

Richmond Public Interest Law Review

Volume 27
Issue 1 *Volume 27, Issue 1 (2023) General
Assembly*

Article 4

12-22-2023

Family Time: A Selection of Bills from the Virginia 2023 Legislative Session Relating to Family, Intimate Partner Violence, and Child Welfare

Valerie L'Herrou

Follow this and additional works at: <https://scholarship.richmond.edu/pilr>



Part of the [Public Law and Legal Theory Commons](#)

Recommended Citation

Valerie L'Herrou, *Family Time: A Selection of Bills from the Virginia 2023 Legislative Session Relating to Family, Intimate Partner Violence, and Child Welfare*, 27 RICH. PUB. INT. L. REV. 25 (2023).

Available at: <https://scholarship.richmond.edu/pilr/vol27/iss1/4>

This Article is brought to you for free and open access by the Law School Journals at UR Scholarship Repository. It has been accepted for inclusion in Richmond Public Interest Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

FAMILY TIME: A SELECTION OF BILLS FROM THE
VIRGINIA 2023 LEGISLATIVE SESSION RELATING TO
FAMILY, INTIMATE PARTNER VIOLENCE, AND CHILD
WELFARE

*Valerie L'Herrou**

* Valerie L'Herrou is deputy director of the Center for Family Advocacy at the Virginia Poverty Law Center (VPLC). Her work focuses on family and child welfare law and policy advocacy. She is the Virginia state coordinator for the National Association of Counsel for Children and previously served on the Virginia Child Support Guidelines Review Panel. Currently, she serves on: the Self-Represented Litigants Committee of the Virginia Access to Justice Commission, the SB396 Child Dependency Legal Representation Workgroup, and the Virginia Child Welfare Advisory Committee. In 2023 she was awarded the first-ever "Champion for Virginia's Children" award by Families Forward Virginia for her role in passing the bill that created the Virginia Office of the Children's Ombudsman. She would like to thank Susheela Varky, director of the Center for Family Advocacy at VPLC for providing additional background and context regarding bills S.B. 873, S.B. 1532/H.B. 1897, and H.B. 1961.

ABSTRACT

In 2023, the Commonwealth of Virginia was forced to operate without a finalized state budget following the adjournment of the regular session of its legislative body. The Commonwealth waited (luckily without bated breath) for its “caboose” budget for the 2023–2024 budget cycle for nearly six months after the General Assembly adjourned sine die, which it did on its normal date for a “short” (odd-numbered) year on February 25, 2023.¹ However, most other actions taken by the Virginia General Assembly during its 2023 session did go into effect on July 1, 2023, as usual.² These include a number of bills that primarily impact the family-related matters heard in Virginia’s juvenile and domestic relations (“JDR”) district courts, as well as circuit courts with jurisdiction over divorces, concurrent jurisdiction over some family law matters, and appeals from the JDR courts.³ Most of these bills were without controversy.⁴ The legislature amended a few that were more contentious in order to be acceptable to both sides of the aisle and these passed, often unanimously.⁵

INTRODUCTION

Summary of Bills That Did Not Pass

A few family-related bills had significant opposition, often from both sides of the aisle, and died at some point in the process.⁶ These bills usually didn’t

¹ Laura Vozzella, *Va. Lawmakers Cut Budget Deal, Reject Youngkin’s Call for Recurring Tax Cuts*, WASH. POST (Aug. 25, 2023), <https://www.washingtonpost.com/dc-md-va/2023/08/25/virginia-budget-deal-youngkin/>.

² Michael Pope, *With New Fiscal Year Approaching, Budget Negotiations Appear to Be in a Stalemate*, RADIO IQ (June 30, 2023), <https://www.wvtf.org/news/2023-06-30/with-new-fiscal-year-approaching-budget-negotiations-appear-to-be-in-a-stalemate>; see also Michael Martz, *Youngkin Makes Final Budget Push with Strong Revenue Report*, RICHMOND TIMES DISPATCH (July 20, 2023), https://richmond.com/news/state-regional/government-politics/youngkin-makes-final-budget-push-with-strong-revenue-report/article_7eclf0e0-2664-11ee-bb5b-ab1e65c3b6e4.html; Graham Moomaw et al., *What Caused Virginia’s Budget Breakdown? Accounts Differ.*, VA. MERCURY (June 28, 2023), <https://www.virginiamercury.com/2023/06/28/what-caused-virginias-budget-breakdown-accounts-differ/>.

³ See *2023 Changes to Virginia’s Laws*, VA. DEP’T OF LEGIS. SERVS., (June 2023), <https://dls.virginia.gov/pubs/idc/idc23.pdf>.

⁴ E.g., H.B. 1744, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (passed in the State Senate unanimously); H.B. 2054, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (passed in the State Senate unanimously).

⁵ See Gregory S. Schneider & Laura Vozzella, *Va. General Assembly Takes Light Approach to Actions Proposed by Youngkin*, WASH. POST (Apr. 12, 2023), <https://www.washingtonpost.com/dc-md-va/2023/04/12/virginia-assembly-youngkin-veto-amendments/>.

⁶ See, e.g., Voices for Virginia’s Children, *2023 Bill Tracker*, <https://vakids.org/2023-bill-tracker> (last visited Sept. 2, 2023); see also H.B. 2259, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (died in chamber at vote in February 2023).

make it past the committee stage, although some may have made it through one legislative body and crossed over only to die in a committee of the other body. One such bill, filed by Delegate A.C. Cordoza, would have added a new felony crime: to knowingly name someone as a father who was not genetically the parent of a child.⁷ This bill also would have modified Virginia Code § 20-49.10, which allows a parent to: set his paternity aside, have his name removed from the birth certificate, and prevent the filing of child support unless the parent subsequently adopts the child.⁸ The bill would have allowed such a person to sue the other parent to collect any child support paid, and removed provisions allowing child support in situations where such person acknowledged paternity even knowing he was not biologically related to the child, including where the child was conceived by artificial insemination.⁹

Two bills from Delegate (now Judge) Jeffrey Campbell and Senator Bill DeSteph would have allowed a child's custodian to petition to require a person who has unintentionally caused the death of a parent due to drunk driving to pay child support.¹⁰ Another bill, from Delegate Nadarius Clark, would have removed the mandatory waiting period for a divorce predicated on cruelty, desertion, or abandonment.¹¹ The mandatory one-year waiting period for a divorce on these grounds is apparently an artifact based on outmoded ideas of divorce.¹² Divorce on the grounds of cruelty was added to Virginia's divorce statute (Virginia Code § 20-91) in 1975, in the same subsection—(A)(6)—as the grounds of desertion or abandonment; cruelty was viewed as a defense to the grounds of desertion.¹³

It may have made sense to require a person to wait a year to determine if the deserting party had indeed abandoned the marriage, and to therefore lump this requirement into the cruelty grounds if alleged as a defense to desertion. But, since cruelty can be alleged separate from desertion, requiring a waiting period (especially in these days of no-fault divorce) does not make much sense.¹⁴ This is especially true for divorce plaintiffs who do not intend to seek

⁷ H.B. 2259, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (died in chamber at vote in February 2023).

⁸ *See id.*

⁹ *Id.* (left in chamber at vote February 2023) (genetic tests to determine parentage, relief from paternity).

¹⁰ *See* S. 1288, 2023 Gen. Assemb. (Va. 2023) (left in chamber at vote February 2023); H.B. 1549, 2023 Gen. Assemb. (Va. 2023) (left in chamber at vote February 2023) (wrongful death; death of parent or guardian of child resulting from driving under the influence).

¹¹ *See* H.B. 1720, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (cruelty, reasonable apprehension of bodily hurt, or willful desertion or abandonment).

¹² *See* Dulcey B. Fowler, *Virginia Family Law: The Effect of The General Assembly's 1975 Revisions*, POPULAR MEDIA 115, 10 (1975), https://scholarship.law.wm.edu/popular_media/115/.

¹³ *Id.* at 10.

¹⁴ *Id.* at 10.

court battles over property and spousal support, which can prolong litigation, but just merely want to leave their abusive spouse.¹⁵ It is therefore unclear as to why the legislature has repeatedly rejected this legislation.¹⁶

Some opponents to the proposed change argue that fault-based divorce requires sufficient evidence to succeed, and if the plaintiff does not meet their burden of proof, the divorce will be denied and the plaintiff themselves will further prolong the process by starting all over again.¹⁷ Critics also point out that a person can get a protective order, a temporary support order, and then seek a “divorce *a mensa et thoro*” (divorce from bed and board, pursuant to Virginia Code § 20-95), which allows the couple to separate with orders from the court.¹⁸ The orders then can be merged into a final decree of divorce after the one year waiting period, as per Virginia Code § 20-121 (“Merger of decree for divorce from bed and board with decree for divorce from bond of matrimony”).¹⁹ However, it is not clear why that’s preferable to simply allowing a clean break without the double process.²⁰

Delegates Kathy Tran and Cia Price proposed bills that would have created refundable tax credits for Virginia families and low-income individuals, respectively, but each bill received short shrift in the House Finance Committee.²¹ House Finance apparently does not like tax credits; even a bill to merely *study* the issue, from Senator Jennifer McClellan (now Congresswoman from Virginia’s Fourth Congressional District), was quickly killed in an early morning session of a House Finance subcommittee despite its unanimous passage in the Senate.²² The failure of the legislature to pass even a study of the issue is concerning, because the success of the federal temporary refundable child tax credit indicates its great benefit to children.²³

¹⁵ Sylvia Clute, *Divorce Denied: Have Mental Cruelty, Constr. Desertion and Reasonable Apprehension of Bodily Harm been Abolished in Virginia?*, 25 UNIV. OF RICH. L. REV. 273, 274 (1991).

¹⁶ See, e.g., H.B. 1351, 2022 Gen. Assemb., Reg. Sess. (Va. 2022); S. 1776, 2019 Gen. Assemb., Reg. Sess. (Va. 2019) (same/similar bills filed in 2022 and 2019); H.B. 2862, 2007 Gen. Assemb., Reg. Sess. (Va. 2007) (left in Courts of Justice) (different bill with similar effect filed in 2007).

¹⁷ See *The Difference Between Fault and No-Fault Divorce in Virginia*, DIPIETRO L. GRP., PLLC (Aug. 4, 2021), <https://www.dipietropllc.com/blog/2021/august/the-difference-between-fault-and-no-fault-div-orc/>.

¹⁸ VA. CODE § 20-95 (2022); *Bailey v. Bailey*, 62 Va. 43 (Va. 1871).

¹⁹ VA. CODE § 20-121 (2023); VA. CODE § 20-95 (2022).

²⁰ See *Hearing Before the H. Sub. Comm. 2 on Courts of Justice*, 2023 Leg. (Va. 2023) (statement of Richard Garriot, Rep., Va. Fam. L. Coal.).

²¹ See H.B. 2205, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (children; refundable tax credit for individuals whose household includes a child younger than 18); H.B. 1653, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (income tax, state; eligible low-income taxpayers to claim a refundable tax credit).

²² S. 1324, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

²³ BRADLEY HARDY ET AL., *THE HAMILTON PROJECT, THE ANTIPOVERTY EFFECTS OF THE EXPANDED CHILD TAX CREDIT ACROSS STATES: WHERE WERE THE HISTORIC REDUCTIONS FELT?* 4-5 (2023).

Such financial supports of low-income families are associated with lower rates of reports of child maltreatment and entries into foster care, resulting in less trauma to children, and less expense to governments.²⁴

Another bill that did not pass was a second attempt by Senator Barbara Favola to put guard rails around the practice of “kinship diversion,” also known as “hidden foster care.”²⁵ Kinship diversion occurs when a government child-protection agency requires a parent or guardian of a child to sign an agreement placing the child with a relative or “fictive kin” (person with a relationship to the child but who is not a legal or blood relative).²⁶ Placement is usually for an indeterminate period of time, and happens without the provision of “reasonable efforts” to prevent family separation, as required by federal and state law when a child is removed judicially—and without court involvement or oversight.²⁷ The practice has raised concerns nationally, as it is functionally an extra-judicial government removal of children from their parents without providing due process or a clear path home for the child, and has led to at least two multi-million dollar lawsuits in our neighboring state of North Carolina.²⁸ In Virginia, the practice has resulted in the death of a child.²⁹ While some agencies continue to work with the family and track the child after diversion, many do not, as there are no laws requiring it.³⁰ Virginia relies heavily on this practice, which—while not well-documented or tracked—may equal at *least* half as many children as those who are actually in foster care.³¹

While remaining with relatives is less traumatic, and provides more

²⁴ Nicole L. Kovski, et al., *Short-Term Effects of Tax Credits on Rates of Child Maltreatment Reports in the United States*, 150 PEDIATRICS, June 6, 2022, at 2-6 (discussing the reductions in rates of child maltreatment amongst families who receive poverty-reducing tax-credits).

²⁵ See S. 923, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

²⁶ See Qi Wu & Susan M. Snyder, *Factors Associated with the Decision-Making Process in Kinship Diversion*, 22 J. OF FAM. SOC. WORK 161, 161-162 (Sep. 23, 2018) (discussing formal kinship care as a situation when a child welfare agency places a child with a relative or member of a support system).

²⁷ See Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 STAN. L. REV. 841, 851 (Aug. 19, 2019).

²⁸ See *Verdict: Federal Jury Awards Millions to Daughter, Father Separated by Cherokee County DSS*, CAROLINA COAST ONLINE (May 14, 2021), https://www.carolinacoastonline.com/regional/article_4d05a26c-b4a2-11eb-919f-b7b6c07bdeda.html; Kate Martin, *NC Woman Wins \$4 Million Settlement Over Illegal Removal From Her Family*, CAROLINA PUB. PRESS (Dec. 6, 2021), <https://carolinapublicpress.org/50122/nc-woman-wins-4-million-settlement-over-illegal-removal-from-her-family/>.

²⁹ See Deborah Hastings, *What Happened to Khaleesi Cuthriell? Searching for Justice in Case of Missing Toddler Presumed Dead by Sheriff*, INSIDE ED. (Jan. 18, 2022), <https://www.insideedition.com/what-happened-to-khaleesi-cuthriell-searching-for-justice-in-case-of-missing-toddler-presumed-dead>.

³⁰ Gupta-Kagan, *supra* note 27 at 843.

³¹ See Katie O'Connor, *Every Year, Children are Diverted Away from Foster Care and Placed with Relatives. Nobody Knows What Happens Next*, THE VA. MERCURY (June 2, 2019), <https://www.virginiamercury.com/2019/06/03/every-year-children-are-diverted-away-from-foster-care-and-placed-with-relatives-nobody-knows-what-happens-next/>.

stability for children than going into foster care with strangers when a parent is unable to care for them, Virginia trails far behind other states in utilizing relatives for formal foster care placements, which provide support for the relative, the child, and the parent.³² This is important because many relatives are low- or fixed-income or need assistance in understanding and meeting the child's emotional needs, and the parent needs help rectifying the concerns that led to the decision to separate the family. For many years, Virginia hovered at 6% utilization of relatives as foster placements.³³ New emphasis on a "kin-first culture" has moved us to 13%, which is still far below the national average of 30%.³⁴

There are a number of barriers in Virginia to placing a child with relatives *within* the system; one of these is the impulse of agencies to abdicate their responsibility to the family in order to save on paperwork, caseworker resources, and money.³⁵ Senator Favola's "Kinship as Foster Care Prevention Program" would have required the local department of social services to document the need for diverting children from their parent or caregiver, and identify the services and support that would be provided to the child, the relative, and the child's parent.³⁶ Senator Favola's program would also limit the time period for diversionary placements, require advisement of the right to counsel, and provide for the agreement's termination by any party.³⁷

Senator Jennifer Boysko attempted to pass a bill requiring the Virginia Employment Commission to establish a family and medical leave insurance program, through which, similar to unemployment insurance, both employers and employees would pay into, creating a statewide fund.³⁸ The fund would have made it possible for those persons who are not covered by employers under the federal Family and Medical Leave Act (FMLA) to receive coverage and be paid 80% of their salary.³⁹ A bill from Delegate Patrick Hope would have added a non-parent custodian to the statutory list of "family or

³² See Caitlin Morris, *Virginia Trails Nation in Placing Foster Children with Relatives*, NBC 12 (Apr. 19, 2019), <https://www.nbc12.com/2019/04/19/virginia-trails-nation-placing-foster-children-with-relatives/>.

³³ *Id.*

³⁴ See Ana Beltran & Heidi Redlich, *Virginia Kin-First Assessment Report Summary*, GENERATIONS UNITED AND ABA CENT. ON CHILDREN AND THE LAW (June 28, 2021); see also Valerie Martinez et al., *State-level Data for Understanding Child Welfare in the United States - Kinship Caregiving*, CHILD TRENDS (Apr. 27, 2023), <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states> (according to Garrett Morris, VDSS Family Engagement and Program Manager, Oct. 4, 2023).

³⁵ See S. 923, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (fiscal impact statement).

³⁶ *See id.*

³⁷ *See generally id.*

³⁸ See S. 1101, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

³⁹ *Id.* (paid family and medical leave program; Virginia Employment Commission required to establish).

household members” for situations where either a family violence protective order or a criminal charge for assault and battery of a family member would ordinarily apply.⁴⁰ Because a “person with a legitimate interest” may gain custody of a child under Virginia Code § 20-124.2, a child may live with such a person acting in the role of a parent.⁴¹ Such a person is not, however, a family or household member (as currently defined in Virginia Code § 16.1-228) for the purposes of criminal liability or first-offender provisions—which allow for dismissal of a first offense upon completion of conditions such as batterer intervention classes—or three-strike enhanced penalties for assault and battery of a family member under Virginia Code § 18.2-57.2, or for filing a family abuse protective order under § 16.1-279.1.⁴² The bill as introduced included step-siblings, but these are already addressed under current code as children of married or cohabiting persons under Virginia Code § 16.1-228.⁴³

The impetus for this bill was those situations where an assault or protective order matter is brought in the JDR court related to a person who seems to be a “family member”—but, by definition of the code, are not.⁴⁴ These cases may “bounce” between the JDR court and the general district court (GDC) when it is unclear which court has jurisdiction over the matter.⁴⁵ An example of how this might play out was brought to our attention when an assault on a minor by a person with custody (but not a parent) was mistakenly brought by a prosecutor in JDR.⁴⁶ The criminal charge was dismissed—with double jeopardy attached—when the custodial caregiver was determined not to be a household or family member. The protective orders were also dismissed but refiled in GDC. While bringing the case in the GDC would have avoided this outcome, a GDC might have believed it did not have jurisdiction and required it to be filed in JDR.⁴⁷ The following sections discuss a selection of bills that did pass in three categories: family law; intimate partner violence; and child welfare.

I. UPDATES IN THE REALM OF FAMILY LAW

The legislature passed seven family law bills during the 2023 General

⁴⁰ H.D. 1899, 2023 Gen. Assembly, Reg. Sess. (Va. 2023).

⁴¹ See VA. CODE ANN. § 20-124.2 (B) (2021).

⁴² See VA. CODE § 16.1-228 (2023); VA. CODE § 18.2-57.2 (2014); VA. CODE § 16.1-279.1 (2023).

⁴³ VA. CODE § 16.1-228; H.B. 1899, 2023 Gen. Assembly, Reg. Sess. (Va. 2023).

⁴⁴ See generally H.B. 1899, 2023 Gen. Assembly, Reg. Sess. (Va. 2023). (fiscal impact statement).

⁴⁵ (Based on author’s experiences in both JDR courts and GDC).

⁴⁶ (Based on author’s experience in JDR courts).

⁴⁷ Conversation and email exchanges with Eric Angel, staff attorney at Legal Services of Northern Virginia (January 27, 2023).

Assembly.⁴⁸ Several more were filed—some of which seemed doomed from the start, while others made it part way through the process only to die later.⁴⁹ Still others seemed dead but were revived and made it all the way to the enactment process.⁵⁰

A. Changes to Evidentiary Rules in Family Law Cases

Evidentiary issues in family law can be tricky, especially for low-income and/or self-represented litigants, who comprise the majority of those involved in cases in Virginia’s 124 “JDR courts.”⁵¹ The requirement to authenticate health or treatment records by issuing subpoenas to the creator or custodian of such records can make litigation very expensive.⁵² Doctors or therapists may charge hundreds or thousands of dollars to appear in court to authenticate these records, and self-represented litigants may not even know of the necessity for, or how, to subpoena a healthcare provider or custodian of records.⁵³ Two bills brought by Senator Scott Surovell and Delegate Jeffrey Campbell sought to mitigate these issues, by adding a new section, § 16.1-245.2, to Article 3 of Chapter 11 of Title 16.1 of the Virginia Code.⁵⁴

Senator Surovell’s bill required a thirty-day notice and fifteen-day period for responsive pleadings, while Delegate Campbell’s bill called for a ten-day notice requirement and did not require notice of an oppositional response.⁵⁵

The final version of these bills were reconciled in favor of the Senate bill’s notice requirements.⁵⁶ The new code section allows for certain health records in custody, visitation, placement, or support matters in the JDR courts to be

⁴⁸ E.g., 2023 Gen. Assemb. Sess., LIS (2023), <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sbj+030> (last visited Sept. 8, 2023).

⁴⁹ See, e.g., Karina Elwood, *Va. Killed Bills Aimed at Trans Youths. Here’s Where the Debate Moves Next.*, WASH. POST (Mar. 1, 2023), <https://www.washingtonpost.com/education/2023/03/01/virginia-education-transgender-youth/>; Moomaw et al., *supra* note 2.

⁵⁰ See 2023 Gen. Assemb. Sess., LIS (2023), <https://lis.virginia.gov/cgi-bin/legp604.exe?231+sbj+030> (last visited Sept. 8, 2023).

⁵¹ See generally Shauna Strickland et al., *Virginia Self-represented Litigant Study: Outcomes of Civil Cases in General District Court Juvenile & Domestic Relations Court, and Circuit Court*, BLUE RIDGE LEGAL SERV., Dec. 2017, at i, 2.

⁵² See, e.g., VA. CODE § 8.01-413 (2013).

⁵³ See James J. Mangravati, Jr., Esq., *How Much Can a Physician Expert Witness Charge?*, SEAK, <https://www.testifyingtraining.com/how-much-can-a-physician-expert-witness-charge/>; see generally VA. ACCESS TO JUST. COMM’N, PERCEPTIONS OF SELF REPRESENTED LITIGATION IN VIRGINIA (2014 & 2015).

⁵⁴ See S. 799, 2023 Gen. Assemb., Reg. Sess., (Va. 2023); H.B. 1541, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁵⁵ See S. 799, 2023 Gen. Assemb., Reg. Sess., (Va. 2023); H.B. 1541, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁵⁶ See S. 799, 2023 Gen. Assemb., Reg. Sess., (Va. 2023); H.B. 1541, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

self-authenticating.⁵⁷ This minimizes or eliminates the need to subpoena medical providers or custodians of records, so long as a sworn statement relating to the accuracy of such records is included (and subject to the notice provisions).⁵⁸ While the 30-day notice requirement under the Senate bill is a departure from the usual range of notice requirements in the evidentiary provisions of Chapter 11—such as § 16.1-245.1 (10 days); § 16.1-274 (15 days); § 16.1-274.2, (10 days)—which was better reflected by Delegate Campbell’s bill, Senator Surovell successfully argued that providing more time with a notice requirement for objections would result in fewer continuances for in-court objections to proffered evidence.⁵⁹

B. Shifts in Pregnancy and Delivery Expenses

A pair of bills from Delegate Emily Brewer and Senator Siobhan Dunnivant that, as originally filed, would have required the “legal father” in a nonmarital relationship to pay not only 50% of a mother’s pregnancy and birth expenses, but also 50% of her maternity leave (or bereavement leave, should the infant not survive), along with child support from the moment of conception.⁶⁰ Questions about terminology such as “legal father,” to whom the costs of leave would be paid (to employer or employee), and how to pay child support to a not-yet-existing child, resulted in a much-reduced bill.⁶¹ The final version of the bill simply allows for any unreimbursed pregnancy and delivery expenses, or reasonable expenses incurred by either parent for the benefit of the child prior to the birth of the child, to be apportioned between the parties according to the incomes of the parties (as is the case when calculating child support).⁶²

C. Resolving Ambiguities in Divorce Cases

Delegate Jason Ballard carried a bill (H.B. 1385) that requires an affidavit submitted by the plaintiff in support of a divorce complaint to specifically state whether any children are “children either born of the parties, born of either party and adopted by the other, or adopted by both parties” of the

⁵⁷ See generally S. 799, 2023 Gen. Assemb., Reg. Sess., (Va. 2023); H.B. 1541, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁵⁸ See generally S. 799, 2023 Gen. Assemb., Reg. Sess., (Va. 2023); H.B. 1541, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁵⁹ See Hearing before the S. Judiciary Comm., 2023 Leg. (Va. 2023).

⁶⁰ H.B. 2290, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1314, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (a bill to amend and reenact §§ 20-49.8, 20-108.2, and 63.2-1913 of the Code of Virginia, relating to judgment or child support order for pregnancy and delivery expenses).

⁶¹ Chapter 571, LIS (2023), <https://lis.virginia.gov/cgi-bin/legp604.exe?231+ful+CHAP0571>; see generally H.B. 2290, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1314, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁶² See H.B. 2290, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1314, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

divorcing couple.⁶³ Previously, such affidavit only needed to affirm that any children were “born or adopted of the marriage” (i.e. are the joint responsibility of the divorcing couple).⁶⁴ The new law tracks the language of the child support guidelines statute, Virginia Code § 20-108.2, and makes clear that the children named in the divorce pleadings are those subject to child support obligation by both parties to the marriage.⁶⁵

D. Concurrent Jurisdiction for Virginia Circuit Courts

A bill filed by Delegate Charniele Herring provides for divestiture of jurisdiction from a JDR court:

... when a suit for divorce has been filed in a circuit court, in which the custody, guardianship, visitation or support of children of the parties or spousal support is raised by the pleadings and a hearing, including a pendente lite hearing, is set by the circuit court on any such issue for a date certain or placed on a motions docket within 21 days of the filing, though such hearing itself may occur after such 21-day period ...⁶⁶

Previously, the hearing itself must have been held within the twenty-one days for divestiture to occur.⁶⁷ There is concern from some attorneys that the divestiture statute is being used by unscrupulous practitioners to game the legal system—that some defendants’ counsel may choose to file in circuit court to divest the JDR court’s power to hear the matter, but then dismiss their case in circuit court so the matter is never heard.⁶⁸ The bill may make the prevalence of this practice more likely.

E. Appeals From Juvenile and Domestic Relations District Court

Another bill that has some practitioners concerned is Delegate Herring’s amendment to Virginia Code § 16.1-296.⁶⁹ The amendment requires parties to notify opposing parties or their counsel when they appeal to circuit court. The bill does not identify how, in cases with self-represented litigants—as is common in the JDR court—a party would know the address where such notice is to be served; if the existing JDR court appeal forms would need to be amended; or how the situation is to be addressed if an opposing party is a

⁶³ H.B. 1385, 2023 Leg., Gen. Assemb., Reg. Sess. (Va. 2023).

⁶⁴ 2012 Va. HB 126, LEXISNEXIS (2023), <https://plus.lexis.com/document/documentlink/?pdmfid=1530671&crd=25dc4d2a-4fa3-4c4c-8623-166c7e8e2fa3&pdDocFullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A555T-KCD0-002X-C23W-00000-00&pdcontentcomponentid=139217&pdproductcontenttypeid=urn%3Apct%3A82&pdiskwview=false&pdpinpoint=&ecomp=2gntk>.

⁶⁵ See VA. CODE § 20-108.2 (2023); H.B. 1385, *supra* note 62.

⁶⁶ H.B. 1991, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁶⁷ *Id.*

⁶⁸ See *Divesting Jurisdiction in Virginia*, LIVESAY & MYERS, P.C. (May 24, 2017), <https://www.livesaymyers.com/divesting-jurisdiction-virginia-family-law-cases/>.

⁶⁹ See H.B. 1992, 2023 Gen. Assemb., Reg. Sess., (Va. 2023) (Reconvened).

victim of domestic violence, whose address may be protected. While some of these concerns were raised in committee hearings, and amendments were drafted to address some of them, ultimately the bill passed without fully addressing all concerns.⁷⁰

Another change relating to appeals in family law matters concerns the issue of interlocutory appeals—that is, appeals taken in a case prior to a final order in a matter. Generally, interlocutory appeals have not been allowed in family law matters.⁷¹ Recently, Virginia Code § 17.1-405(A)(5) was amended to allow appeals “on any interlocutory decree or order involving an equitable claim in which the decree or order (i) requires money to be paid or the possession or title of property to be changed or (ii) adjudicates the principles of a cause.”⁷² A concern from the Virginia Family Law Coalition was that this subsection could potentially be read to apply to “*pendente lite*” support awards under Virginia Code § 16.1-278.17.⁷³ This concern led to Senator Surovell filing S.B. 895, which clarifies that *pendente lite* awards in domestic relations matters are not covered under the new subsection, by adding subsection (B), which states that:

[n]o interlocutory decree or order shall be appealed if such decree or order involves: 1. Affirmance or annulment of a marriage; 2. Divorce; 3. Custody of a minor child; 4. Spousal or child support; 5. Control or disposition of a minor child; 6. Any other domestic relations matter arising under Title 16.1 or 20; or 7. Any protective order other than a final protective order issued by a circuit court.⁷⁴

Further, the bill includes two clauses: one an emergency clause, and one that directs the Virginia Family Law Coalition to “conduct a study on appeals of interlocutory decrees or orders involving domestic relations matters in the Commonwealth.”⁷⁵ The Coalition shall report the findings of such study to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by October 1, 2024.⁷⁶

F. Extending Guardians ad litem’s Appointment to a Case

Delegate Herring also found success with H.B. 1990, which requires Guardians *ad litem* (“GAL”) for children to follow a case from JDR court to

⁷⁰ See generally *id.*

⁷¹ See VA. CODE § 17.1-405(A)(5), (B)(2023).

⁷² *Id.* at § 17.1-405(A)(5) (2023); see also S.143, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁷³ See *Courts Subcommittee #1*, VA. GEN. ASSEMB. (Feb. 17, 2023), <https://sg001-harmony.sliq.net/00304/harmony/en/PowerBrowser/PowerBrowserV2/20230826/-1/18043?Startposition=20230217153730&mediaEndTime=20230217154000&viewMode=2&globalStreamId=4>.

⁷⁴ S. 895, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

⁷⁵ *Id.*

⁷⁶ *Id.*

circuit court on appeal, with exception for good cause.⁷⁷

A GAL is appointed in many cases involving children, not to represent the child, but to represent to the court their “best interests,” which a court is required to consider—or even hold above—many other competing interests in a court case involving juveniles.⁷⁸ A child’s best interests are a prime consideration in child custody matters; some factors relating to a child’s best interests are laid out in the code, and judges must consider them in such cases.⁷⁹ Interestingly, there is no such list of factors for child dependency (i.e. foster care) matters to guide Virginia courts or GALs (who are required by federal and state law to be appointed in such matters), though other states do provide such factors.⁸⁰ A 2022 bill from Senator Edwards that would have provided such “best interests” guidance to the courts, was amended to remove this language.⁸¹ Further, the required qualifying course for Guardians *ad litem* for children in Virginia does not cover the best interests of children in foster care, so GALs are thus required to represent children’s best interests without any training on what these may be, or how to assess them.⁸² With no statutory factors to provide guidance in these matters, GALs’ biases and personal beliefs inform their recommendations all too often.⁸³

In cases where a GAL has been appointed, they are required to investigate the facts of the case and provide the court with recommendations based on their findings.⁸⁴ Accordingly, in cases appealed from the JDR court to circuit court, it is more efficient and cost-effective to retain the same GAL who has already investigated and is familiar with the case.⁸⁵ However, some circuit court judges may prefer to appoint a GAL whom they know, or whose

⁷⁷ See H.B. 1990, 2023 Gen. Assemb. Reg. Sess. (Va. 2023).

⁷⁸ See Erik D. Baines & Jordan Bondurant, *When Should a Guardian Ad Litem be Appointed in a Child Custody Case?*, VA. LAW. WKLY. (May 30, 2018), <https://valawyersweekly.com/2018/05/30/when-should-a-guardian-ad-litem-be-appointed-in-a-child-custody-case/>.

⁷⁹ See VA. CODE § 16.1-278.15(G) (2023) (“[T]he court shall consider the best interest of the child, including the considerations for determining custody and visitation...”); VA. CODE § 20-124.3 (2020) (providing various factors that the court is to consider when determining the best interests of a child for purposes of custody and visitation).

⁸⁰ Compare 42 U.S.C. § 5106a (2019) and VA. CODE § 16.1-266 (2005) with Juvenile Court Act of 1987, 37 ILL. COMP. STAT. 705/4.05 (2023).

⁸¹ See generally S. 396, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

⁸² See generally *Representation of Children as a Guardian Ad Litem - 2021 Qualifying Course*, VA. CONTINUING LEGAL EDUC., <https://www.vacle.org/product.aspx?zpid=7166> (last visited Sep. 10, 2023).

⁸³ Katherine H. Federle & Danielle Gadomski, *The Curious Case of the Guardian Ad Litem*, 36 U. DAYTON L. REV. 348, 349 (2011).

⁸⁴ JUDICIAL COUNCIL OF VIRGINIA, STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN S-1 (2023), https://www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/gal_performance_standards_children.pdf.

⁸⁵ See Sherrill L. Rosen, *Guardian Ad Litem Practice*, 63 UMKC L. REV. 371, 375 (1994).

recommendations they trust.⁸⁶ Some courts may prefer to have fresh eyes on a case. Delegate Herring's bill requires circuit court judges to justify their decision if they decide to appoint a different GAL than the one appointed below.⁸⁷ Since many litigants are unhappy with the child's GAL—for whom performance questions arise with some frequency—the passage of H.B. 1990 could see more litigation regarding these concerns raised on appeals from circuit court.⁸⁸

II. CHANGES IN INTIMATE PARTNER VIOLENCE LEGISLATION

A. Hearings to Extend Protective Orders

Delegate Robert Bell and Senator R. Creigh Deeds carried bills that allow for a hearing on a timely-filed motion to extend a full protective order.⁸⁹ The hearing can occur even after the underlying full protective order has expired.⁹⁰ Previously, judges found that once the underlying order had expired, their jurisdiction under the statute to extend a protective order did as well.⁹¹ This resulted in formerly protected individuals being left without protection if they failed to file far enough in advance of the expiration for a hearing to be scheduled and held on the matter.⁹² As amended, the statute now allows that a hearing “may be held after the expiration of the protective order.”⁹³ If a respondent is not present, and no proof of service has been returned, the court shall reschedule the hearing and may extend the order until the new date.⁹⁴ If the petitioner shows “by clear and convincing evidence that a continuance is necessary to meet the ends of justice or the respondent shows good cause,” the court may continue the extension hearing and the protective

⁸⁶ Ellen Solender, *The Guardian Ad Litem: A Valuable Representative or an Illusory Safeguard*, 7 TEX. TECH. L. REV. 619, 627 (1976).

⁸⁷ See H.B. 424, 2022 Gen. Assemb. Reg. Sess. (Va. 2022).

⁸⁸ See Megan Williams, *Who Monitors Lawyers Appointed to Speak for Vulnerable Children Without a Voice?*, THE NEWS LEADER (Sept. 28, 2017), <https://www.newsleader.com/story/news/2017/09/28/vulnerable-children-court-appointed-lawyer-questions/555455001/>.

⁸⁹ See H.B. 1897, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1532, 2023 Gen. Assemb., Reg. Sess. (Va. 2023);

VA. CODE § 19.2-152.10 (2023); VA. CODE § 16.1-279.1 (2023).

⁹⁰ See H.B. 1897, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); S. 1532, 2023 Gen. Assemb., Reg. Sess. (Va. 2023);

⁹¹ See E-mail from Ashley N. Kempczynski, Legal Servs. of Va., to author (Jan. 23, 2023) (on file with author); see also E-mail from vpivirotto@svlas.org, to Ashley N. Kempczynski, LEGAL SERVS. OF VA. (Jan. 23, 2023) (on file with author).

⁹² See E-mail from Ashley N. Kempczynski, Legal Servs. of Va., to author (Jan. 23, 2023) (on file with author); see also E-mail from vpivirotto@svlas.org, to Ashley N. Kempczynski, LEGAL SERVS. OF VA. (Jan. 23, 2023) (on file with author).

⁹³ VA. CODE § 16.1-279.1 (2023); see also VA. CODE § 19.2-152.10 (2023).

⁹⁴ VA. CODE § 16.1-279.1 (2023); see also VA. CODE § 19.2-152.10 (2023).

order shall remain in effect until the extension hearing.⁹⁵

B. Expansions in Family Abuse Protective Orders

Delegate Mike Mullin added language to the family abuse protective order statute.⁹⁶ When a petitioner is granted exclusive use and possession of a cellular telephone or other electronic device, they must be given the password to the device. Delegate Mullin also added that, in addition to enjoining the respondent from using the device to locate the petitioner, the court may prevent the respondent from using it to surveil the petitioner.⁹⁷

Additionally, under a bill from Senator Ryan McDougle, a Commonwealth's attorney or a law enforcement officer may now file for a family abuse protective order on behalf of a minor.⁹⁸ In cases where a family abuse emergency protective order (EPO) has previously been issued for the protection of the minor, and the respondent is that minor's parent, guardian, or person standing *in loco parentis*, the Commonwealth's attorney or law enforcement officer may file a family abuse protective order on behalf of a minor as their next friend.⁹⁹ In a hearing on the bill in the Senate Judiciary Committee, Senator McDougle explained the reason for filing this bill by referencing a situation where such an emergency family abuse protective order was sought by law enforcement on behalf of a juvenile victim of family violence and granted by the magistrate, as provided for under Virginia Code § 16.1-253.4.¹⁰⁰

However, when the EPO was about to expire and the parent charged with the abuse was to be released, the parent refused to seek a Preliminary Protective Order (PPO) for the minor.¹⁰¹ The PPO statute required the petitioner on behalf of a minor to be the minor's "next friend"—typically a parent or person standing *in loco parentis*.¹⁰² Thus, with the parent refusing to seek a PPO, the statute prevented anyone else from having standing to petition on the child's behalf.¹⁰³ As passed, S.B. 873 added a new subsection to Virginia Code § 16.1-253.1, providing that:

⁹⁵ VA. CODE § 16.1-279.1 (2023); *see also* VA. CODE § 19.2-152.10 (2023).

⁹⁶ *See* H.B. 1961, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); *see also* VA. CODE. § 16.1-253.1 (2023).

⁹⁷ *See* H.B. 1961, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); *see also* VA. CODE. § 16.1-253.1 (2023).

⁹⁸ *See* S. 873, 2023 Gen. Assemb., Reg. Sess. (Va. 2023); *see also* VA. CODE. § 16.1-253.1 (2023).

⁹⁹ VA. CODE. § 16.1-253.1 (2023).

¹⁰⁰ *See generally* Virginia Senate Live Session Video Stream, VA. S., https://virginia-senate.granicus.com/ViewPublisher.php?view_id=3 (last visited Sept. 14, 2023).

¹⁰¹ *See generally id.*

¹⁰² *See generally id.*

¹⁰³ *See generally id.*

In the event that the allegedly abused person is a minor and an emergency protective order was issued pursuant to § 16.1-253.4 for the protection of such minor and the respondent is a parent, guardian, or person standing *in loco parentis*, the attorney for the Commonwealth or a law-enforcement officer may file a petition on behalf of such minor as his next friend before such emergency protective order expires or within 24 hours of the expiration of such emergency protective order.¹⁰⁴

III. ONGOING ISSUES IN CHILD WELFARE

A. Improving Court-Appointed Counsel for Parents in Child Dependency Cases

An issue identified in 2015 by the Virginia Commission on Youth (VCOY), but which the General Assembly has repeatedly failed to address, is the compensation, training, qualifications, and practice standards of court-appointed counsel for parents in child dependency cases.¹⁰⁵ Court-appointed panel attorneys are qualified as GALs but not trained to represent parents, nor provided with standards for practice when representing parents.¹⁰⁶ When representing parents (unlike when serving as GALs), these attorneys are paid a flat rate of \$120 per petition, which may include more than one court hearing.¹⁰⁷ When serving as GALs, these same attorneys are paid hourly (still not enough, but more than the flat fee).¹⁰⁸ This flat fee compensation, one of the (if not *the*) lowest in the nation, has been the same since it was last changed—twenty-three years ago.¹⁰⁹ Judges increasingly report difficulty finding attorneys willing to accept appointments to these cases.¹¹⁰ Clients and court observers note that many attorneys representing parents do not contact their clients prior to court hearings, do not subpoena witnesses, and do not make arguments on behalf of their clients in court.¹¹¹ This is especially concerning because courts have declared the right of parents to raise their child a fundamental one, and because the majority of parents in these

¹⁰⁴ S. 873, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹⁰⁵ See VA. COMM'N ON YOUTH, COURT-APPOINTED COUNSEL FOR PARENTS IN CHILD WELFARE CASES 1-2, 9 (2015).

¹⁰⁶ See VA. CODE §16.1-266.1 (2023); S. 7, 2016 Gen. Assemb., Reg. Sess. (Va. 2016); OFFICE OF THE CHILD'S OMBUDSMAN, REPORT TO THE CHAIRMEN OF THE SENATE COMMITTEE ON THE JUDICIARY AND THE HOUSE COMMITTEE FOR COURTS OF JUSTICE, 3-4 (2022).

¹⁰⁷ VA. COMM'N ON YOUTH, *supra* note 105, at 3-4.

¹⁰⁸ See OFF. OF THE EXEC. SEC'Y, SUP. CT. OF VA., CHART OF ALLOWANCES 9 (2023), https://www.vacourts.gov/courtadmin/aoc/fiscal/chart2023_0101.pdf.

¹⁰⁹ VA. OFF. OF CHILD'S OMBUDSMAN, *supra* note 106.

¹¹⁰ See *id.* at 2-3.

¹¹¹ See Rachel Mahoney, 'It's All Set Up to Make You Fail': Parents Struggle to Keep Their Kids with Poor Legal Support in Custody Cases, CARDINAL NEWS (Jan. 16, 2023), <https://cardinalnews.org/2023/01/16/strengthening-support-for-parents-in-court-is-a-long-haul-advocates-say>.

proceedings are low-income, and disproportionately families of color.¹¹²

As noted in the VCOY report, “strengthening the quality of parents’ legal representation provided by court-appointed attorneys in child welfare cases could potentially have a number of benefits, including reducing foster care entry, assisting parents in navigating complex court proceedings, improving decision-making for all parties involved, and highlighting innovative solutions available to the court and interested parties (such as access to community-based services).”¹¹³ Several legislative initiatives have been filed since the publication of that report, beginning in 2015, to improve the rate of pay for court-appointed parents’ counsel.¹¹⁴ In response to these concerns, a bill carried by Senator John Edwards in the 2022 legislative session created a workgroup that published a report with several recommendations.¹¹⁵ Two of these recommendations were put forward as bills in the 2023 legislative session; one of these, along with a bill to continue Edwards’ 2022 workgroup, passed.¹¹⁶

Senator Creigh Deeds carried a bill to explore the workgroup’s recommendation to create a state office or commission to develop qualifications, training and practice standards, and oversee the creation of pilot multidisciplinary law offices.¹¹⁷ These efforts have been shown in other states to not only improve outcomes for children in these matters, but also to save money for states.¹¹⁸ The third recommendation put forward during this legislative session, a budget amendment that would have increased the compensation of parents’ counsel from \$120 to \$445 per petition—which the workgroup identified as the most pressing concern—to “stop the bleeding” of attorneys from the court-appointed list, again did not make it through the budget process.¹¹⁹ Because Virginia’s budget process is relatively non-

¹¹² *Disproportionality and Race Equity in Child Welfare*, NAT’L CONF. OF STATE LEGIS. (Jan. 26, 2021), <https://www.ncsl.org/human-services/disproportionality-and-race-equity-in-child-welfare>; see, e.g., *Richmond Dept. of Soc. Serv. v. Crawley*, 625 S.E.2d 670, 674 (Va. Ct. App. 2006) (“The fundamental liberty interest of natural parents in the care, custody and management of their child[ren] does not evaporate simply because they have not been model parents or have lost temporary custody ... to the State.” (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982))).

¹¹³ VA. COMM’N ON YOUTH, *supra* note 105, at 7.

¹¹⁴ See, e.g., S. 1028, 2015 Gen. Assemb., Reg. Sess. (Va. 2015) (allowing court-appointed counsel for parents in child welfare cases to submit a waiver application for additional compensation of \$120 in district court and \$158 for cases appealed to the circuit court); H.R. 401, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) (attempting the same provision again, five years later).

¹¹⁵ S. 396, 2022 Gen. Assemb., Reg. Sess. (Va. 2022).

¹¹⁶ S.J. Res. 241, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹¹⁷ S. 1443, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹¹⁸ Elizabeth Thornton & Betsy Gwin, *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 FAM. L. Q. 139, 148-149, 152 (2012).

¹¹⁹ *Item 44 #2s*, VA. GEN. ASSEMB., <https://budget.lis.virginia.gov/amendment/2023/1/SB800/Introduced/MR/44/2s/> (last visited Aug. 28, 2023).

transparent, no hearing to specifically discuss the amendment was held, and no publicly-recorded reason was provided for its failure to be included in the Senate's final proposed budget.¹²⁰

The budget amendment could have been lumped in with the amendments relating to court-appointed criminal defense attorney compensation in S.B. 940 (discussed below); but even if it had, there was no House version of the budget amendment, so it would have had to make it through the budget negotiation process first.¹²¹ From there, it would have to have been approved by the governor once the final budget was (finally) passed.¹²²

A separate, yet related, bill from Senator Edwards to increase all the court-appointed compensation rates—which would at least have doubled the statutory fee cap for court-appointed parents' counsel from \$120 to \$240—also did not pass.¹²³ The bill was amended to add “the clause”—an addendum that states the bill will not go into effect if the necessary funds are not appropriated in the final budget—and died when the budget amendment to fund the increase in rates was not included in the final senate budget.¹²⁴ The bill's failure may be understood through remarks made by Senator Janet Howell, chair of the Senate Finance and Appropriations Committee, to the effect that the Joint Legislative Audit and Review Commission (JLARC) was conducting a study to include court-appointed attorneys in the criminal justice system, to be completed in fall of 2023.¹²⁵

B. Redefining Child Abuse and Neglect

Senator Jill Vogel's bill amends the definitions of an “abused or neglected child” under Virginia Code §§ 16.1-228 and 63.2-100 by providing an

¹²⁰ See Megan Rhyné, *THE 2020 VIRGINIA GENERAL ASSEMBLY: THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME* 4-6 (2020).

¹²¹ See *SB 940 Court-appointed Counsel; Increases Statutory Caps for Fees Paid in Indigent Cases*, VA. GEN. ASSEMB., <https://lis.virginia.gov/cgi-bin/legp604.exe?231+vot+H02V0244+SB0940> (last visited Sep. 7, 2023) (meeting of the General Government Subcommittee of the Senate Finance and Appropriations Committee, in which staff briefs members of the subcommittee on budget amendments brought by members; amendments relating to court-appointed counsel being referred for study by JLARC).

¹²² *Virginia State Budget Process*, VA. GEN. ASSEMB., <https://virginiageneralassembly.gov/virginiaStateBudget.php?secid=22&activesec=4#!hb=1&mainContentTabs=0&content=0,includes/contentTemplate.php%3Ftid%3D56%26ctype%3Db%26cid%3D108> (last visited Aug 28, 2023); see Sarah Rankin, *Virginia Senate Democrats Make Another Counteroffer in Long-running Budget Talks*, ASSOCIATED PRESS (Aug. 14, 2023), <https://wset.com/news/local/virginia-senate-democrats-make-another-counteroffer-in-long-running-budget-talks-richmond-august-2023>.

¹²³ S. 940, 2023 Gen. Assemb., Reg. Sess. (Va. 2023).

¹²⁴ *Id.*

¹²⁵ *Hearing on S. 940 Before the S. Fin. & Appropriations Comm.*, 2023 Gen. Assemb. (Va. 2023) (statement of Sen. Janet D. Howell, Co-Chair, S. Fin. & Appropriations Comm.) https://virginiasenate.granicus.com/MediaPlayer.php?view_id=3&clip_id=5688.

additional exception that:

[N]o child whose parent or other person responsible for his care allows the child to engage in independent activities without adult supervision shall for that reason alone be considered to be an abused or neglected child, provided that (a) such independent activities are appropriate based on the child's age, maturity, and physical and mental abilities and (b) such lack of supervision does not constitute conduct that is so grossly negligent as to endanger the health or safety of the child. Such independent activities include traveling to or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a reasonable period of time.¹²⁶

This bill will provide relief to the many families who have been told they may not allow their children to walk to the library, ride a bike to school, climb a tree, play in their front yard, or stay at home alone for reasonable lengths of time (as generations of latchkey children have done).¹²⁷ When parents fear they may be investigated for “lack of supervision,” this can influence their parenting choices leading to “helicopter parenting” which experts say can lead to problems with a child’s development of healthy self-esteem.¹²⁸ For advocates who spoke at public hearings on the bill (which included children relating their experiences), one concern is that low-income families and families of color may disproportionately bear the brunt of reports of and intrusions.¹²⁹

CONCLUSION

The Virginia General Assembly is a part-time legislature, deciding things of great importance to the Commonwealth in a very brief period of time—no more than sixty days in “long,” or even-numbered years (when a new biennial budget is decided), or forty-six days in “short,” or odd-numbered years.¹³⁰ While the issue of whether the modern Commonwealth would be best served

¹²⁶ S. 1367, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (defining what constitutes child abuse or neglect when engaging in independent activities without supervision).

¹²⁷ See Lenore Skenazy, *Free-Range Kids in Virginia, Connecticut, and Illinois Celebrate a Very Special Independence Day*, REASON MAG. (July 1, 2023), <https://reason.com/2023/07/01/reasonable-childhood-independence-free-range-independence-day/>.

¹²⁸ RACHEL M. FLYNN ET AL., THE UNINTENDED CONSEQUENCES OF “LACK OF SUPERVISION” CHILD NEGLECT Laws 3-6, 16-17 (Ellen Wartella et al. eds., Vol. 36, No. 1 2023).

¹²⁹ See e.g., *Hearing on S. 1367 Before the S. Judiciary Comm.*, 2023 Gen. Assemb. (Va. 2023) (statement of Fallon Speaker, Legal Dir., Youth Just. Program at the Legal Aid Just. Ctr.) https://virginia-senate.granicus.com/MediaPlayer.php?view_id=3&clip_id=5592.

¹³⁰ VA. CONST. art. IV § 6; Robert McCartney, *Virginia's Short Legislative Sessions Hinder Public Input*, WASH. POST (Feb. 19, 2011), <https://www.washingtonpost.com/virginias-short-legislative-sessions-hinder-public-input/2011/02/19/ABMPTYQstory.html>.

by a full-time legislature is occasionally raised,¹³¹ and bills are periodically introduced (such as this year's H.B. 478 from Delegate Fowler, which would have directed JLARC to study changes to the legislative system, had it not failed), Virginia's commitment to "the Virginia way," and a reverence for the past that has long held a stranglehold on the present and future, means this is unlikely to change.¹³²

Further, Virginia continues to adhere to a lack of transparency in its budget process, not allowing public input on many budget matters. Negotiations about whether, and how much, to allot for various issues within each body, and between the bodies, often take place behind closed doors. While citizens and advocates can set up times to meet with legislators to discuss bills and budgetary issues, often they find themselves palmed off on staff who may or may not be familiar with the issues at hand. With so many bills to decide in such a short period of time—3,000 in 2023—it's difficult for citizens, or even advocates, to explain to legislators their support or opposition to a bill. Testimony on important issues in committee meetings is sometimes limited to less than a minute.¹³³ Mistakes are made in the process; and while they may be fixed in subsequent years, they nonetheless can impact citizens until that happens.¹³⁴ Family law bills make up only a small portion of the overall number of bills the legislature considers in any given year, and only a few lawmakers understand or have interest in these, so they may get short shrift.

¹³¹ See e.g., Mark J. Rozell, *Virginia's Legislature Was Built For Agrarian Times. Is it Time For An Update?*, WASH. POST. (March 21, 2022), <https://www.washingtonpost.com/opinions/2022/03/21/virginias-legislature-was-built-agrarian-times-is-it-time-an-update/>; see also Bob Lewis, *Another Session With Vital Work Left Undone: Virginia Outgrows its Part-time Legislature*, THE VA. MERCURY (Feb. 28, 2023), <https://www.virginiamercury.com/2023/02/28/another-session-with-vital-work-left-undone-virginia-outgrows-its-part-time-legislature/>.

¹³² See H.B. 478, 2023 Gen. Assemb., Reg. Sess. (Va. 2023) (dying in chamber as of Feb. 7, 2023); see also RICHARD C. SCHRAGGER & C. ALEX RETZLOFF, *THE FAILURE OF HOME RULE REFORM IN VIRGINIA: RACE, LOCALISM, AND THE CONSTITUTION OF 1971* 3-4 (2020).

¹³³ McCartney, *supra* note 130.

¹³⁴ See e.g., Lisa Bacon, *New Law Gives Virginia's Workers a Break, by Accident*, N.Y. TIMES (July 2, 2004), <https://www.nytimes.com/2004/07/02/us/new-law-gives-virginia-s-workers-a-break-by-accident.html>.

This page intentionally left blank.