427, Va. Gen. Assembly (Reg. Sess. 1993).

120. H.J. Res. 641, Va. Gen. Assembly (Reg. Sess. 1993).

121. H.J. Res. 642, Va. Gen. Assembly (Reg. Sess. 1993).

122. S.J. Res. 323, Va. Gen. Assembly (Reg. Sess. 1993).

123. H.J. Res. 447, Va. Gen. Assembly (Reg. Sess. 1993).

124. 14 Va. App. 874, 419 S.E.2d 863 (1992).

125. *Id.* at 878, 419 S.E.2d at 865-66.

the methods whereby the father of the child born out of wedlock may give consent or the consent may be dispensed with,¹²⁶ and liberalize the procedures where prospective adoptive parents are directly related to the child and the child has lived in the relatives' home continuously for three or more years.¹²⁷ Another enactment allows easier access to adoption records by a person who has been adopted.¹²⁸

VII. PATERNITY AND ILLEGITIMACY

In *Doe v. Doe*¹²⁹ the court of appeals concluded that the parentage of a child conceived by in vitro fertilization of a wife's ovum by her husband's sperm, and born following implantation into the uterus of another woman, could be determined by a declaratory judgment proceeding, prior to July 1, 1993, the effective date of the surrogacy contract legislation.¹³⁰ In *Elder v. Evans*,¹³¹ the court of appeals ruled that the father of a child born out of wedlock was entitled to the natural parent presumption over a non-parent, even though custody had previously been awarded to the biological mother in a dispute with the father. To deny custody to the father, the parental presumption requires either a finding of parental unfitness or the existence of some other special circumstances.¹³² As noted previously, the parental rights of an unknown father may be terminated without actual or constructive notice where his identity is not readily ascertainable due to the mother's numerous sexual partners around the time of conception.¹³³ A change of name for a child born out of wedlock may be ordered over the objection of the biological father if it is in the best interests of the child.¹³⁴

In *Veeney v. Sullivan*,¹³⁵ the United States Court of Appeals for the Fourth Circuit ruled that sufficient evidence of paternity was presented to establish eligibility for social security survivorship

126. VA. CODE ANN. § 63.1-220.3 (Cum. Supp. 1993).

127. *Id.* §§ 63.1-220.3-220.4, -223, -225, -229.

128. *Id.* § 63.1-236.

129. 15 Va. App. 242, 421 S.E.2d 913 (1992). See the text accompanying footnote 64, *supra*, for a discussion of the guardian *ad litem*'s responsibilities and role in the case.

130. VA. CODE ANN. §§ 20-156-165 (Cum. Supp. 1993).

131. 427 S.E.2d 745 (1993).

132. *Id.* at 749.

133. See *Unknown Father of Baby Girl Janet v. Division of Social Services of the City of Lynchburg*, 15 Va. App. 110, 422 S.E.2d 407 (1992).

134. *In re Change of Name of J.R.O.*, 27 Va. Cir. 260 (Loudoun County 1992).

135. 973 F.2d 326 (4th Cir. 1992).

benefits where blood tests showed that the decedent's brother was likely to be the child's uncle by odds of almost 800,000 to one and the decedent was clearly the father of the child's older brother.¹³⁶ The court also concluded that the administrative law judge improperly limited his paternity determination to the factors specified in former Code of Virginia section 64.1-5.2, which may have been unconstitutional, and that the current statute would allow admission of blood test evidence.¹³⁷

VIII. EDUCATION

Most of the recently decided cases affecting education in Virginia typically involve the schooling of handicapped children. In *Richards v. Fairfax County School Board*,¹³⁸ the district court ruled that the parents of a learning disabled student who graduated from high school in 1989 had one year to challenge the school board's termination of special education services, and thus a suit brought in June, 1992 was time-barred.¹³⁹ On remand, the court in *Doyle v. Arlington County School Board*¹⁴⁰ held that the school system's program for the learning disabled student satisfied the requirement of "appropriateness."¹⁴¹ In another ruling, the district court held that a disabled student was not the "prevailing party" in administrative proceedings where the school system made minor adjustments in the individualized education program after the due process hearing.¹⁴²

In *Pandazides v. Virginia Board of Education*,¹⁴³ a continuing dispute between a learning disabled teacher and the Virginia Board of Education regarding the National Teacher Examination, the district court ruled that the state was not required to fundamentally alter the test to accommodate the teacher's disability.¹⁴⁴ In *Lewis v. School Board of Loudoun County*,¹⁴⁵ the court held

136. *Id.* at 329-31.

137. See VA. CODE ANN. § 64.1-5.2 (Repl. Vol. 1991).

138. 798 F. Supp. 338 (E.D. Va. 1992).

139. *Id.* at 343.

140. 806 F. Supp. 1253 (E.D. Va. 1992).

141. *Combs v. School Board of Rockingham County*, No. 90-0162-H, 1992 U.S. Dist. LEXIS 14898 (W.D. Va. Sept. 11, 1992).

142. *Id.*

143. 804 F. Supp. 794 (E.D. Va. 1992). The teacher relied on § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 706(8)(B).

144. *Id.* at 802.

145. 808 F. Supp. 523 (E.D. Va. 1992).

that the individualized education plan was appropriate and the school system was not required to pay for a private school placement, even though the private placement had benefitted the student.¹⁴⁶

The General Assembly addressed the educational needs of disabled children in several ways. Standard 4 of the Standards of Quality was amended to provide greater accommodation of students with disabilities in the "Literary Passport" program.¹⁴⁷ A fee system for payments by school districts for children placed at the Virginia Schools for the Deaf and the Blind was established.¹⁴⁸ Also, the General Assembly adopted a resolution requesting that the Department of Education explore means for identifying children with an attention deficit disorder (ADD/ADHD).¹⁴⁹ The legislature requested the Governor to implement Part H of the Individuals with Disabilities Education Act by delivering early intervention services to infants and toddlers with disabilities.¹⁵⁰ The Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities was continued.¹⁵¹ Moreover, the General Assembly requested that the Department of Education study the effectiveness of the "Reading Recovery Program."¹⁵² Lastly, the Department of Education and the State Health Department were requested to study the needs of medically fragile children.¹⁵³

The United States District Court for the Eastern District of Virginia considered a difficult first amendment case in *Broussard by Lord v. School Board of the City of Norfolk*.¹⁵⁴ A Norfolk middle school sent home a twelve-year-old girl for wearing a "New Kids on the Block" tee shirt with the words "Drugs Suck!" emblazoned on the front.¹⁵⁵ She was suspended for one day for refusing to change the shirt. The court concluded that the one-day suspension

146. *Id.* at 804.

147. Act of Mar. 28, 1993, ch. 661, 1993 Va. Acts 921 (codified at VA. CODE ANN. § 22.1-253.13:4 (Cum. Supp. 1993)) (effective July 1, 1994).

148. Act of Feb. 9, 1993, ch 2, 1993 Va. Acts 1 (codified at VA. CODE ANN. §§ 22.1-348-349 (Cum. Supp. 1993)).

149. H.J. Res. 469, Va. Gen. Assembly (Reg. Sess. 1993).

150. H.J. Res. 626, Va. Gen. Assembly (Reg. Sess. 1993).

151. H.J. Res. 627, Va. Gen. Assembly (Reg. Sess. 1993).

152. H.J. Res. 470, Va. Gen. Assembly (Reg. Sess. 1993).

153. S.J. Res. 306, Va. Gen. Assembly (Reg. Sess. 1993).

154. 801 F. Supp. 1526 (E.D. Va. 1992).

155. *Id.* at 1528.

did not violate the girl's due process or free speech rights.¹⁵⁶ This case illustrates the extent of the federal courts' retreat from *Tinker v. Des Moines Independent School District*¹⁵⁷ and the hyper-sensitivity of school officials to language commonly used by adolescents, beyond any sexual connotation, even when used to express a socially acceptable sentiment: that drugs are bad and should be avoided.

The General Assembly amended the compulsory school attendance law to address the requirements for attendance by five-year-old children.¹⁵⁸ In addition, the legislature provided for free textbooks on a universal basis effective July 1, 1994, if the necessary funds are appropriated.¹⁵⁹ Further, local school boards were mandated to institute school breakfast programs upon the appropriation and authorization of federal funds in schools where twenty-five per cent of the students are eligible for free or reduced-price school lunches.¹⁶⁰

Growing concern about school violence prompted legislation. A pilot program of alternative education options for certain categories of school-age children was developed.¹⁶¹ The legislature issued a mandate for the development of regulations for alternative attendance programs,¹⁶² and established a "school crime line" program similar to Crime Stoppers for reporting offenses on school property or during school-sponsored activities.¹⁶³ Access to school records was redefined.¹⁶⁴ Schools were given greater access to juvenile court records of youth commission of certain offenses.¹⁶⁵ The General Assembly also initiated a study by the Commission on

156. *Id.* at 1537.

157. 393 U.S. 503 (1969).

158. Acts of Apr. 7, 1993, ch. 903, 1993 Va. Acts 1368 (codified at VA. CODE ANN. §§ 22.1-3, -254, -256 (Cum. Supp. 1993)) (effective Jul. 1, 1994).

159. Act of Mar. 28, 1993, ch. 654, 1993 Va. Acts 900 (codified at VA. CODE ANN. § 22.1-251 (Cum. Supp. 1993)) (effective Jul. 1, 1994 depending on sufficient funds).

160. Act of Mar. 28, 1993, ch. 698, 1993 Va. Acts 978 (codified at VA. CODE ANN. § 22.1-207.3 (Cum. Supp. 1993)).

161. VA. CODE ANN. §§ 22.1-209.1:2, -257, -278 (Cum. Supp. 1993). *See also* H.J. Res. 619, Va. Gen. Assembly (Reg. Sess. 1993).

162. Act of Apr. 17, 1993, ch. 947, 1993 Va. Acts 1534 (codified at VA. CODE ANN. § 22.1-269.1 (Cum. Supp. 1993)).

163. Act of Mar. 19, 1993, ch. 361, 1993 Va. Acts 414 (codified at VA. CODE ANN. §§ 22.1-280.2 (Cum. Supp. 1993)).

164. Acts of Mar. 28, 1993, Mar. 29, 1993, chs. 740, 889, 1993 Va. Acts 1039, 1343 (codified at VA. CODE ANN. § 22.1-289 (Cum. Supp. 1993)).

165. VA. CODE ANN. §§ 16.1-305.1, -309, 22.1-3.2, -132.1, -277.2, -278, -289 (Cum. Supp. 1993).

Youth to determine whether juvenile courts should intervene with parents of disruptive school children,¹⁶⁶ and requested the Department of Education to study violence in school sports.¹⁶⁷

The General Assembly again strengthened the laws dealing with electronic pagers and trespass on school property.¹⁶⁸ The Joint Subcommittee Studying School Drop Out and Ways to Promote the Development of Self-Esteem Among Youth and Adults was continued.¹⁶⁹ Additional issues regarding home schooling and immunizations for such students were addressed.¹⁷⁰ Also, legislation was enacted implementing the results of local school board elections.¹⁷¹

The United States Supreme Court ruled in *Zobrest v. Catalina Foothills School District*¹⁷² that the Establishment Clause of the First Amendment does not bar a public school district from placing a sign language interpreter in a sectarian school to serve a deaf student pursuant to the Individual with Disabilities Education Act.¹⁷³ Also, in another First Amendment school case, the court held in *Lamb's Chapel v. Center Moriches Union Free School District*¹⁷⁴ that a school district could not bar the after-hours showing of a film about family life with a religious perspective when it would not prevent a similar film with a secular perspective. The school district's Establishment Clauses argument did not overcome the Free Speech Clause of the First Amendment.¹⁷⁵

IX. MENTAL HEALTH

In the past year, little action took place in the mental health arena. The General Assembly finally moved to provide more reasonable payment to appointed counsel representing a child in a mental health commitment proceeding, allowing payment of a fee up to \$100.00.¹⁷⁶ In *Heller v. Doe*¹⁷⁷ the Supreme Court of the

166. S.J. Res. 303, Va. Gen. Assembly (Reg. Sess. 1993).

167. S.J. Res. 200, Va. Gen. Assembly (Reg. Sess. 1993).

168. VA. CODE ANN. §§ 18.2-128, -322.1 (Cum. Supp. 1993).

169. H.J. Res. 699, Va. Gen. Assembly (Reg. Sess. 1993).

170. VA. CODE ANN. §§ 22.1-254.1, -271.4 (Cum. Supp. 1993).

171. *Id.* §§ 22.1-57.1, -57.3:1.

172. 113 S. Ct. 2462 (1993).

173. 20 U.S.C. §§ 1400 *et seq* (1988).

174. 113 S. Ct. 2141 (1993).

175. *Id.* at 2148.

176. Act of Mar. 19, 1993, ch. 344, 1993 Va. Acts 397 (codified at VA. CODE ANN. §§ 16.1-267, -343 (Cum. Supp. 1993)).

United States upheld a Kentucky statutory scheme for the commitment of mentally retarded persons which was less demanding than the state's requirements for the commitment of the mentally ill.

X. MISCELLANEOUS

In *Carson by Meredith v. LeBlanc*,¹⁷⁸ the Virginia Supreme Court reiterated the presumption that a child who reaches the age of fourteen has sufficient capacity to be capable of and chargeable with contributory negligence.¹⁷⁹ In *Turner v. Lotts*,¹⁸⁰ an automobile accident case, the court concluded that the facts were insufficient as a matter of law to support a claim of negligent entrustment against the driver's parents where the minor driver had three prior traffic tickets and two earlier accidents not resulting from his negligence.¹⁸¹

The power of a court to approve compromise settlements in favor of a minor was clarified, allowing settlements to be paid to the parents to be held in trust.¹⁸² In *Pereira v. Kozlowski*,¹⁸³ the United States District Court for the Eastern District of Virginia concluded that under the Medicaid Act, the Virginia Department of Medical Assistance Services was obligated to pay for a medically necessary heart transplant for a child.¹⁸⁴

The General Assembly expanded the emancipation statute to include the ability of the emancipated minor to marry without parental, judicial, or other consent.¹⁸⁵ The 1993 session also renewed the state's right to license child day care programs when a child under the age of thirteen years is cared for during less than a 24-hour period.¹⁸⁶ Several bills and resolutions addressed the question

177. 113 S. Ct. 2637 (1993).

178. 245 Va. 135, 427 S.E.2d 189 (1993).

179. *Id.* at 140, 427 S.E.2d at 192.

180. 244 Va. 554, 422 S.E.2d 765 (1992).

181. *Id.* at 558, 422 S.E.2d at 767.

182. VA. CODE ANN. § 8.01-424 (Cum. Supp. 1993).

183. 805 F. Supp. 361 (E.D. Va. 1992).

184. *Id.* at 365.

185. VA. CODE ANN. §§ 16.1-334, 20-49 (Cum. Supp. 1993).

186. Act of Mar. 19, 1993, ch. 344, 1993 Va. Acts 397 (codified at VA. CODE ANN. §§ 22.1-19, 63.1-195 to 196.01:1, -196.03 to 196.04, -196.3, -196.5, -198 to 199, -201.1 to 202.1, -210.1, -211.2 to 211.3 (Cum. Supp. 1993)). The Council on Child Day Care and Early Childhood Programs was also given the power to provide grants and loans to promote the development and expansion of quality day care programs. VA. CODE ANN. § 9-284 (Cum. Supp. 1993). The State Board of Social Services and the Council were also charged with developing training

of human immunodeficiency virus testing of children.¹⁸⁷ A minor, with the written consent of her or his parent or legal guardian, may make or refuse to make an anatomical gift.¹⁸⁸ The Department of Health was also requested to study the feasibility of expanding the currently required screening tests for metabolic and other disorders in newborn infants.¹⁸⁹

XI. CONCLUSION

1993 turns out to be a year of anticipation because of the required 1994 reaffirmation of the family court initiative and the significant number of pending studies on serious juvenile offenders and juvenile court records. The actions taken as a result of those studies in 1994, and the final action on the family court, will fix the direction of Virginia for a number of years insofar as children, youth, and families are concerned.

programs for operators and staffs of child care agencies. VA. CODE ANN. § 63.1-196.5 (Cum. Supp. 1993).

187. Human immunodeficiency virus test results may be provided to health care providers dealing with a child born to an HIV positive mother and to the parents or other legal custodian of the minor subject of a test. VA. CODE ANN. §§ 32.1-11.2, -36.1 (Cum. Supp. 1993). The Department of Social Services was directed to develop AIDS/HIV education guidelines for use with foster families and social services personnel. H.J. Res. 680, Va. Gen. Assembly (Reg. Sess. 1993). The Department of Health was also requested to develop a plan for incorporating AIDS/HIV treatment for infected children in the Children's Specialty Program. H.J. Res. 691, Va. Gen. Assembly (Reg. Sess. 1993).

188. VA. CODE ANN. § 32.1-290 (Cum. Supp. 1993).

189. H.J. Res. 657, Va. Gen. Assembly (Reg. Sess. 1993).