

11-2003

Legal Issues Involving Children

Robert E. Shepherd Jr.
University of Richmond School of Law

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



Part of the [Legislation Commons](#), [Social Welfare Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Robert E. Shepherd Jr., *Legal Issues Involving Children*, 38 U. Rich. L. Rev. 161 (2019).
Available at: <https://scholarship.richmond.edu/lawreview/vol38/iss1/9>

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 University of Richmond Law Review by an authorized editor of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

LEGAL ISSUES INVOLVING CHILDREN

*Robert E. Shepherd, Jr. **

I. INTRODUCTION

During the past year, little significant legislation was passed and few major court cases were decided that impact children in the Commonwealth of Virginia. Virginia, however, did take important steps to increase the protection of children involved in the juvenile justice, child protection, and family law processes through reforms of the guardian ad litem system. As a result, this survey article will concentrate on those reforms initiated by a Virginia Bar Association ("VBA") study and implemented through resulting action by the Judicial Council of Virginia ("Judicial Council"), the Supreme Court of Virginia, a legislative study, and the enactment of legislation reaffirming the authority of courts to appoint lawyers for children as guardians ad litem or as counsel in situations where legal representation is already provided.

II. GUARDIANS AD LITEM¹

Virginia has a long history of commitment to the need for children to have independent legal representation in litigation affecting their interests. This commitment has translated into legislation, Rules of the Supreme Court of Virginia, qualification standards for guardians ad litem appointed to represent children, and now performance standards for those guardians as well. Virginia Code section 16.1-266(A) specifically provides for the ap-

* Emeritus Professor of Law, University of Richmond School of Law. B.A., 1959, LL.B., 1961, Washington and Lee University.

1. Much of this discussion is based on the various documents generated during the study of the guardian ad litem system in Virginia by the Commission on the Needs of Children of the Virginia Bar Association during 2001-03. The author chairs the Commission and directed the study. Many of the documents were written by Harriet McCollum, who served as consultant for the study.

pointment of lawyers as counsel or as guardians ad litem, depending on the particular type of case.² Likewise, Rule 8:6 of the Supreme Court of Virginia recognizes the importance of the lawyer for a child and it defines the role of that lawyer.³ In order to implement these provisions in a meaningful fashion, Virginia Code section 16.1-266.1 directs the Judicial Council, in conjunction with the Virginia State Bar and VBA, to adopt standards governing the qualifications, experience, and training requirements for attorneys appointed as guardians ad litem.⁴ In 1995, the Judicial Council adopted *Standards to Govern the Appointment of Guardians ad Litem*, which contain detailed information concerning the professional memberships, experience in juvenile and domestic relations district court, and the content and length of training required of attorneys in order to qualify for appointment.⁵ Virginia Code section 16.1-267 provides for compensation of guardians ad litem for legal services—the current rate of compensation is \$75 per hour for in-court services and \$55 per hour for out-of-court services.⁶

Surveys conducted in 1999 and 2000 by the Court Improvement Project of the Office of the Executive Secretary of the Supreme Court of Virginia revealed that courts are indeed appointing guardians ad litem to represent children in nearly every case

-
2. VA. CODE ANN. § 16.1-266(A) (Repl. Vol. 2003). The Virginia Code directs that: Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

Id.

3. VA. SUP. CT. R. 8:6. As articulated by the Supreme Court of Virginia: The role of counsel for a child is the representation of the child's legitimate interests. When appointed for a child, the guardian ad litem shall vigorously represent the child fully protecting the child's interest and welfare. The guardian ad litem shall advise the court of the wishes of the child in any case where the wishes of the child conflict with the opinion of the guardian ad litem as to what is in the child's interest and welfare.

Id.

4. VA. CODE ANN. § 16.1-266.1 (Repl. Vol. 2003).
5. See VA. LAW FOUNDATION, JUVENILE LAW AND PRACTICE IN VIRGINIA § 2.2, App. 2-2 (Robert E. Shepherd, Jr., ed., 2d ed. 2002).
6. VA. CODE ANN. § 16.1-267 (Repl. Vol. 2003); OFFICE OF THE EXEC. SEC'Y OF THE SUPREME COURT OF VIRGINIA, COURT-APPOINTED COUNSEL—PUBLIC DEFENDER PROCEDURES AND GUIDELINES MANUAL 40 (2002).

and that these appointments generally are made within a day of the initiation of the case.⁷ The guardians ad litem who responded to the surveys reported that they “usually” (18.8%) or “always” (81.3%) attend all court hearings in the child’s case.⁸ Only 54.1% of those responding reported that they “always” conduct an independent investigation of the facts in the child’s case, while 39.6% reported that they “usually” and 6.3% reported that they “often” conduct such investigations.⁹ Similarly, only 56.3% of guardians ad litem reported that they “always” review records pertinent to the child’s case.¹⁰ No more than 25% of responding guardians ad litem reported that they “always” interview foster parents, meet with the child between court hearings, and discuss the purpose of an upcoming hearing with the child, and as many as 25% reported that they do these things “rarely” or “occasionally.”¹¹ While 31.9% of guardians ad litem reported that they “always” filed an appeal when the court’s decision was contrary to the welfare of the child, an alarming 23.4% reported that they “never” file such an appeal and 21.3% reported that they “rarely” do so.¹² A focus group of teenagers convened by the Court Improvement Project, who had previously been represented by guardians ad litem, reported that few had met with their lawyers prior to the day of their hearing and that they heard little from the guardian at any other time.¹³

The VBA’s Commission on the Needs of Children (“VBA Commission”) undertook a project in 2001 with the principal “aim of improving the quality of practice by attorneys serving as [guardians ad litem]” in abuse and neglect cases.¹⁴ The VBA Commission

established a broadbased Advisory Committee composed of attorneys currently serving as [guardians ad litem], attorneys representing local departments of social services, juvenile and domestic relations

7. OFFICE OF THE EXEC. SEC’Y OF THE SUPREME COURT OF VIRGINIA, SAFETY AND PERMANENCY FOR DEPENDENT CHILDREN BEFORE THE COURTS OF THE COMMONWEALTH—COURT IMPROVEMENT PROGRAM 1997–2000 I-100 (2001).

8. *Id.* at I-87.

9. *Id.*

10. *Id.* at I-88.

11. *Id.*

12. *Id.* at I-92.

13. *Id.* at I-71.

14. VIRGINIA BAR ASS’N COMM’N ON THE NEEDS OF CHILDREN, NARRATIVE REPORT SUPPORTING PROPOSED STANDARDS OF PERFORMANCE FOR GUARDIANS AD LITEM IN CHILD PROTECTION PROCEEDINGS 9 (2002).

district court and circuit court judges, volunteer Court Appointed Special Advocates, foster parents, child protective services workers and other experts in the areas of court administration, juvenile law and services to troubled families.¹⁵

In the summer and fall of 2001, the VBA Commission and its advisory committee "conduct[ed] an extensive review of similar efforts conducted by national organizations¹⁶ and other states."¹⁷ The group also "examined Virginia's current statutes, rules and policies."¹⁸ The group determined that Virginia needed to attend to the performance of guardians ad litem and proposed that the Judicial Council "adopt standards of performance for [guardians ad litem] . . . in order to assure vigorous, effective and competent representation for all children."¹⁹ At its meeting on October 21, 2002, the Judicial Council adopted the VBA Commission's proposed standards and urged the group to continue its study to extend to other proceedings where guardians ad litem were appointed for children in Virginia.²⁰

During the pendency of the VBA Commission's study, the Attorney General of Virginia issued an official opinion concluding that a juvenile court judge had no authority under Virginia Code section 16.1-266(D) to appoint a guardian ad litem in a delinquency case where counsel had already been appointed under Virginia Code section 16.1-266(B).²¹ After the Executive Secretary of the Supreme Court of Virginia requested further clarification in light of the broader implications of that opinion for other cases,

15. *Id.*

16. *Id.* (citing NAT'L ASSOC. OF COUNSEL FOR CHILDREN, NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES (2001); NAT'L ASSOC. OF COUNSEL FOR CHILDREN, AM. BAR ASS'N STANDARDS FOR PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (NCCC Revised version 1999); AM. BAR ASS'N STANDARDS FOR PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996); ADMIN. FOR CHILDREN YOUTH AND FAMILIES, U.S. DEP'T OF HEALTH AND HUMAN SERVS., NAT'L STUDY OF GUARDIAN AD LITEM REPRESENTATION (1990); ADMIN. FOR CHILDREN YOUTH AND FAMILIES, U.S. DEP'T OF HEALTH AND HUMAN SERVS., NAT'L EVALUATION OF THE IMPACT OF GUARDIANS AD LITEM IN CHILD ABUSE AND NEGLECT JUDICIAL PROCEEDINGS (1988)).

17. *Id.*

18. *Id.* at 10.

19. *Id.* at 12.

20. PROPOSED STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM IN CHILD PROTECTION PROCEEDINGS PURSUANT TO §§ 16.1-266 AND 16.1-266.1, CODE OF VIRGINIA (2002); *see also* Letter from Robert N. Baldwin, Executive Secretary of the Supreme Court of Virginia, to C.B. Arrington, Jr., Executive Vice President, Virginia Bar Association (Nov. 1, 2002) (on file with author).

21. 2001 Op. Va. Att'y Gen. 81.

the Attorney General issued a second opinion reaffirming the first opinion.²² Virginia Code section 16.1-266, as amended in 2003, however, reestablishes the power of the juvenile and domestic relations district court to appoint both counsel and a guardian ad litem for a party when it deems it necessary.²³

While the VBA Commission's study was ongoing, guardians ad litem became an issue during the 2002 Session of the General Assembly. Several efforts were made to establish a cap on guardian ad litem fees due to complaints about practices by lawyers serving in that role.²⁴ That effort was forestalled, however, by the passage of a resolution establishing the Joint Subcommittee to Study the Effectiveness and Costs of the Guardian ad Litem Program ("Joint Subcommittee").²⁵ The study raised a number of general issues relating to the role of guardians ad litem, and specific issues relating to custody and visitation cases and concerning the role of guardians ad litem in the juvenile and circuit courts.²⁶ The study also focused on issues of compensation for guardians ad litem.²⁷ In the fall of 2002, the Joint Subcommittee ended its work by commending the VBA Commission for its work on the standards for guardians ad litem, urging the VBA to continue its work in developing performance standards for custody and visitation cases, and requesting that the VBA present a further report on its progress to the study group members in the summer of 2003.²⁸ No further action was taken on guardian ad litem fees except to direct the Office of the Executive Secretary to have guardians ad litem submit itemized bills for amounts in excess of \$500.²⁹

In the spring of 2003, the VBA Commission and its advisory committee concluded their work in drafting comprehensive per-

22. Op. to Hon. Robert N. Baldwin, Executive Secretary of the Supreme Court of Virginia (July 16, 2002), *available at* <http://www.oag.state.va.us/> (last visited Sept. 22, 2003).

23. VA. CODE ANN. § 16.1-266(D) (Repl. Vol. 2003).

24. See H.B. 30, Va. Gen. Assembly (Reg. Sess. 2002); see also S.B. 30, Va. Gen. Assembly (Reg. Sess. 2002). Specifically, House Bill 30 was changed by amendment 2h to item 34. Senate Bill 30 was changed by amendment 2s to item 26.

25. H.J. Res. 76, Va. Gen. Assembly (Reg. Sess. 2002).

26. *Id.*

27. *Id.*

28. GENERAL ASSEMBLY OF VIRGINIA JOINT SUBCOMMITTEE TO STUDY THE GUARDIAN AD LITEM PROGRAM, SUMMARY OF ACTIONS TAKEN BY THE JOINT SUBCOMMITTEE TO STUDY THE GUARDIAN AD LITEM PROGRAM, H.J. RES. 76 (Nov. 12, 2002).

29. *Id.*

formance standards.³⁰ The participants

spent a great deal of time discussing the definition of the role of the [guardian ad litem] and the tension between the [guardian ad litem] acting as an attorney in a traditional attorney role, that is primarily presenting evidence and arguing the case for the child's best interest, versus the attorney acting as a reporter to the courts, that is primarily presenting information in the form of reports not necessarily supported by evidence and perhaps containing hearsay. Some members of the Advisory Committee felt that the submission of reports summarizing the [guardian ad litem's] findings and recommendations . . . was an appropriate and desirable responsibility of a guardian ad litem. They noted that the submission of such summaries, especially in cases where the other parties have reached an agreement or are unrepresented is an efficient way to handle such cases. They also noted that reports allow the [guardian ad litem] to provide accounts of their firsthand observations when visiting homes, meeting with parties to the case, or interviewing doctors and counselors on perfunctory matters such as whether appointments were kept or not. The group reached a strong consensus that the [guardian ad litem] should rely primarily on opening statements, presentation of evidence and closing arguments to present the salient information the [guardian ad litem] feels the court needs to make its decisions. At dispositional hearings the [guardian ad litem] may be asked to provide a written or oral summary of his or her findings and recommendations[, but] notice of the impending report, and copies of the summary, if written, should be provided to the other parties in a reasonable time frame prior to a hearing.³¹

The final report of the VBA Commission reached a number of general conclusions about the representation of children by guardians ad litem.³² The report concluded that many of the skills, abilities, and actions

required to represent children are the same as those required for many other types of litigation . . . conducting interviews, framing and evaluating pleadings, engaging in discovery techniques, thoroughly preparing for trial, and negotiating on behalf of a client . . .

Representing children, however, is also different from other forms of litigation [due to] [t]he importance of the dispositional process and

30. See VA. BAR ASS'N COMM'N ON THE NEEDS OF CHILDREN & GUARDIAN AD LITEM ADVISORY COMM., ADDENDUM TO THE COMM'N ON THE NEEDS OF CHILDREN AND GUARDIAN AD LITEM ADVISORY COMMITTEE'S SEPTEMBER 2002 REPORT TO THE VA. BAR ASS'N 2-3 (2003).

31. *Id.* at 3.

32. VA. BAR ASS'N COMM'N ON THE NEEDS OF CHILDREN, PROPOSED STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN (2003).

the potential for court proceedings to affect the very nature of a family The long term consequences to the child client make the role of a [guardian ad litem] as crucial at the dispositional stage as at any other phase of the case. These consequences demand [the guardian ad litem's] full attention to the formulation and articulation of well-supported arguments and appropriate recommendations, as well as critical evaluation of plans proposed by others.

. . . .

[The VBA Commission recognized that] [a]ttorneys who serve as [guardians ad litem] are subject to the Rules of Professional Conduct . . . as they would be in any other case, except when the special duties of a [guardian ad litem] conflict with such rules. For example, an attorney would follow the general conflict rule . . . to determine if there would be a possible conflict of interest if the attorney served as [guardian ad litem]. But unlike the Rules for Professional Conduct as they apply to confidentiality, there may be times when [an attorney] serving as a [guardian ad litem] must, in furtherance [of his or her role,] disclose information provided by the child to the court

The role and responsibility of the [guardian ad litem] is to represent, as an attorney, the child's best interests before the court. The [guardian ad litem] is a full and active participant in the proceedings who independently investigates, assesses and advocates for the child's best interests.³³

The standards were approved by the Judicial Council in a meeting on June 23, 2003, and the Supreme Court of Virginia also approved them on July 7, 2003, with the comprehensive performance standards taking effect on September 1, 2003.³⁴ The new 2003 standards prescribe certain things that an attorney must do to fulfill the duties of a guardian ad litem.³⁵ For instance, the attorney must meet face-to-face with the child and conduct interviews and an independent investigation in order to ascertain the facts of the case.³⁶ The attorney serving as guardian ad litem must also advise the child, in terms that he or she can understand, of the nature of all proceedings, the child's rights, the role and responsibilities of the guardian ad litem, and the court process and possible consequences of the legal action.³⁷ Next, the

33. *Id.* at S-2; VA. CODE ANN. LEGAL ETHICS AND UNAUTHORIZED PRACTICE OPINIONS, L.E.O. 1729 (Mar. 26, 1999) (Repl. Vol. 2002); VA. SUP. CT. R. 8:6.

34. VA. BAR ASS'N COMM'N ON THE NEEDS OF CHILDREN, STANDARDS TO GOVERN THE PERFORMANCE OF GUARDIANS AD LITEM FOR CHILDREN, *supra* note 32, at S-12.

35. *Id.* at S-1.

36. *Id.* at S-3 to S-4.

37. *Id.* at S-5.

guardian ad litem must participate, as appropriate, in pre-trial conferences, mediations, and negotiations, as well as ensure the child's attendance at all proceedings where such would be appropriate or mandated and also appear in court on the dates and times scheduled for hearings prepared to represent fully and vigorously the child's interests.³⁸ For all court hearings the guardian ad litem must prepare the child to testify when necessary and appropriate in accordance with the child's interest and welfare.³⁹ The guardian ad litem should provide the court with sufficient information, including specific recommendations for court action based on the findings of the interviews and independent investigation.⁴⁰ In order to provide the best services to the child, the guardian ad litem is required to communicate, coordinate, and maintain a professional working relationship in so far as possible with all parties without sacrificing independence.⁴¹ The guardian ad litem should file appropriate petitions, motions, pleadings, briefs, and appeals on behalf of the child, and ensure that the child is represented by a guardian ad litem in any appeal involving the case.⁴² Lastly, at the end of the case the guardian ad litem must advise the child, in terms the child can understand, about the court's decision and its consequences for the child and others in the child's life.⁴³

The new standards will be printed on the reverse side of the order appointing a guardian ad litem in the juvenile and domestic relations district court.⁴⁴

In *Ferguson v. Grubb*,⁴⁵ a custody and visitation case, the juvenile and domestic relations district court entered an order enforcing the circuit court's prior visitation order and continued the appointment of a guardian ad litem for the children, ruling that the guardian ad litem and his staff would have access to both parents' homes for unannounced or announced visits.⁴⁶ The circuit court

38. *Id.* at S-6 to S-7.

39. *Id.* at S-8.

40. *Id.* at S-9.

41. *Id.* at S-10.

42. *Id.* at S-11.

43. *Id.*

44. FORM DC-514, SUPREME COURT OF VIRGINIA, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM.

45. 39 Va. App. 549, 574 S.E.2d 769 (Ct. App. 2003).

46. *Id.* at 554-55, 574 S.E.2d at 771.

affirmed these actions on appeal.⁴⁷ The Court of Appeals of Virginia affirmed that decision and reiterated that, because of the courts' continuing jurisdiction to consider custody and visitation issues, the power to continue representation by a guardian ad litem continues until the children at issue reach the age of majority.⁴⁸ The court also affirmed the power of the guardian ad litem to use "court-approved or designated staff" to assist in the performance of the guardian's statutory and rule-based duties.⁴⁹ Once again, an appellate court in Virginia took a very expansive view of the role and functioning of guardians ad litem in the Commonwealth.

III. DELINQUENCY AND CHILDREN IN NEED OF SUPERVISION

A. *Effectiveness of a Juvenile's Waiver of the Right to Appeal in Capital Cases*

The only Supreme Court of Virginia decision even tangentially touching on illegal behavior by juveniles this year was *Emmett v. Commonwealth*.⁵⁰ Despite having a voluntary waiver from the juvenile capital defendant of the right to appeal his conviction, the supreme court was nonetheless obliged to review the death sentence imposed, including the possible effect an allegedly improper argument may have had on the penalty phase of his trial.⁵¹ The court concluded that the prosecutor's inaccurate depiction of "a maximum-security juvenile detention facility" as a prison was a relatively minor misstatement and not unduly prejudicial to the sentencing phase.⁵²

47. *Id.* at 555–56, 574 S.E.2d at 772.

48. *Id.* at 558–59, 574 S.E.2d at 773.

49. *Id.* at 561, 574 S.E.2d at 774–75.

50. 264 Va. 364, 569 S.E.2d 39 (2002).

51. 264 Va. at 370, 569 S.E.2d at 43–44.

52. *Id.* at 371–72, 569 S.E.2d at 44.

B. Parental Right to Notice in Delinquency Cases

In two holdovers from the now severely limited *Baker v. Commonwealth*⁵³ decision, the Court of Appeals of Virginia issued decisions in *Smith v. Commonwealth*⁵⁴ and *Langhorne v. Commonwealth*.⁵⁵ The court held in *Smith* that the failure to give notice of juvenile court transfer proceedings to the juvenile's father did not deprive that court or the circuit court of jurisdiction since his mother had notice, and the relevant statute⁵⁶ only required that notice be given "to at least one parent."⁵⁷ In *Langhorne*, the court held that the previous decision⁵⁸—overturning a conviction for the failure to give notice to the defendant's father of the proceeding—was withdrawn in accordance with a supreme court order, and final judgment was entered reinstating the appellant's conviction.⁵⁹

C. The Right to a Speedy Trial

In *Hudson v. Commonwealth*,⁶⁰ the court concluded that the trial judge appropriately denied Hudson's motion to dismiss his indictment because of a violation of the right to a speedy trial.⁶¹ Although Virginia Code section 19.2-243, requiring trial within five months of the preliminary hearing in the juvenile court, was violated, the fourteen-year-old defendant had voluntarily agreed to setting a trial date beyond the five-month period in a docketing conference held in the circuit judge's chambers prior to the pre-

53. *Baker v. Commonwealth*, 28 Va. App. 306, 504 S.E.2d 394 (Ct. App. 1998), *aff'd per curiam*, 258 Va. 1, 2, 516 S.E.2d 219, 219-220 (1999). See also the discussions of *Baker* and later cases in Robert E. Shepherd, Jr., *Annual Survey of Virginia Law: Legal Issues Involving Children*, 35 U. RICH. L. REV. 741, 746-49 (2001); Robert E. Shepherd, Jr., *Annual Survey of Virginia Law: Legal Issues Involving Children*, 34 U. RICH. L. REV. 939, 939-45 (2000); and Robert E. Shepherd, Jr., *Annual Survey of Virginia Law: Legal Issues Involving Children*, 33 U. RICH. L. REV. 1001, 1007-08 (1999).

54. 38 Va. App. 840, 568 S.E.2d 462 (Ct. App. 2002).

55. 39 Va. App. 84, 570 S.E.2d 268 (Ct. App. 2002).

56. VA. CODE ANN. § 16.1-263(A) (Repl. Vol. 2003).

57. *Id.*; *Smith*, 38 Va. App. at 843, 568 S.E.2d at 464.

58. 35 Va. App. 19, 25, 542 S.E.2d 780, 783 (Ct. App. 2001).

59. *Langhorne*, 39 Va. App. at 84, 570 S.E.2d at 268.

60. 39 Va. App. 240, 572 S.E.2d 486 (Ct. App. 2002).

61. *Id.* at 245, 572 S.E.2d at 488-89.

liminary hearing, and he thus waived his right to be tried within the statutory period.⁶²

D. *Implications of Certification as an Adult*

In *Hughes v. Commonwealth*,⁶³ a juvenile certified for trial as an adult was convicted in circuit court of unlawful wounding, a lesser offense of the certified charge of malicious wounding.⁶⁴ He was sentenced by the trial judge to confinement in the Department of Juvenile Justice for an indefinite time period, not to exceed his twenty-first birthday.⁶⁵ Hughes asserted on appeal that he was improperly sentenced because he was convicted of the lesser offense, not the certified violent felony, and the case should have been remanded to the juvenile court for sentencing and for reclaiming juvenile status.⁶⁶ The Court of Appeals of Virginia rejected the contention.⁶⁷

Similarly, in *Rodriguez v. Commonwealth*,⁶⁸ the court held that Virginia Code section 16.1-269(B) did not violate the state or federal constitutions by allowing automatic certification of specified charges of murder or aggravated malicious wounding from a juvenile court to a circuit court for trial as an adult after a preliminary hearing.⁶⁹

Likewise, in *Ingram v. Commonwealth*,⁷⁰ the court determined that the defendant was not entitled to be sentenced by the jury for charges for which he was convicted as an adult in the circuit court after certification from the juvenile court merely because he was convicted and sentenced as an adult on another charge prior to the sentencing in this case.⁷¹

62. *Id.* at 248–50, 572 S.E.2d at 490–91.

63. 39 Va. App. 448, 573 S.E.2d 324 (Ct. App. 2002).

64. *Id.* at 454, 573 S.E.2d at 326.

65. *Id.* at 454, 573 S.E.2d at 326–27.

66. *Id.* at 454–55, 573 S.E.2d at 327.

67. *Id.* at 461–62, 573 S.E.2d at 330. For additional discussion of certification issues in Virginia over the past year, see Marla Graff Decker & Stephen R. McCullough, *Annual Survey of Virginia Law: Criminal Law*, 38 U. RICH. L. REV. 87, 124 (2003).

68. 40 Va. App. 144, 578 S.E.2d 78 (Ct. App. 2003).

69. *Id.* at 150–55, 578 S.E.2d at 80–83.

70. No. 1791-01-1, 2002 Va. App. LEXIS 593 (Ct. App. Oct. 8, 2002) (unpublished decision).

71. *Id.* at *8–12.

E. *Fourth Amendment Search and Seizure Issues*

In *Kaupp v. Texas*,⁷² the Supreme Court of the United States ruled that a seventeen-year-old youth had been illegally taken into custody without a warrant at his home.⁷³ The young man was taken handcuffed, shoeless, and clad only in his boxer shorts and a T-shirt to the interview room at the sheriff's headquarters where he was interrogated and subsequently made certain inculpatory admissions.⁷⁴ The Court ruled that the arrest lacked probable cause and was in violation of the Fourth Amendment.⁷⁵

Likewise, in *El-Amin v. Commonwealth*,⁷⁶ the Court of Appeals of Virginia ruled that police officers illegally seized the defendant during a warrantless encounter with a group of juveniles standing on a street corner in the City of Richmond.⁷⁷ Because the officers lacked probable cause, the ensuing search was unlawful, the evidence seized was suppressed, and the charges were dismissed.⁷⁸

The Court of Appeals also held in *Jones v. Commonwealth*⁷⁹ that, although a motion to suppress evidence of drugs seized at the time of the defendant's detention was improperly overruled, the trial court did not err in admitting into evidence records from the juvenile court regarding the defendant's weapons charge.⁸⁰ The court reasoned that the records were obtained from the court using information supplied by Jones, and were thus admissible at trial.⁸¹

72. 123 S. Ct. 1843 (2003) (per curiam).

73. *Id.* at 1847.

74. *Id.* at 1845.

75. *Id.* at 1847.

76. No. 1472-02-2, 2003 Va. App. LEXIS 315 (Ct. App. May 27, 2003) (unpublished decision).

77. *Id.* at *2-3.

78. *Id.* at *7-10.

79. No. 1077-02-2, 2003 Va. App. LEXIS 189 (Ct. App. Apr. 22, 2003) (unpublished decision).

80. *Id.* at *13-14.

81. *Id.* at *17-18.

In *Wells v. Commonwealth*,⁸² the Court of Appeals of Virginia ruled that a police officer's recognition that Wells was not a student at the high school provided reasonable articulable suspicion to stop him.⁸³ The police had received reports that persons from another county might cause a disturbance.⁸⁴ The officer knew that Wells was from another county.⁸⁵ Suspicious that Wells was present to cause a disturbance, the officer's ensuing search was legal and the firearm that was discovered was properly seized.⁸⁶

F. *Juvenile Confessions*

Several Court of Appeals of Virginia cases have dealt with the troublesome issue of confessions by juveniles. In *Rodriguez v. Commonwealth*,⁸⁷ the court of appeals addressed the admission of a fourteen-year-old boy's confession.⁸⁸ The court concluded that the evidence supported the trial judge's conclusions that the youth knowingly, intelligently, and voluntarily waived his *Miranda* rights during his interrogation by the police, and that his subsequent confession was voluntary.⁸⁹ The court acknowledged that although a confession by a juvenile so young and with no prior experience with the criminal justice system dictates "special caution," the totality of the circumstances, including the trial court's findings about the appellant's courtroom demeanor, supported the conclusion that the court was correct in overruling the motion to suppress the confession.⁹⁰ Footnote three of the court's opinion notes that the American Bar Association's Task Force on Youth in the Criminal Justice System urged "particular caution when evaluating a waiver of substantive rights by 'any youth fourteen years of age or younger.'"⁹¹

82. No. 0375-02-2, 2003 Va. App. LEXIS 231 (Ct. App. Apr. 22, 2003) (unpublished decision). Although the opinion does not indicate whether defendant was a juvenile, it does reflect that he was not a student at the high school when he was stopped by a school resource officer. *Id.* at *6-7.

83. *Id.*

84. *Id.*

85. *Id.* at *7.

86. *Id.*

87. 40 Va. App. 144, 578 S.E.2d 78 (Ct. App. 2003).

88. *Id.* at 149, 578 S.E.2d at 79-80.

89. *Id.* at 164, 578 S.E.2d at 87.

90. *Id.* at 158-59, 578 S.E.2d at 84-85.

91. *Id.* at 158 n.3, 578 S.E.2d at 84 n.3 (quoting ABA CRIMINAL JUSTICE SYSTEM TASK

In *Cary v. Commonwealth*,⁹² the court of appeals affirmed that a seventeen-year-old defendant's confession was properly admitted, despite the inability of his mother to talk to him, being taken away in a police car, only having a ninth-grade education, and being a poor student with poor attendance.⁹³ The court noted that Cary never asked for his mother and that her absence was only one factor to be considered in determining the voluntariness of the waiver and confession.⁹⁴ The interrogation was videotaped and the trial court found that Cary intelligently and voluntarily waived his rights before he gave his confession.⁹⁵ Based on the totality of the circumstances, the confession was admissible and the conviction was affirmed.⁹⁶

In *White v. Commonwealth*,⁹⁷ the juvenile defendant's confession was deemed voluntary and the trial court properly overruled the motion to suppress the confession.⁹⁸ Judge Benton dissented in the case because he found the record showed the defendant's mother had advised him not to talk to the detectives, but an officer subsequently lied to the defendant by telling him that his mother had relented and told him to talk with them.⁹⁹ An officer also told White that if he talked with them he could go home with his mother, and Judge Benton believed that these misrepresentations overbore White's will.¹⁰⁰

FORCE ON YOUTH IN THE CRIMINAL JUSTICE SYSTEM, YOUTH IN THE CRIMINAL JUSTICE SYSTEM: GUIDELINES FOR POLICYMAKERS AND PRACTITIONERS 15 (2001), available at <http://www.abanet.org/crimjust/pubs/reports> (last visited Sept. 22, 2003)). However, the same publication urges, more specifically, that "[c]ustodial interrogation of a youth who has not reached his or her [sixteenth] birthday should not take place outside the presence of counsel." ABA CRIMINAL JUSTICE SYSTEM TASK FORCE ON YOUTH IN THE CRIMINAL JUSTICE SYSTEM, YOUTH IN THE CRIMINAL JUSTICE SYSTEM: GUIDELINES FOR POLICYMAKERS AND PRACTITIONERS 9 (2001) (second alteration in original), available at <http://www.abanet.org/crimjust/pubs/reports> (last visited Sept. 22, 2003)).

92. 40 Va. App. 480, 579 S.E.2d 691 (Ct. App. 2003).

93. *Id.* at 483-85, 579 S.E.2d at 693.

94. *Id.* at 488-89, 579 S.E.2d at 695.

95. *Id.* at 485-86, 579 S.E.2d at 693-94.

96. *Id.* at 490, 579 S.E.2d at 696.

97. No. 0104-02-1, 2002 Va. App. LEXIS 787 (Ct. App. Dec. 31, 2002) (unpublished decision).

98. *Id.* at *1-2.

99. *Id.* at *11 (Benton, J., dissenting).

100. *Id.* (Benton, J., dissenting).

In *Commonwealth v. Brown*,¹⁰¹ Judge Annunziata, in affirming the trial court's decision to suppress the defendant's confession, pointed out that the defendant was fifteen years old when he was arrested on suspicion of committing murder, attempted murder, carjacking, and robbery.¹⁰² The defendant was seen smoking a marijuana cigarette and was arrested and searched—culminating in the discovery of a gold ring belonging to one of the victims.¹⁰³ He was informed of his *Miranda* rights and taken to the police station, but his mother was never contacted.¹⁰⁴ The police knew he had only an eighth-grade education, but did not know he had the intellectual functioning capacity of an eight-year-old.¹⁰⁵ Although Brown had a prior juvenile history, the record did not indicate whether he had ever been in an interrogation room or ever previously been advised of his rights.¹⁰⁶ Based on the totality of the circumstances as shown by the videotape, Brown's verbal IQ score of sixty, a verbal comprehension IQ score of fifty-nine, and a full scale IQ score of sixty-five, the trial judge suppressed defendant's statements.¹⁰⁷ That action was affirmed.¹⁰⁸

These cases, and the general body of Virginia case law on juvenile confessions, present rather troubling questions about police interrogation of children.¹⁰⁹ Minors are particularly at risk of improper conviction through false confessions extracted by police interrogation techniques that are targeted at vulnerable children or adolescents.

Two recent articles in the *Columbia Journalism Review* have addressed high profile cases in the past two decades where youths have been falsely convicted, largely on the basis of their confessions.¹¹⁰ The first article recounts the press response to the sav-

101. No. 3062-01-2, 2002 Va. App. LEXIS 314 (Ct. App. May 17, 2002) (unpublished decision).

102. *Id.* at *15.

103. *Id.* at *2.

104. *Id.* at *2-4.

105. *Id.* at *3-4.

106. *Id.* at *4-5.

107. *Id.* at *15, 20.

108. *Id.* at *20.

109. See VA. LAW FOUNDATION, *supra* note 5, at § 5.301; see also Ellen R. Fullmer, Note, Novak v. Commonwealth: Are Virginia Courts Providing Special Protection to Virginia's Juvenile Defendants?, 30 U. RICH. L. REV. 935 (1996) (addressing juvenile interrogations and Virginia case law).

110. See Lynnell Hancock, *Wolf Pack: The Press and the Central Park Jogger*, COLUM. JOURNALISM REV., Jan./Feb. 2003, at 38 [hereinafter *Wolf Pack*]; see also Lynnell Hancock,

age assault on a white female jogger in Central Park in New York City in 1989 and the arrest of five African-American teens—ages fourteen, fifteen, and sixteen—who confessed in some detail after up to thirty hours of interrogations.¹¹¹ Although the young men quickly recanted their confessions, they were convicted despite a complete lack of any physical evidence linking them to the crime.¹¹² And yet, thirteen years later, the district attorney was forced to reopen the case because of another confession, supported by DNA evidence, by an adult serial rapist who had attacked another woman two days earlier in the same area of the park.¹¹³ The second article on false confessions recounts three other high profile cases where admissions were made by innocent juveniles.¹¹⁴ The author notes the case of four young men in Chicago who were convicted as teenagers of raping and murdering a twenty-three-year-old medical student in 1986.¹¹⁵ An investigation by the *Chicago Tribune* revealed DNA evidence implicating two other individuals.¹¹⁶ The new evidence compelled the governor to pardon the three wrongfully convicted teens.¹¹⁷ The author also reports on the seven and eight-year-old boys who confessed falsely in 1998 to the sexual brutalization and killing of eleven-year-old Ryan Harris in Chicago.¹¹⁸ Once again, DNA evidence implicated another individual—an adult sex offender recently released from prison.¹¹⁹ Each of these cases illustrate the risks associated with a body of law that does little to protect juveniles from overreaching police interrogators.¹²⁰

False Confessions: How They Happen, COLUM. JOURNALISM REV., Jan./Feb. 2003, at 40 [hereinafter *False Confessions*].

111. *Wolf Pack*, *supra* note 110, at 40.

112. *Id.*

113. *Id.* at 38–39.

114. *False Confessions*, *supra* note 110, at 40.

115. *Id.*

116. *Id.* at 40–41.

117. *Id.*

118. *Id.* at 40.

119. *Id.* at 41.

120. See generally Trey Meyer, Comment, *Testing the Validity of Confessions and Waivers of the Self-Incrimination Privilege in the Juvenile Courts*, 47 U. KAN. L. REV. 1035 (1999) (analyzing juvenile confessions and Kansas law).

G. *Disposition of Juvenile Records*

As in every legislative session in the past decade, the General Assembly enacted legislation in the 2003 Session dealing with juvenile records. For instance, Virginia Code section 16.1-300 now allows a person who has reached the age of majority and requests his Department of Juvenile Justice records to have access to those records even if he was not a ward of the Department.¹²¹ Virginia Code section 16.1-305 provides greater access to otherwise confidential records of the juvenile court and the Department of Juvenile Justice, by permitting pretrial services and community-based probation officers electronic access to those records for the purpose of preparing pretrial investigations, risk assessment instruments, and post sentence investigation reports.¹²² Virginia Code section 19.2-389.1 now authorizes the release of juvenile information in the Central Criminal Records Exchange ("CCRE") to authorized officers or employees of criminal justice agencies "for purposes of the administration of criminal justice."¹²³ The Virginia Code also entitles a secure facility, most often a detention home, to obtain the medical records of a juvenile in its care directly from a health care provider if consent for release is refused or not readily obtainable from the parent or guardian.¹²⁴

H. *Juveniles and School Authority*

The Virginia Code also requires that notification be given to school division superintendents or school principals when their students are involved in criminal activity.¹²⁵ Moreover, the Board

121. VA. CODE ANN. § 16.1-300 (Repl. Vol. 2003). Virginia Code section 16.1-300(9)(B) also expands the Department's authority to withhold information contained in its records from inspection by a child's parent or guardian when Department staff determine that disclosure would be detrimental to a third party or the child. *Id.* § 16.1-300(9)(B) (Repl. Vol. 2003).

122. *Id.* § 16.1-305(5) (Repl. Vol. 2003).

123. *Id.* § 19.2-389.1 (Cum. Supp. 2003).

124. *Id.* § 16.1-248.3 (Repl. Vol. 2003). The records may be obtained only if: "necessary (i) for the provision of health care to the juvenile, (ii) to protect the health and safety of the juvenile or other residents or staff of the facility or (iii) to maintain the security and safety of the facility." *Id.* Redislosure of the records by facility staff is prohibited. *Id.*

125. See *id.* § 16.1-301 (Repl. Vol. 2003) (allowing notification of criminal acts to schools to protect fellow students and personnel); *id.* § 16.1-305.1 (Repl. Vol. 2003) (requiring disclosure of delinquency disposition within fifteen days after expiration of appeal period); *id.*

of Education is required to adopt legislation requiring voluntary and mandatory drug testing policies to be included in the Board of Education's guidelines for student conduct policies and guidelines for conducting student searches.¹²⁶ The law now states that its provisions must not be "construed to require any school board to adopt [drug testing] policies"; however, school boards may "require or encourage drug testing in accordance with the [Board's two sets of guidelines]."¹²⁷ No reports may be made to law enforcement of any test showing illegal alcohol or drug use when such test was conducted pursuant to any school board drug testing policy.¹²⁸

Virginia Code section 18.2-308.1(B) clarifies the "closed container" exception to the ban of unloaded firearms on school property by providing that the definition of "closed container" includes a locked vehicle trunk.¹²⁹

Recent public outcry against school "hazing" rituals necessitated a clearer rule regarding the prohibition of hazing in the Commonwealth. Accordingly, Virginia Code section 18.2-56 now defines hazing as

recklessly or intentionally endanger[ing] the health or safety of a student or students or to inflict bodily injury on a student or students in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a club, organization, association, fraternity, sorority, or student body regardless of whether the student or students so endangered or injured participated voluntarily in the relevant activity.¹³⁰

§ 16.1-305.2 (Repl. Vol. 2003) (allowing disclosure of notice of filing a petition by school superintendent); *id.* § 16.1-309(B) (Repl. Vol. 2003) (permitting disclosure of delinquency if act committed on school grounds or at a school activity); *id.* § 22.1-277(B) (Repl. Vol. 2003) (permitting suspension from school for adjudication or conviction for delinquency); *id.* § 22.1-288.2 (Repl. Vol. 2003) (discussing receipt and maintenance of pupil records). Former law required that superintendents be notified when a petition was filed for certain offenses, but there was no required follow-up unless there was a conviction. Virginia Code section 16.1-301 now requires notification when the juvenile is acquitted or the charges are dismissed, withdrawn, or reduced. *Id.* § 16.1-301(B) (Repl. Vol. 2003).

126. VA. CODE ANN. §§ 22.1-279.6, -279.7 (Repl. Vol. 2003). These policies are required to be "[i]n accordance with the most recent enunciation of constitutional principles by the Supreme Court of the United States." *Id.* § 22.1-279.6 (Repl. Vol. 2003) (referring to *Bd. of Educ. of Indep. Sch. Dist. No. 72 Pottowatomie County v. Earls*, 536 U.S. 822 (2002)).

127. *Id.* § 22.1-279.6(B) (Repl. Vol. 2003).

128. *See Earls*, 536 U.S. at 833 (noting the importance of the fact that the drug testing results were not turned over to the authorities).

129. VA. CODE ANN. § 18.2-308.1(B) (Cum. Supp. 2003).

130. *Id.* § 18.2-56 (Cum. Supp. 2003). The legislation essentially eliminated "otherwise

The Court of Appeals of Virginia ruled in *B.P. v. Commonwealth*¹³¹ that a juvenile and domestic relations district court had the authority to issue and impose an interlocutory order directing a juvenile to attend school pending final disposition of her child in need of supervision ("CHINS") case.¹³² The court was awaiting the preparation of a social history for the disposition hearing when the juvenile missed school and was placed in detention for violating the order.¹³³ Judge Benton concurred in part, but dissented from the portion of the decision upholding the detention of the youth because of code language requiring that certain findings be made before any placement in detention.¹³⁴

I. *Children in Need of Services*

Virginia Code section 16.1-228(5) expands the definition of "child in need of services" to include "a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child" or any other person.¹³⁵

Next, the Virginia Code permits an intake officer to defer filing a truancy complaint petition for ninety days and to "proceed informally by developing a truancy plan [provided]. . . the juvenile has not previously been proceeded against informally or adjudicated in need of supervision for failure to comply with compulsory school attendance."¹³⁶ The juvenile and any relevant adult must agree in writing to the development of a truancy plan and may participate in the plan.¹³⁷ The intake officer may refer the juve-

mistreating" in favor of the single term "hazing" and substituted the policies and procedures used by the institution for the former sole remedy of expulsion. See Act of Mar. 16, 2003, ch. 62, 2003 Va. Acts ____ (codified as amended at VA. CODE ANN. § 18.2-56 (Cum. Supp. 2003)).

131. 38 Va. App. 735, 568 S.E.2d 412 (Ct. App. 2002).

132. *Id.* at 736-37, 568 S.E.2d at 412.

133. *Id.* at 737, 568 S.E.2d at 412-13.

134. *Id.* at 740-43, 568 S.E.2d at 414-16 (Benton, J., concurring in part, dissenting in part). Specifically, Judge Benton based his opinion on Virginia Code section 16.1-292(A) which states in relevant part: "[N]othing in this chapter shall deprive the court of its power to punish summarily for contempt . . . except that confinement in the case of a juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of ten days for each offense." (quoting VA. CODE ANN. § 16.1-292(A) (Repl. Vol. 2003)).

135. VA. CODE ANN. § 16.1-228(5) (Repl. Vol. 2003). For additional discussion of *B.P.*, see Decker & McCullough, *supra* note 67, at 125.

136. *Id.* § 16.1-260(B) (Repl. Vol. 2003).

137. *Id.*

nile to an appropriate public agency for development of a plan; the intake officer must file the truancy petition within ninety days if the juvenile does not successfully complete the plan.¹³⁸

J. Status Offenses

Several laws dealing with substances prohibited to minors changed this year. For instance, Virginia Code section 18.2-371.21, as amended, prohibits the attempted or completed purchase of tobacco products by minors and allows punishment as a civil offense.¹³⁹ Additionally the sale or purchase of “wrappings” to minors—defined as “papers [or other encasements] made or sold for covering or rolling tobacco or other materials for smoking in a manner similar to a cigarette or cigar”—is also prohibited.¹⁴⁰ With regard to the purchase or possession of alcohol, Virginia Code section 4.1-305 provides that consumption of an alcoholic beverage may lead to prosecution “either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of [consumption].”¹⁴¹ A person convicted of underage possession of alcohol or using a false identification to purchase alcohol may be placed on probation pursuant to a deferred disposition and referred to a community-based probation program, if such program has been established as an alternative to referral to a Virginia Alcohol Safety Action program or Department of Mental Health, Mental Retardation, and Substance Abuse Services program.¹⁴²

K. Juvenile Driving Issues

Several amendments to the Virginia Code address juvenile driving issues. Virginia Code sections 16.1-278.8 and 16.1-278.9 allow a court to discharge and dismiss a juvenile charged with drunk driving or refusal to submit to a blood or breath test without the current requirement of a suspension of license or proba-

138. *Id.*

139. *Id.* § 18.2-371.2(B) (Cum. Supp. 2003). Virginia Code section 18.2-371.2(B) provides a specific exception for purchases associated with law-enforcement activities. *Id.*

140. *Id.* § 18.2-371.2(A)–(H) (Cum. Supp. 2003).

141. *Id.* § 4.1-305(A) (Cum. Supp. 2003).

142. *See id.* § 4.1-305(F) (Cum. Supp. 2003).

tion.¹⁴³ Somewhat inconsistently, Virginia Code section 46.2-391.2 adds an automatic seven-day administrative license suspension as a penalty when a person under the age of twenty-one operates a motor vehicle after consuming alcohol and has a blood alcohol concentration of 0.02.¹⁴⁴ Virginia Code section 46.2-334.01 allows persons under the age of eighteen, whose driver's licenses have been suspended for a second moving violation, to obtain restricted licenses to drive to and from work if there is no other means of transportation for such purpose.¹⁴⁵ Virginia Code section 46.2-334.01 also provides that a violation of the curfew or passenger restrictions of a provisional driver's license is a traffic infraction and that for a second or subsequent violation the court may suspend the juvenile's privilege to drive for up to six months.¹⁴⁶ Lastly, no more than one passenger under the age of eighteen may ride in a vehicle with a juvenile driver during the first year of licensure—no more than three are permitted until the driver turns eighteen.¹⁴⁷

L. Juvenile and Domestic Relations Court Jurisdiction and Authority

In the field of detention and shelter care, Virginia Code section 16.1-248.1 now makes it clear that a juvenile and domestic relations district court judge has the authority to order a juvenile into detention prior to final disposition, even if the juvenile was not ordered into detention when first taken into custody.¹⁴⁸ Next, Virginia Code section 16.1-250.1, as amended, requires that notice of a juvenile detention review hearing be given to the probation and parole department of the local or state court services unit.¹⁴⁹ Ad-

143. See *id.* §§ 16.1-278.8, -278.9 (Repl. Vol. 2003). The court also may impose any disposition currently available for a delinquent child on a child charged with refusing a blood or breath test under the juvenile "zero tolerance" law. *Id.* § 18.2-266.1 (Cum. Supp. 2003).

144. *Id.* § 46.2-391.2 (Supp. 2003). This makes the BAC for the seven-day administrative driver's license suspension for persons under twenty-one consistent with the violation for driving after consuming alcohol underage, which is also 0.02. See *id.* § 18.2-266.1 (Cum. Supp. 2003).

145. *Id.* § 46.2-334.01(A)(2) (Cum. Supp. 2003).

146. *Id.* § 46.2-334.01(B)-(D) (Cum. Supp. 2003).

147. *Id.*

148. *Id.* § 16.1-248.1(A) (Repl. Vol. 2003).

149. *Id.* § 16.1-250.1 (Repl. Vol. 2003). Notice is also required for "the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child's attorney, to the child if 12 years of age or over, . . . and to the attorney for the Common-

ditionally, orders terminating the juvenile court's jurisdiction after a juvenile has been transferred and tried as an adult "shall not apply to any allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and domestic relations district court if the defendant were an adult."¹⁵⁰ Virginia Code section 19.2-169.2 now provides that juveniles aged fourteen years or older being tried as adults and who have been found by the court to lack substantial capacity to understand the proceedings against them may have their competency to stand trial restored.¹⁵¹

IV. ABUSE OR NEGLECT AND TERMINATION OF PARENTAL RIGHTS

A. *The Relevance of the Parent-Child Relationship in Sexual Assault Cases*

In *Commonwealth v. Bower*,¹⁵² the Supreme Court of Virginia upheld the defendant's conviction of animate object sexual penetration of his thirteen-year-old daughter.¹⁵³ The court held that the parent-child relationship itself is a relevant factor in determining the possibility of intimidation and that the harm inherent in a sexual assault was sufficient to support the conviction.¹⁵⁴ Similarly, the Court of Appeals of Virginia concluded in *Benyo v. Commonwealth*¹⁵⁵ that there was sufficient evidence to convict the defendant of raping his stepdaughter because of his intimidation through the use of psychological and emotional pressure.¹⁵⁶

wealth" *Id.*

150. *Id.* § 16.1-269.6(C) (Repl. Vol. 2003). This would include such matters as intrafamily offenses or offenses committed by an adult against the person of a child. *See generally id.* § 16.1-241 (Repl. Vol. 2003).

151. *See id.* § 19.2-169.2(B) (Cum. Supp. 2003). Under current law, competency restoration is available only to adults and to juveniles tried as juveniles. *Id.* § 19.2-169.2(A)-(B) (Cum. Supp. 2003).

152. 264 Va. 41, 563 S.E.2d 736 (2002).

153. *Id.* at 43, 563 S.E.2d at 736-37.

154. *Id.* at 45-46, 563 S.E.2d at 738-39.

155. 38 Va. App. 650, 568 S.E.2d 371 (Ct. App. 2002).

156. *Id.* at 656, 568 S.E.2d at 374.

B. *The Use of Closed Circuit Television at Trial*

In *Johnson v. Commonwealth*,¹⁵⁷ the Court of Appeals of Virginia upheld the constitutionality of Virginia Code section 18.2-67.9—the closed circuit television provision in the criminal code.¹⁵⁸ The court further upheld the use of closed circuit television in this case because the then seven-year-old child victim of sexual abuse said “she would run out of court and run away” if put on the witness stand in open court.¹⁵⁹ Likewise, in *Parrish v. Commonwealth*¹⁶⁰ the court upheld the use of closed circuit television testimony to support the conviction of Parrish for the sexual abuse of his six-year-old daughter.¹⁶¹ The court also upheld the use of closed circuit television testimony in *Civitello v. Commonwealth*.¹⁶² Civitello was convicted of twenty counts of taking indecent liberties with a child, seven counts of aggravated sexual battery, three counts of forcible sodomy, three counts of child pornography, one count of rape, and one count of attempted sodomy.¹⁶³ There were six complaining child witnesses, and the court permitted two to testify by the use of closed circuit television.¹⁶⁴ The appellate court upheld this action, because the trial court made adequate findings illustrating the need for the use of that method of testimony.¹⁶⁵

C. *Juvenile Sexual Abuse Victims and Hearsay*

Several cases over the past year addressed the admission in court of statements made by an abuse victim to a third party. In *Esser v. Commonwealth*,¹⁶⁶ the trial court admitted a nineteen-year-old physically and learning disabled rape victim’s statements—made to her mother two days after the assault—as “ex-

157. 40 Va. App. 605, 580 S.E.2d 486 (Ct. App. 2003).

158. *Id.* at 614–18, 580 S.E.2d at 491–92 (upholding VA. CODE ANN. § 18.2-67.9 (Cum. Supp. 2003)).

159. *Id.* at 617–18, 580 S.E.2d at 492–93.

160. 38 Va. App. 607, 567 S.E.2d 576 (Ct. App. 2002).

161. *Id.* at 609, 567 S.E.2d at 577.

162. No. 1963-01-2, 2003 Va. App. LEXIS 2 (Ct. App. Jan. 7, 2003) (unpublished decision).

163. *Id.* at *1–2.

164. *Id.* at *7.

165. *Id.* at *7–8.

166. 38 Va. App. 520, 566 S.E.2d 876 (Ct. App. 2002).

cited utterances.”¹⁶⁷ The statements were volunteered by the young lady while she was crying hysterically because she thought her mother was going to place her back into the custody of her uncle, the defendant, and she was frightened that she would be assaulted again.¹⁶⁸ Thus, the startling event that triggered the statement was her fear that she was going to be returned to the control of Esser.¹⁶⁹ That event provided the necessary spontaneity for the statement to be considered an excited utterance.¹⁷⁰ Similarly, in *Guy v. Commonwealth*,¹⁷¹ the statements that a sexually victimized eight-year-old girl made to her mother were admissible under the “excited utterance” exception to the hearsay rule because of the context of the statements.¹⁷² In *Almond v. Commonwealth*,¹⁷³ the defendant was convicted of the sexual battery and forcible sodomy of a seven-year-old girl, and the court concluded that the trial judge did not err in allowing the child’s stepmother to testify regarding statements made to her by the girl pursuant to Virginia Code section 19.2-268.2—the recent complaint provision.¹⁷⁴ The court determined that although the statute does not require the court to make express factual findings on the record, it would be a better practice to do so.¹⁷⁵

D. Expert Testimony by Sexual Assault Nurse Examiners

In *Mohajer v. Commonwealth*,¹⁷⁶ the court reaffirmed that a sexual assault nurse examiner (“SANE”) could present expert testimony regarding the nature of an eighteen-year-old high school student’s injuries and whether they indicated consensual sexual contact during the victim’s first professional massage where she was allegedly subjected to a sexual assault.¹⁷⁷ *Leonard v. Com-*

167. *Id.* at 524–25, 566 S.E.2d at 878, 880.

168. *Id.* at 523, 566 S.E.2d at 878.

169. *Id.*

170. *Id.* at 527, 566 S.E.2d at 880.

171. No. 2270-01-1, 2002 Va. App. LEXIS 461 (Ct. App. Aug. 6, 2002) (unpublished decision).

172. *Id.* at *2–3, 10–11.

173. No. 3071-01-2, 2002 Va. App. LEXIS 746 (Ct. App. Dec. 17, 2002) (unpublished decision).

174. *Id.* at *1, 14–15; see also VA. CODE ANN. § 19.2-268.2 (Cum. Supp. 2003).

175. *Almond*, 2002 Va. App. LEXIS 746, at *8.

176. 39 Va. App. 21, 569 S.E.2d 738 (Ct. App. 2002), *aff’d en banc*, 40 Va. App. 312, 579 S.E.2d 359 (Ct. App. 2003).

177. *Mohajer*, 40 Va. App. at 320–21, 579 S.E.2d at 364.

*monwealth*¹⁷⁸ also discusses the viability of SANEs as expert witnesses. In *Leonard*, the defendant was initially charged with rape and abduction with intent to defile.¹⁷⁹ Extensive plea negotiations ensued, but when the defendant declined to plead guilty, the Commonwealth decided to charge him with attempted murder as well.¹⁸⁰ The court concluded that there was no evidence of actual vindictiveness on the part of the prosecution, and thus the trial judge did not err in refusing to dismiss the indictment for attempted murder of the minor victim.¹⁸¹ Also, in light of the Supreme Court of Virginia's decision in *Velazquez v. Commonwealth*,¹⁸² issued during the pendency of the appeal, the *Leonard* court admitted the SANE's testimony.¹⁸³

E. Prosecutorial Comments During Voir Dire

In *Smith v. Commonwealth*,¹⁸⁴ the Court of Appeals of Virginia reversed Smith's convictions in a jury trial of the rape, object sexual penetration, and attempted rape of two girls—one twelve and the other seventeen years old.¹⁸⁵ The court concluded that the trial court erred in denying the defendant's motions for curative instructions to correct improper comments made by the prosecutor during *voir dire* and closing arguments.¹⁸⁶ The prosecutor in this case urged in *voir dire* and during summation that it was common for children not to report sexual assaults right away.¹⁸⁷ Although the court made a general cautionary instruction late in the case, it did not address the specifics of the prosecutor's statements.¹⁸⁸ The court of appeals concluded that the comments were improper as they amounted to testimony on matters that were not put into evidence at trial.¹⁸⁹ The court also opined that "*voir dire* is not an opportunity for attorneys to testify or argue to the

178. 39 Va. App. 134, 571 S.E.2d 306 (Ct. App. 2002).

179. *Id.* at 138, 571 S.E.2d at 308.

180. *Id.* at 139–40, 571 S.E.2d at 309.

181. *Id.* at 145, 571 S.E.2d at 312.

182. 263 Va. 95, 557 S.E.2d 213 (2002).

183. *Leonard*, 39 Va. App. at 152–53, 571 S.E.2d at 315.

184. 40 Va. App. 595, 580 S.E.2d 481 (Ct. App. 2003).

185. *Id.* at 597, 580 S.E.2d at 482.

186. *Id.* at 597, 580 S.E.2d at 482–83.

187. *Id.* at 598–600, 580 S.E.2d at 483–84.

188. *Id.* at 602, 580 S.E.2d at 485.

189. *Id.* at 601, 604, 580 S.E.2d at 484, 486.

jury, especially regarding facts that will not be put into evidence."¹⁹⁰

F. *Children as Victims*

As in the past, this year saw a number of criminal cases considered by the court of appeals where the victims were children. These cases are listed to illustrate their vast numbers.¹⁹¹

G. *Child Neglect and Abuse*

1. Judicial Decisions

In an interesting civil matter, *Bothen v. Virginia Department of Social Services*,¹⁹² the Court of Appeals of Virginia affirmed the Fairfax County Circuit Court's decision, stating that there was "substantial evidence to support the determination of the Virginia

190. *Id.* at 601, 580 S.E.2d 484.

191. *Morris v. Commonwealth*, No. 2931-01-1, 2003 Va. App. LEXIS 181, at *2-3 (Ct. App. Apr. 1, 2003) (unpublished decision) (finding that a teenage boy was sexually abused while he was under the influence of illicit drugs); *Magnum v. Commonwealth*, No. 0761-02-2, 2003 Va. App. LEXIS 43, at *1, 5 (Ct. App. Feb. 4, 2003) (unpublished decision) (convicting Magnum of two offenses of carnal knowledge of a fourteen-year-old child, and holding that the trial judge did not err in permitting the introduction of evidence about prior acts of intercourse between the defendant and the victim); *Navarette v. Commonwealth*, No. 0403-01-4, 2002 Va. App. LEXIS 590, at *2-3, 17 (Ct. App. Oct. 8, 2002) (unpublished decision) (admitting defendant's confession to having sexual intercourse with his eleven-year-old niece, by which she became pregnant); *Cox v. Commonwealth*, No. 1898-00-2, 2002 Va. App. LEXIS 469, at *2, 6-7 (Ct. App. Aug. 13, 2002) (unpublished decision) (finding sufficient circumstantial evidence to support defendant's conviction of aggravated sexual battery of a thirteen-year-old girl); *Guzman v. Commonwealth*, No. 2329-01-2, 2002 Va. App. LEXIS 361, at *6-7 (Ct. App. June 25, 2002) (unpublished decision) (finding sufficient evidence to convict defendant of the assault and battery of his ten-year-old son for hitting his son on the face with a closed hand while consuming alcohol); *Martin v. Commonwealth*, No. 1405-01-2, 2002 Va. App. LEXIS 358, at *9 (Ct. App. June 25, 2002) (unpublished decision) (finding that evidence of malice was sufficient to support the conviction of the defendant for the second degree murder of his infant daughter where the expert testimony showed that the child died as a result of "shaken baby syndrome"); *Creed v. Commonwealth*, No. 0593-01-2, 2002 Va. App. LEXIS 352, at *2-3, 8-9 (Ct. App. June 18, 2002) (unpublished opinion) (finding sufficient evidence to support the defendant's conviction on two counts of aggravated sexual battery of nine and twelve-year-old girls during karate lessons); *Williams v. Commonwealth*, No. 2258-01-2, 2002 Va. App. LEXIS 315, at *2 (Ct. App. May 21, 2002) (unpublished decision) (convicting defendant of orally sodomizing his eleven-year-old daughter).

192. No. 0118-02-4, 2002 Va. App. LEXIS 378 (Ct. App. July 9, 2002) (per curiam) (unpublished decision).

Department of Social Services (VDSS) that a complaint of 'Physical Neglect—Inadequate Supervision—Level Three' against appellant was 'Founded.'¹⁹³ Bothen, a member of the National Guard, was deployed in Kuwait but failed to arrange for adequate supervision for his fifteen-year-old daughter who had previously been in trouble when left unsupervised for short periods of time.¹⁹⁴ In *Ables v. Rivero*,¹⁹⁵ evidence that Ables spanked his teenage daughter multiple times over a three-day period hard enough to cause severe bruising was sufficient to support the administrative decision that the abuse complaint was "founded."¹⁹⁶

In *Smith v. Commonwealth*,¹⁹⁷ the defendant was convicted of second degree murder and child neglect for the death of her newborn infant by blunt force head injuries.¹⁹⁸ Smith gave birth to her newborn but did not want her mother to know she was pregnant.¹⁹⁹ The infant was found in her backyard, wrapped in some clothing near the trash cans.²⁰⁰ The infant died a few days later from the head injuries and abandonment.²⁰¹ Likewise, in *Corrales v. Commonwealth*²⁰² the defendant was convicted of the second degree murder of her newborn baby where the baby was placed in a closet within a plastic bag and suffocated to death.²⁰³ The Court of Appeals of Virginia held that there was no error in admitting the autopsy report and that the conclusion expressed therein was cumulative of testimony at the trial.²⁰⁴

The Virginia Code tries to prevent these types of infant deaths through the provision of an affirmative defense against prosecution for abuse or neglect if the parent delivers the child to a hospital or rescue squad within fourteen days of the child's birth.²⁰⁵

193. *Id.* at *1.

194. *Id.* at *3-4.

195. No. 0973-02-1, 2003 Va. App. LEXIS 83 (Ct. App. Feb. 19, 2003) (unpublished decision).

196. *Id.* at *28-29.

197. No. 2284-01-1, 2002 Va. App. LEXIS 668 (Ct. App. Nov. 5, 2002) (unpublished decision).

198. *Id.* at *1-2.

199. *Id.* at *1-3.

200. *Id.* at *3.

201. *Id.*

202. No. 2797-01-2, 2002 Va. App. LEXIS 687 (Ct. App. Nov. 19, 2002) (unpublished decision).

203. *Id.* at *1-3.

204. *Id.* at *5.

205. VA. CODE ANN. §§ 18.2-371, -371.1 (Cum. Supp. 2003); *id.* § 40.1-103 (Repl. Vol.

This defense only applies, however, if the prosecution is based solely on having left the child at the hospital or rescue squad.²⁰⁶ Persons who accept babies under these conditions are also granted immunity from liability absent gross negligence or willful misconduct.²⁰⁷ The authority of local social services agencies to take custody of abandoned children, to arrange appropriate placements, including foster care, and to institute proceedings for termination of parental rights was affirmed.²⁰⁸

On remand from the Supreme Court of the United States, the United States Court of Appeals for the Fourth Circuit held in *Ferguson v. City of Charleston*²⁰⁹ that: (1) the hospital's testing of pregnant patients' urine samples for evidence of cocaine use was not done for medical purposes;²¹⁰ (2) the hospital's consent forms were inadequate to establish the patients' informed consent to searches of their urine for law enforcement purposes;²¹¹ (3) only two of the patients had knowledge of the law-enforcement aspect of the hospital's drug screening policy sufficient to permit determination that patients gave implied consent to search of urine for such purposes;²¹² and (4) that the patients did not act voluntarily, in a constitutional sense, when they presented themselves to the hospital for treatment, thus precluding a finding of implied consent to searches under the policy.²¹³

In *United States v. Jarrett*,²¹⁴ the defendant's motion to suppress evidence was granted in a child pornography case, where the evidence was obtained by an unidentified Turkish Internet user who had gained unauthorized access to Jarrett's computer and turned the evidence over to the government,²¹⁵ because the private party acted as an agent of the government and his illegal

2002).

206. *Id.* §§ 18.2-371, -371.1 (Cum. Supp. 2003); *id.* § 40.1-103 (Repl. Vol. 2002).

207. *Id.*

208. *Id.* § 63.2-910.1 (Supp. 2003). For further discussion of this defense, see Decker & McCullough, *supra* note 67, at 131.

209. 308 F.3d 380 (4th Cir. 2002). The prior decision, found at 186 F.3d 469 (4th Cir. 1999), was reversed at 532 U.S. 67 (2001).

210. *Ferguson*, 308 F.3d at 398.

211. *Id.* at 399.

212. *Id.* at 399, 402.

213. *Id.* at 402.

214. 229 F. Supp. 2d 503 (E.D. Va. 2002).

215. *Id.* at 505-06, 510.

search would be tested by Fourth Amendment exclusionary standards.²¹⁶

2. Legislative Changes

Virginia Code section 16.1-228, as amended, includes half-siblings within the definition of "family or household member" in the juvenile and domestic relations district court law.²¹⁷ In addition, any practitioner who fails to obtain an emergency removal order, after four hours have elapsed, following taking custody of the child, must state the reasons therefore in an affidavit or sworn testimony before the judge or intake officer.²¹⁸ Virginia Code section 19.2-11.01, as amended, includes a child's foster parents or other custodians within the definition of "victim" in the Crime Victim and Witness Rights Act—allowing foster parents' or custodians' input for sentencing.²¹⁹ In an effort to further prevent incidents of child abuse by persons in a position of authority, the Virginia Code requires each local department of social services ("DSS") and school division to adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel.²²⁰ When the subject of the child abuse or neglect complaint is an employee of a local school board or is employed in a school operated by the Commonwealth, the local DSS must conduct a face-to-face interview with the employee.²²¹ Further, the local DSS must notify the employee at the onset of the interview of the general nature of the complaint, of the identity of the alleged victim, and of his right to have an attorney or other representative present during any interview.²²² Additionally, the records of family assessments must be retained

216. *Id.* at 519–20.

217. VA. CODE ANN. § 16.1-228 (Repl. Vol. 2003).

218. *Id.* § 16.1-251 (Repl. Vol. 2003); *id.* § 63.2-1517 (Supp. 2003). The law also states that the parents or guardians shall be given notice of the removal as soon as practicable, and every effort shall be made to provide such notice in person. *Id.* § 63.2-1517 (Supp. 2003).

219. *Id.* § 19.2-11.01(B) (Cum. Supp. 2003). The law does not, however, affect the current definition of "victim" under the Criminal Injuries Compensation Fund and would not entitle foster parents to compensation. *See id.*

220. *Id.* § 63.2-1516.1 (Supp. 2003).

221. *Id.*

222. *Id.*

by local DSS offices for three years after the date of the complaint or report, rather than the current one-year retention period.²²³

H. *Sex Offender and Other Electronic Databases*

A comprehensive bill passed by the General Assembly during the 2003 Session moved provisions regarding the Sex Offender and Crimes Against Minors Registry ("Registry") from Title 19.2 into Title 9.1.²²⁴ The legislation breaks the Code provisions into shorter, more readable sections, but the offenses for which registration is required and the registration requirements remain unchanged.²²⁵ The new law states more explicitly that persons with convictions occurring on or after July 1, 1994 must register.²²⁶ In addition, registrants who are enrolled or employed by institutions of higher education must indicate the name of the institution on their registration form and the State Police must notify the chief law-enforcement officer of the institution of that person's registration.²²⁷ The Registry also requires the registration of a person who has been convicted of unlawful photographing, videotaping, or filming of a non-consenting person who is nude or in a state of undress that exposes private body parts in circumstances where the person would have a reasonable expectation of privacy.²²⁸

Virginia Code section 19.2-390.3 establishes within the Office of the Attorney General, in cooperation with the Department of State Police, a Child Pornography Registry that includes images of sexually explicit visual material presented as evidence and used in any conviction for any offense enumerated in Virginia Code sections 18.2-374.1 and 18.2-374.1:1.²²⁹ This law also increases the penalties for child pornography possession to a Class six felony and second and subsequent offenses to a Class five felony.²³⁰

223. *Id.* § 63.2-1514 (Supp. 2003).

224. *See* Act. of Mar. 18, 2003, ch 584, 2003 Va. Acts ____ (codified at VA. CODE ANN. §§ 9.1-900 to -920 (Cum. Supp. 2003)).

225. *Compare* VA. CODE ANN. § 19.2-298.1 (Repl. Vol. 2000), *with* VA. CODE ANN. § 9.1-202 (Cum. Supp. 2003).

226. VA. CODE ANN. § 9.1-901 (Cum. Supp. 2003).

227. *Id.* § 9.1-906 (Cum. Supp. 2003).

228. *Id.* § 9.1-902 (Cum. Supp. 2003) (referring to VA. CODE ANN. § 18.2-386.1 (Repl. Vol. 1996 & Cum. Supp. 2003)).

229. *Id.* § 19.2-390.3 (Cum. Supp. 2003).

230. Act of Mar. 24, 2003, ch. 935, 2003 Va. Acts. ____ (codified as amended at VA. CODE

I. Termination of Parental Rights and Support Obligations

The Supreme Court of Virginia held in *Commonwealth v. Fletcher*²³¹ that a parent whose residual parental rights have been terminated no longer has a legal duty of support to her or his minor children.²³² In *L.G. v. Amherst County Department of Social Services*,²³³ the Court of Appeals of Virginia reversed the decision of the circuit court which terminated residual parental rights because the trial court had declined to consider any changes in the minor mother's behavior which occurred after the passage of the twelve-month period following her infant child's placement in foster care.²³⁴ Although that period is important in order "to prevent an indeterminate state of foster care 'drift,'" the subsequent progress of the parent and the best interests of the child may dictate consideration of later events.²³⁵

V. MISCELLANEOUS PROVISIONS INVOLVING CHILDREN

A. Preserving Confidence Between the Child and the Counselor

In *Clatterbuck v. Clatterbuck*,²³⁶ the trial court properly found that good cause existed under Virginia Code section 20-124.6 to deny the father access to his daughter's counseling records.²³⁷ The girl's guardian ad litem recommended against the records release and informed the court that the girl did not want the records transmitted.²³⁸ The counselor opined that release to either parent would not be in the girl's best interest and would undermine the trust between the girl and the counselor.²³⁹

ANN. § 18.2-374.1:1 (Cum. Supp. 2003)).

231. 266 Va. 1, 581 S.E.2d 213 (2003).

232. *Id.* at 2, 581 S.E.2d at 213.

233. 41 Va. App. 51, 581 S.E.2d 886 (Ct. App. 2003).

234. *Id.* at 52-53, 581 S.E.2d at 887.

235. *Id.* at 56-57, 581 S.E.2d at 889.

236. No. 1775-02-3, 2002 Va. App. LEXIS 728 (Ct. App. Dec. 10, 2002) (unpublished decision) (per curiam).

237. *Id.* at *1-2.

238. *Id.* at *2.

239. *Id.*

B. *Abortion and the Parent's Role*

The Virginia Code now requires a physician to obtain parental consent prior to performing an abortion on an unemancipated minor, rather than simply providing notification of the minor's desire to obtain an abortion to the parents.²⁴⁰ It sets out the procedures required for the minor to seek "judicial authorization for . . . an abortion if [the] minor elects not to seek consent of an authorized person."²⁴¹ Like the notification statute, the new law provides a judicial bypass procedure and requires a judge

to issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.²⁴²

If authorization for an abortion is given by the judge based on the best interests of the minor, the physician or his agent is required to notify the parent, "however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor."²⁴³ The judge "shall find that notice is not in the best interest of the minor" if the minor regularly and customarily resides with authorized persons who are abusive or neglectful, and every other authorized person "is either abusive or neglectful or has refused to accept responsibility" for the minor.²⁴⁴ "Consent" is defined in the statute as a situation where:

(i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician²⁴⁵

240. See VA. CODE ANN. § 16.1-241(V) (Repl. Vol. 2003).

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

C. *The Comprehensive Services Act for At-Risk Youth and Families*

The Comprehensive Services Act for At-Risk Youth and Families ("CSA"),²⁴⁶ as amended, clarifies that referrals and reviews of children and families under the Act may be done by the family and planning team ("FAPT") or a collaborative, multidisciplinary team process approved by the State Executive Council.²⁴⁷ The law also states that the department of health representative on the FAPT will serve at the request of the chair of the local Community Policy and Management Teams ("CPMT").²⁴⁸ Other related legislation requires the director of the Office of Comprehensive Service for At-Risk Youth and Families to provide support and assistance to the CPMTs and FAPTs established pursuant to the CSA.²⁴⁹ The management teams should use the funding to "[d]evelop and maintain a web-based statewide automated database . . . of the authorized vendors of the [CSA] services to include verification of a vendor's licensure status," each CSA service provided by the vendor, and the rate charged by the vendor for each service, and develop, in consultation with the Department of General Services, standardized contracts that CPMTs may use to purchase services.²⁵⁰

D. *Jurisdiction of Juvenile and Domestic Relations Courts in Certain Divorce Cases*

Virginia Code section 16.1-244 makes clear that the juvenile and domestic relations district court is divested of jurisdiction over custody, guardianship, visitation, and support when such issues are raised by pleadings in a suit for divorce in the circuit court and where the circuit court is set to hear the issue on a date certain or on a motions docket within twenty-one days of filing.²⁵¹

246. VA. CODE ANN. §§ 2.2-5201 to -5209 (Cum. Supp. 2003).

247. *Id.* § 2.2-5209 (Cum. Supp. 2003).

248. *Id.* § 2.2-5207 (Cum. Supp. 2003).

249. Act of Mar. 16, 2003, ch. 485, 2003 Va. Acts ____ (codified as amended at VA. CODE ANN. § 2.2-2649 (Cum. Supp. 2003)).

250. VA. CODE ANN. § 2.2-2649(C) (Cum. Supp. 2003).

251. *Id.* § 16.1-244(A) (Cum. Supp. 2003).

VI. CONCLUSION

Although 2003 was not a year that produced a litany of major legislation or judicial decisions affecting every legal issue involving children, significant measures changed the guardian ad litem system, juvenile justice, and family law landscapes. Although not a monumental change, these steps show Virginia's continued and unwavering dedication to the protection and support of juveniles and families in the Commonwealth.