Chapter 6 - Juvenile Civil Procedures

Consent for Adoption

Overview

The Juvenile and Domestic Relations District Court has the authority to accept consent for adoption by the birth parent(s) of a child and transfer custody of the child to the prospective adoptive parents, pending notification to any non-consenting birth parent.

Pursuant to Va. Code § 63.2-1232, the conditions to allow the execution of consent in the Juvenile and Domestic Relations District Court are as follows.

Requirements for Consent to Adoption

The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend to file an adoption petition and proceed toward a final order of adoption.

The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child.

Any financial agreement or exchange of property among the parties and any fees charged or paid for services related to the placement or adoption of the child have been disclosed to the court and that all parties understand that no binding contract regarding placement or adoption of the child exists.

There has been no violation of the provisions of Va. Code § 63.2-1218 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by Va. Code § 63.2-1219.

A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the Board and has provided to the court a report of such home study, which shall contain the agency's

recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption.

The birth parent(s) have been informed of their opportunity to be represented by legal counsel. The Court shall advise the birth parent(s) of their right to counsel, and, if the parent requests and is eligible for court-appointed counsel, the Court shall appoint counsel.

If a birth parent is incarcerated, the Court may either appoint a Guardian *ad litem* to represent the incarcerated birth parent, or, if the presence of the parent is essential to a just adjudication and disposition of the matter, the Court may order the issuance of a Custodial Transportation Order for the incarcerated parent. It is recommended that the Clerk's office develop a standard procedure for this situation.

Pursuant to Va. Code § 63.2-1242.1, a "close relative placement" shall be an adoption by the child's grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt, stepparent, adult stepbrother or stepsisters, or other adult relatives of the child by marriage or adoption.

Pursuant to Va. Code § 63.2-1242.2, for a close relative adoption where the child has continuously been in the home for less than two years, the adoption proceeding, including court approval of the home study, shall commence in the juvenile and domestic relations district court pursuant to the parental placement adoption provisions of this chapter with the following exceptions:

- The birth parent(s)' consent does not have to be executed in juvenile and domestic relations district court in the presence of the prospective adoptive parents.
- The simultaneous meeting specified in Va. Code § 63.2-1231 is not required.
- No hearing is required for this proceeding.
- Pursuant to Va. Code § 63.2-1242.3, for a close relative adoption where the child has continuously been in the home for two years or more, the parental placement provisions of this chapter shall not apply and the adoption proceeding shall commence in the circuit court.

  Pursuant to Va. Code § 63.2-1232, when consent to a parental placement adoption is sought and the prospective adoptive parent(s) have had continuous physical and legal custody of the child for five or more years, the juvenile and domestic relations district court may, in its discretion, accept consent without (i) a home study as required by subsection A of § 63.2-1231 and subdivision A 6 of this section and (ii) the meeting and counseling requirements, as they relate to the prospective adoptive parent(s), listed in subsection A of § 63.2-1231 and

subdivision A 2 of this section. All other provisions of the parental placement adoption statutes shall apply.

Clerk's Procedures

The following procedures are recommended in processing a petition for consent for adoption pursuant to Va. Code § 63.2-1233.

STEP	DESCRIPTION
1	The Clerk's office receives and date stamps petition to approve parental consent for adoption. This petition may be either an attorney-drafted petition or a DC-511, PETITION. All petitions must include notarized consent affidavits executed by required parties as identified in Va. Code § 63.2-1202, including the birth parent(s) unless the birth parent(s) are deceased. The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child or if the putative father did not register with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 *et seq.*) If the identity of the birth father is reasonably ascertainable, verification of compliance with the Virginia Birth Father Registry shall be provided to the court. Petitions may also include attorney- drafted orders for investigation or completed investigations. The petition for consent may also include a petition for custody by the adoptive placement parties. This is a mingled pleading – the recommended best practice is separate petitions for each pleading. Enter the petition in JCMS and schedule initial hearing within **ten (10) calendar days** of filing of petition. The petitioners are the parties seeking to adopt the child. Index in JCMS using the following codes: Case type: **CV** – custody Hearing type: **AJ** – adjudicatory
2	The Court shall appoint a Guardian *ad litem* to represent the interests of the child. Use DC-514, ORDER FOR APPOINTMENT OF GUARDIAN *AD LITEM*.

STEP	DESCRIPTION
3	The clerk's office issues DC-510, SUMMONS for the birth parent(s) and petitioners, attaching a copy of petition and all attachments. For out-of-state parties, send notice by certified mail. If a parent is unknown or unable to be located after due diligence has been used in accordance with Va. Code § 8.01-316 to determine their location, the petitioners will need to do an order of publication. (*See* Miscellaneous Chapter in this manual for Order of Publication procedures.)
4	For an order of publication, the petitioner or the attorney for the petitioner shall submit the affidavit and petition for Order of Publication. Use DC-435, AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION. Ensure that all sections of the affidavit have been completed and remind petitioners that they will be responsible for publication costs.
5	Upon filing of the affidavit, the clerk's office prepares the order for publication for the Judge's review and signature. Use DC-436, ORDER OF PUBLICATION.
6	At the initial hearing, the Court shall first advise the birth parent(s) of their right to an attorney. Use DC-334, REQUEST FOR APPOINTMENT OF LAWYER or DC-536, TRIAL WITHOUT A LAWYER. After presentation of initial evidence justifying the filing of the petition, the Court shall issue an order of investigation and report of the home of the petitioner(s) as required by Va. Code § 63.2-1231. Use either attorney-drafted order approved by the Court, or DC-542, ORDER FOR INVESTIGATION AND REPORT. Example language to use in DC-542 order: An investigation into the home of petitioners and report in accordance with Va. Code § 63.2-1231. The investigation of the home of the petitioners: John and Jane Doe, 123 Main Street, Anytown, VA 12345. The court further orders that the report inquiries into (i) whether the prospective adoptive parents are financially able, morally suitable and in satisfactory physical and mental health to enable them to care for this child: (ii) the physical and mental condition of this child, if known; (iii) the circumstances under which this child came to live in the home of the

STEP	DESCRIPTION
	petitioners; (iv) what placement fees, if any, have been paid by the prospective adoptive family in their behalf in the placement and anticipated adoption of this child; (v) whether the requirements of the subdivisions 1, 2, 3 and 5 of subsection b of Va. Code § 63.2-1232 have been met; and shall, in the course of the home study, meet at least once with the birth parents and prospective adoptive parents simultaneously. Order must include specific requirements as outlined by code. Order is returnable to Court fifteen (15) days before next hearing date. A certified copy of the order is sent to agency ordered to perform the home study. **If a completed home study has been submitted:** After presentation of initial evidence justifying the filing of the petition, the Court, upon review of the home study, may continue immediately to disposition. If the Court continues immediately to disposition, skip to Step 10. If not, go to **Step 7**, continuing case to allow for entry of order of publication, review by GAL, etc.
7	Continue case to allow for preparation of order of investigation. It is recommended that the Court allow twelve (12) weeks for preparation of the report. **If DC-436, ORDER OF PUBLICATION has been entered, the case must be set no sooner than fifty days from the entry of the order.** (*See* Miscellaneous Chapter in this manual for Order of Publication procedures.) Index in JCMS using the following code: Hearing type: **DS**-dispositional.
8	Notify all parties of next hearing date. The clerk's office may use the DC-329, RECOGNIZANCE for parties present in court or the DC-326, SUBPOENA FOR WITNESS for parties not present in court. For out-of-state parties, send notice by certified mail.
9	Upon receipt of investigation report, the clerk's office shall distribute report to all counsel. Copies of the report that are distributed shall be stamped CONFIDENTIAL by the clerk's office.

STEP	DESCRIPTION
10	At the dispositional hearing, the Court determines whether consent shall be granted. If consent is granted, the Court enters the Consent for Adoption order, using district court form DC-680, CONSENT FOR ADOPTION. Use separate form for mother and father if both are parties to the case. Case in finalized in JCMS as: **GR**-granted.
11	The birth parent(s) has seven (7) days from the entry of the Consent for Adoption order to file written notice of revocation of consent with the clerk's office. Upon filing, the clerk's office will schedule a hearing. Written notice of revocation of consent may be filed by the birth parent or counsel for the parent. If future hearings are required and an Order of Publication has been done, additional orders for publication are not required for each additional hearing.
12	If consent is not granted the Court enters an order stating consent not granted and refers the birth parent(s) to a licensed or duly-authorized child-placing agency, or the local DSS, for investigation and recommendation for future placement of the child. Use DC-570, ORDER. Case is finalized in JCMS as: **D** - denied.
13	Appeal must be noted within ten days of entry of the order. Appeal may be noted by either the birth parent(s) or adoptive placement parent(s). Use DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS. If the tenth day from the entry of the Consent for Adoption order falls on a Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute. Upon revocation of consent, if the adoptive placement parties want the court to consider them for custody/visitation, they will need to file petitions for custody/visitation. Please note that some petitions for consent may also include petitions for custody by the adoptive placement parties, and if this has been done, then separate petitions for custody are not required.
14	Upon entry of Consent for Adoption order, the clerk's office schedules an annual adoption review hearing within twelve months with Guardian *ad litem*

STEP	DESCRIPTION
	and attorney for petitioners to review status of adoption. Use DC-329, RECOGNIZANCE to recognize parties for review hearing date. Index in JCMS as new number using the following codes: Case type: **CV** – custody Hearing type: **DS** – dispositional**.**
15	The Court shall hold a hearing to review the order every year until the final order of adoption is entered. The Guardian *ad litem*, adoptive parents and counsel for adoptive parents need to be present for these hearings. Use DC-570, ORDER at these hearings.

References

Va. Code § 8.01-316	Service by publication; when available
Va. Code § 8.01-317	What order of publication to state; how published; when publication in newspaper dispensed with.
Va. Code § 8.01-318	Within what time after publication case tried or heard; no subsequent publication required
Va. Code § 63.2-1202	Parental, or agency, consent required; exceptions
Va. Code § 63.2-1230	Placement of children by parent or guardian.
Va. Code § 63.2-1231	Home study; simultaneous meeting required; exception.
Va. Code § 63.2-1232	Requirements of a parental placement adoption
Va. Code § 63.2-1233	Consent to be executed in juvenile and domestic relations district court; exceptions
Va. Code § 63.2-1242.1	Close relative adoption
Va. Code § 63.2-1242.2	Close relative adoption; child in home less than two years
Va. Code § 63.2-1242.3	Close relative placement; child in home for two years or more

Custody, Parenting Time and Visitation

Pursuant to § 16.1-278.15, the court may, in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation", when referring to any case or proceeding involving custody of or visitation of a child, as to a parent. In Chapter 6 of this manual, the term custody and visitation will be used to refer to custody, parenting time, and visitation.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child is not limited to the consideration of petitions filed by a mother, father or legal guardian, but shall include petitions filed at any time by any party with a legitimate interest, including, but not limited to, grandparents, step-grandparents, step-parents, former step-parents, blood relatives and family members. Va. Code § 16.1-241 (A).

Separate petitions should be used for custody and visitation and support issues regarding the same child. Petitions should not intermingle custody, visitation and support proceedings. Separate pleadings should be filed and uniform state forms should be used. Witness subpoenas and subpoenas *duces tecum* may be issued by attorneys in these proceedings. Va. Code §§ 8.01-407, 16.1-265.

Circuit courts and juvenile and domestic relations district courts have concurrent jurisdiction in custody and visitation matters; however, when a divorce suit is filed in which custody or visitation is at issue, only the circuit court has jurisdiction to enter orders unless both spouses consent to referring custody and visitation matters to the juvenile and domestic relations district court or until the circuit court, pursuant to Va. Code § 20-79(c) transfers the case to the juvenile and domestic relations district court. Va. Code § 31-8 requires parties who are separated but not divorced to bring custody proceedings before the JDR court and not the circuit court. Interstate custody cases are governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA is a multi-state uniform law that governs cases involving custody and visitation where the interested parties live in different states or countries or where a custody or visitation order has been entered in another state and one party is requesting enforcement in a Virginia court.

Case Initiation

Proceedings concerning the custody of and rights to visitation with a child are instituted by a petition filed with the intake officer or if an attorney is filing the petition, with the clerk's office of the juvenile and domestic relations district court. The standard DC-511, PETITION should be used for this purpose. A separate petition should be filed for custody and for visitation and for each child. The petition must be sworn to and include the:

- child's name, age, date of birth and address
- mother's name and address
- father's name and address
- current custodian's name and address
- specific facts that bring the child into the court's jurisdiction

The Code of Virginia specifically permits anyone, including grandparents, stepparents, former stepparents, and other blood relatives and family members with a legitimate interest (which shall be broadly construed to include the child's best interest) to petition for custody or visitation. Va. Code § 16.1-241 (A). This same code section also identifies those who do not by statute have a legitimate interest.

A parent or other person having legal custody of a child may petition the court to enjoin and the court may enter an order to enjoin a parent of the child from filing a petition relating to custody and visitation of that child for any period of time up to ten years if

doing so is in the best interests of the child, and such parent has been convicted of sexual assault, murder of a child of the parent. When such a petition is filed, the court shall appoint a guardian *ad litem* for the child. Va. Code § 20-124.2.

Upon the initial commencement of a custody or visitation case, a filing fee of $25.00 must be paid unless the petitioner is granted *in forma pauperis* status. Only one $25.00 fee will be required for all custody and visitation petitions simultaneously initiated by a single petitioner. The fee should be paid to the clerk not the intake officer and no hearing should be set in the case until this fee is paid or *in forma pauperis* status has been granted. The petitioner must pay the filing fee or an *in forma pauperis* be granted within 90 days of the issuance of the petition. After 90 days the petitioner must file a new petition with the intake office. If the request for waiver of filing fees is denied the court should:

- Insert statement on petition "Va. Code § 17.1-606 proceeding denied; order attached"; sign and date statement.
- Mail the petition(s) and DC-409, PETITION FOR PROCEEDING IN CIVIL CASES WITHOUT PAYMENT OF FEES OR COSTS order by first class mail to petitioner.
- Record on a copy of the petition notation regarding the date of mailing.
- Index in JCMS using the **NC** case type, insert three-year expungement date in JCMS expungement field for administrative record retention and retain in file until expiration of records retention period.

In cases in which the custody of a child (including those children to whom a duty of support is owed under Va. Code § 20-61) is an issue to be determined, the petitioner (and other parties filing pleadings) shall also file a completed DC-620, AFFIDAVIT (UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT) with the initial pleadings in both interstate and intrastate cases. A "child custody proceeding" is defined as a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear . . . [but] does not include a proceeding involving juvenile delinquency." When an affidavit is submitted, if a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child. In such a hearing the court shall make a written finding that the disclosure is or is not in the interest of justice. Such hearing and written finding of the issue of disclosure shall be held and made by the court within fifteen days of the filing of a pleading.

Virginia Code § 20-146.20. The DC-620, AFFIDAVIT (UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT) contains a vehicle for a party to make the appropriate allegations regarding the possible harm that may ensue from disclosure of identifying information. In such an instance, the protected information must not be included in the affidavit or pleading. That protected information must be sealed and not disclosed, unless after a hearing the court directs that it may be disclosed. The DC-621, NON-DISCLOSURE ADDENDUM should be used to capture the protected information.

If the Affidavit indicates involvement by a court of any other state or country in the determination of custody or visitation (this will be indicated by a yes answer to any of the questions on page 1 of the Affidavit) or if the child has not resided in Virginia for the past six months, the UCCJEA would apply.

Proper venue for custody and visitation cases can be determined by reference to Va. Code § 16.1-243.

Following initiation of a custody case through the filing of a petition, the clerk's office performs several pre-trial procedures to properly prepare the case for court. The clerk's office will complete the indexing and filing functions by assigning a case number and entering the case into the automated system.

Following the assignment of a case number, the clerk's office should issue a DC-510, Summons with a copy of the DC-511, Petition and the DC-620, AFFIDAVIT (UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT):

- to the parents, guardian, legal custodian or other person standing *in loco parentis*
- to such other persons as appear to the court to be proper or necessary parties to the proceedings
- where the custodian is summoned and such person is not the parent of the juvenile, the parent shall also be served with a summons.

The court may direct the issuance of a summons to the juvenile for any hearing to adjudicate or dispose of such petition (i) on its own motion or (ii) upon request of any party to such petition.

If a summons is issued for a teacher, or other school personnel, and the summons will be served on school property, it must be served by a sheriff or deputy sheriff. If notice is to be served out of state, it should be in a manner calculated to give actual notice, and may be by:

- Personal service in the manner provided for service of process in Virginia or in the other state.

- Certified or registered mail, return receipt requested, addressed to the person to be served.
- Order of publication if other means are ineffective.

Proof of service outside Virginia may be by:

- Affidavit by process server or as provided by Virginia law.
- Receipt signed by addressee if notice sent by mail.

A $12.00 service fee is charged for summoning a witness in a custody or visitation case. Following the issuance of the DC-510, SUMMONS the clerk's office should attach the original petition, the affidavit, and copies of the summonses and file the case in the pending court date file. Upon receipt of the returns on the summonses, the returns should be filed with the case papers.

Pretrial

The clerk's office will prepare the docket of pending cases prior to the court date by:

- Retrieving cases from the pending court files for cases to appear on the docket.
- Printing a docket via JCMS as per the instructions in the JCMS USER'S MANUAL.

The court cannot appoint counsel for the parties in these cases. However, counsel or a guardian *ad litem* may be appointed to represent the child. The court may not appoint counsel or a guardian *ad litem* for the child in custody cases where each of the persons claiming a right to custody is represented by an attorney unless the court finds that the interest of the child is not being adequately represented. Va. Code § 16.1-266.

Notwithstanding any other provision of law, when a guardian *ad litem* is appointed for a child by Commonwealth, the juvenile and domestic relations district court or circuit court, shall order the parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian *ad litem* by the court. If the court determines such party is unable to pay, the required reimbursement may be reduced or eliminated.

Prior to the hearing, the court may order a social history report, using the DC-542, ORDER FOR INVESTIGATION AND REPORT that the court service unit or other entity must complete and file with the court at least fifteen days prior to the hearing. In addition, a court may order an independent mental health or psychological evaluation to assist the court in its determination. Payment of the costs of this evaluation should be borne by the parties as directed by the court.

While parentage determinations can be a separate cause of action or may be an issue in a custody or visitation case, it is most frequently litigated in juvenile and domestic relations district courts in child support cases; therefore, it is discussed in detail in the section on "Paternity Determinations", which should be consulted when a parentage case is filed or a parentage issue is litigated.

The court may enter a *pendent lite* order to provide for the custody and maintenance of minor children of the parties pending a final determination in the custody and visitation proceedings.

Where appropriate, the court shall send the parties to mediation as an alternative to litigation. In custody and visitation matters, the goals of mediation may include the development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future. *See* "Mediation in Custody and Support Cases", below.

The parties to a contested custody or visitation case must attend an educational seminar or other similar program on the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Parties to uncontested cases may be required to attend a seminar if the court finds good cause. Va. Code § 16.1-278.15. *See* "Educational Seminars in Custody and Support Cases".

Trial

The DC-573, ORDER FOR CUSTODY/PARENTING TIME/VISITATION ORDER GRANTED TO INDIVIDUAL(S) has been developed to memorialize the courts order regarding custody and visitation. In determining custody, the court shall give primary consideration to the best interests of the child. There is no presumption or inference of law in favor of either parent. When appropriate, in keeping with the best interests of the child, the court should assure minor children frequent and continuing contact with both parents. In cases where someone other than a parent is requesting custody or visitation with the child, the court shall give due regard to the primacy of the parent-child relationship, but may, upon a showing of clear and convincing evidence that the best interest of the child would be served, award custody or visitation to any other person with a legitimate interest.

In awarding custody, the court

- sole custody to one party - one person retains responsibility for the care and control of the child and has primary authority to make decisions concerning the child; or
- joint custody

- joint legal custody means both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent
- joint physical custody where both parents share physical and custodial care of the child, or
- any combination of joint legal custody and joint physical custody that the court deems to be in the best interest of the child.

In the disposition of visitation matters, the judge may provide visitation privileges for grandparents, stepparents and other family members. In determining the best interest of the child with regard to custody or visitation, the court shall consider:

- the age and physical and mental condition of the child, keeping in mind the child's changing developmental needs,
- the age and physical and mental condition of each parent,
- the existing relationship between each parent and each child, considering the positive involvement with the child's life and the ability to accurately assess and meet the emotional, intellectual and physical needs of the child,
- the needs of the child, considering other important relationships of the child including siblings, peers, extended family members and others,
- the role that each parent has played and will play in the future in the upbringing and care of the child,
- the propensity of each parent to actively support the child's contact and relationship with the other parent, the relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child,
- the reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such preference,
- any history of family abuse or any history of sexual abuse. If the court finds a history of family abuse, the court need not consider the factors in the sixth item listed above,
- such other factors as the court deems necessary and proper to the determination.

The judge shall communicate to the parties the basis of the decision either orally or in writing. Va. Code § 20-124.3. Every order involving custody and visitation must contain as a condition a requirement that any party intending to relocate must give thirty days advance written notice to the court and the other party of any intended change of address, unless the court, for good cause, orders otherwise. Va. Code § 20-124.5. In addition, a parent cannot be denied access to the academic or health records of that

parent's child unless otherwise ordered by the court for good cause shown. In preparing orders regarding access to records, be aware that in the case of health care records, access may be denied if the minor's treating physician or treating clinical psychologist has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. Va. Code § 20-124.6. A noncustodial parent shall not be denied the opportunity to participate in public school or day care events unless there is a court order prohibiting such contact.

Motions to Modify

Motions to modify custody orders may be filed directly with the clerk's office of the juvenile and domestic relations district court on the DC-630, MOTION TO AMEND OR REVIEW ORDER. A "child custody proceeding" is defined as a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue, therefore, the petitioner (and other parties filing pleadings) shall also file a completed DC-620, AFFIDAVIT (UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT) when filing motions to modify a court order.

Military Deployment

In cases involving a parent who is a member of the military and who has been deployed on active duty, a court may enter an order (i) delegating the deploying parent's visitation rights with a child to a family member of the deploying parent or (ii) awarding visitation rights to a family member of the deploying parent if the parent had physical custody of the child prior to the deployment and physical custody is awarded to the nondeploying parent or their family during the deployment. Written notice of the return of the deployed parent or guardian and the termination of the delegated visitation shall be provided by the previously deployed parent or guardian to any family member whose visitation is thereby terminated. The court may provide for the appearance of parties and witnesses via electronic means at any hearing under the Virginia Military Parents Equal Protection Act (§ 20-124.7 *et seq.*). The petitioner is entitled to have such a petition expedited on the docket of the court.

Servicemembers Civil Relief Act Requirements for Default Judgment

A default judgment may not be entered until the plaintiff files an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. The district court form DC-418, AFFIDAVIT – DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT is available for use by plaintiffs. Failure to file the affidavit is not grounds to set aside an otherwise valid default judgment against a

defendant who was not, at the time of service of process or entry of the default judgment, a service member. However, case law indicates that failure to comply with the affidavit requirement in a case involving a defendant who is a service member and whose military service interfered with his ability to respond to a suit creates a voidable default judgment. *See* Flynn v. Great Atlantic Management Co., 246 Va. 93; Matthews v. Allstate Ins. Co., 194 F. Supp. 459 (E.D. Va 1961). If the defendant is believed to be in military service and is unaware of the action, the court must appoint an attorney to represent the defendant prior to entry of a default judgment. The court must grant a stay of not less than ninety days upon request by appointed counsel or upon its own motion if the court believes that (i) there may be a defense that requires the defendant's presence or (ii) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists after due diligence. If the service member cannot be contacted within the first ninety-day stay period, a default judgment may be entered, but the service member may attack the judgment and the attorney's actions shall not bind them.

If the service member is believed to be in military service and has been provided notice of the action, the court may grant a stay of ninety days or more upon its own motion, and shall grant a stay upon application of a service member with notice, if such service member provides (i) a letter setting forth the reasons why his military duties materially affect his ability to appear, and a date on or after which they could appear and (ii) a letter from his commanding officer stating that his service precludes his ability to appear and that they are not authorized to take leave. Active duty status alone, even in another state, does not necessarily "materially affect" one's ability to appear. Application for this stay does not constitute a waiver of jurisdictional defenses. A service member may apply for additional stays, but the court need not grant them. If the court refuses to grant an additional stay after the first ninety-day stay and the service member still cannot appear by reason of his military service, then the court must appoint an attorney to represent them before entering default judgment.

If appointment of counsel is required, the court may assess attorneys' fees and costs against any party, as the court deems appropriate, and shall direct in its order which of the parties shall pay. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment.

The Servicemembers Civil Relief Act covers National Guard members who are in Title 10 status. Title 10 status means they are paid and under the direct control of the federal government. Members who are in a Title 32 status, paid and trained by the United States Armed Forces but under control of the respective state governors, are covered by the Servicemembers Civil Relief Act if they are in that status pursuant to a contingency mission specified by the President or Secretary of Defense. Members who are paid by and under the command of their states' governors are not covered under this Act. A service member who did not have notice of an action that resulted in a default judgment may petition the court to reopen a case within ninety days of his release from service. The court shall

rehear the matter and allow the service member to defend the action only if (i) the service member was materially affected in making a timely defense by reason of military service and (ii) the service member has a meritorious or legal defense to the action or some part thereof.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

This Act can be found at Va. Code §§ 20-146.1 *et seq.* The court should treat an Indian tribe or a foreign country as a state under this Act. Once it is found that a court has jurisdiction to make a child custody determination under this Act, the case would proceed like any other custody or visitation case.

Jurisdiction

If a question arises as to whether the court has jurisdiction under this act, the court should determine the appropriate forum for the current dispute following reasonable notice to the parties and opportunity to be heard. The matter should be set for a jurisdictional hearing and a guardian *ad litem* should be appointed. (Notwithstanding any other provision of law, when a guardian *ad litem* is appointed for a child by Commonwealth, the juvenile and domestic relations district court or circuit court, shall order the parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian *ad litem* by the court. If the court determines such party is unable to pay, the required reimbursement may be reduced or eliminated.)

The grounds for jurisdiction in an initial filing are contained in Va. Code § 20-146.12. Once a court of this Commonwealth has made a child custody determination, it retains exclusive continuing jurisdiction as long as the child, one of the child's parents or any person acting as a parent continues to live in the Commonwealth. Va. Code § 20-146.13. The basis for jurisdiction to modify a child custody determination made by another court can be found at Va. Code § 20-146.14. Even though the exercise of jurisdiction would be improper under Va. Code §§ 20-146.12 or 20-146.14, the court may exercise temporary emergency jurisdiction if the child is in the Commonwealth and has been abandoned or if it is necessary to protect the child because the child, or a sibling or a parent is subjected to or is placed in reasonable apprehension of mistreatment or abuse. Va. Code § 20-146.15. A court of this Commonwealth should not exercise jurisdiction if a proceeding has been commenced in a court of another state. Va. Code § 20-146.17. Under the inconvenient forum provisions of the Act, the court may decline to exercise jurisdiction even when jurisdiction may be proper.

Va. Code § 20-146.18. In any instance where there appears to be a court in another state that would have jurisdiction in the case, the court must communicate with that court prior to exercising jurisdiction.

Registration and Enforcement

The Act provides that orders issued in other states may be registered in the juvenile and domestic relations district court and enforced as Virginia orders. There are specific requirements for registering such an order. Va. Code § 20-146.26. While such a request may be made by letter (as long as it meets the statutory criteria and contains the necessary information), district court form DC-582, REQUEST FOR VIRGINIA REGISTRATION OF A CHILD CUSTODY AND/OR VISITATION DETERMINATION FROM ANOTHER STATE has been developed for the convenience of requestors. One would expect that unrepresented requestors are particularly likely to want to use the form, but it is not required that a request for registration be on this form.

The petitioner must file two copies of the court order, one certified. The case does not need to be docketed, just indexed and closed out. The district court form DC-583, NOTICE OF REQUEST FOR VIRGINIA REGISTRATION OF A CHILD CUSTODY AND/OR VISITATION DETERMINATION FROM ANOTHER STATE should be sent to the respondent with a copy of the request and a copy of the order the petitioner has filed to notify the respondent as to which order is being registered. This should be done by sheriff, if in state, or by certified mail if out of state. The statute does not place a time limit on the respondent's right to contest. The statute indicates the order is considered registered upon filing. There will need to be an order entered registering the order. The court should utilize district court form DC-570, ORDER, for entry of the registration.

Index in JCMS using the following codes:

Case type:	**CV** – custody
Hearing type:	**DS** – disposition
Result:	**F** – final
Final disposition:	**G** – granted

Once a child custody determination is registered, a party may use any of the methods available under Virginia law to enforce that determination. Motions for modification may also be considered by the court.

Enforcement Proceedings Unique to Foreign Orders

There are two proceedings for enforcement included in the Act that are specific to foreign orders. The first is the expedited enforcement

proceeding. Va. Code § 20-146.29. A verified petition must be filed with an attached certified copy of any order sought to be enforced. The petition must contain certain information that is detailed in subsection B of Va. Code § 20-146.29. A summons must be issued immediately to the respondent to appear at a hearing that must be held on the next judicial day after service of the order unless that date is impossible. The summons must contain certain notices to the respondent. Va. Code § 20-146.29 (D). The court may also issue any order necessary to ensure the safety of the parties and the child at that time. The court may extend the date of the hearing at the request of the petitioner. Va. Code § 20-146.31 provides the bases for the order in this proceeding.

At the time of filing of the petition for an expedited hearing, the petitioner may request that an ex parte order be issued requiring that immediate physical custody of the child be taken. Va. Code § 20-146.32. The court must find, based on testimony by the petitioner or another witness, that "the child is likely to suffer serious physical harm or be removed from this Commonwealth." An ex parte order must:

- Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
- Direct law-enforcement officers to take physical custody of the child immediately; and
- Provide for the placement of the child with the petitioner, suitable relative, other suitable interested individual or the local department of social services pending final relief.

A hearing on this order must be held the next judicial day after the ex parte order is issued unless that date is impossible. Under Va. Code § 20-146.33, the court must award the prevailing party "necessary and reasonable expenses incurred . . . , including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would clearly be inappropriate."

Mediation/Educational Seminars/Investigations & Reports

Mediation

Generally, a court on its own motion or on a motion of one of the parties, may refer any contested civil matter to a dispute resolution orientation session in order to encourage the early settlement of disputes. The court shall set a date for the parties to return to court in accordance with its

regular docket and procedure, irrespective of the referral to an orientation session. The parties shall notify the court, in writing, if the dispute is resolved prior to the return date. Va. Code § 8.01-576.5.

In any appropriate custody and visitation case, the court shall refer the parents or persons with a legitimate interest to a dispute resolution orientation at no cost to the parties and in accordance with Va. Code §§ 8.01-576.4 *et seq.* Va. Code § 20-124.4. The DC-604, ORDER OF REFERRAL AND MEDIATOR APPOINTMENT FORM – CUSTODY, VISITATION AND SUPPORT CASES should be used for this purpose. A mediator certified pursuant to guidelines set forth by the Judicial Council shall conduct this session.

When a case is referred to mediation, a copy of the case pleadings should be attached to the DC-604, ORDER OF REFERRAL AND MEDIATOR APPOINTMENT that the mediator receives.

The DC-604, ORDER OF REFERRAL FOR CUSTODY, VISITATION AND SUPPORT CASES, sets forth the general nature of the issues to be mediated in part 3. The DC-604 refers to the "*attached* petition(s) or other pleading" (emphasis added) to identify specifically the matters the court determined to be appropriate for referral to a dispute resolution proceeding. Pleadings attached to the Order of Referral facilitate the mediator's identification of the precise issues the court referred.

Mediation statutes and the mediator standards of ethics require that case related documents in the mediator's possession, such as pleadings, be kept confidential. For example, Virginia Code § 8.01-576.10 provides that "[a]ll memoranda, work products and other materials contained in the case files of a neutral or dispute resolution program are confidential." Mediators need not return pleadings copies to the court at the completion of the mediation, as the copies remain confidential as part of the mediator's case file. The mediator's best practice is to shred the copies when they are no longer needed for the mediation case.

In assessing the appropriateness of a referral, the court shall ascertain upon motion of a party, whether there is a history of family abuse. In custody and visitation matters, the goals of mediation may include the development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future. If an agreement is not reached on any issue through further mediation as agreed to by the parties prior to the return date, the court shall proceed with a hearing on any unresolved issue, unless the court grants a continuance.

Virginia Code § 20-124.4 authorizes payment to certified mediators for conducting court-referred custody, visitation or support mediations. The courts identify custody/visitation cases as "juvenile" cases and support cases (even child cases) as "adult" cases. All support cases (i.e., both child and spousal support cases) are separate and distinct from custody/visitation cases, are filed on separate petitions, and are assigned adult case numbers instead of juvenile case numbers.

When a mediator is appointed to mediate *only* custody/visitation issues, ***or*** *only* child support/spousal support issues, the mediator will receive $120 for conducting the mediation. When the mediator is appointed to mediate both custody/visitation and support it shall be considered two appointments. The mediator will receive $120 for the custody/visitation and $120 for the support appointments. Examples: The mediator will receive $120 for conducting a mediation involving the custody/visitation of one child or multiple children between the same parties, not $120 per child. The mediator will receive $120 for conducting a mediation involving child support and spousal support between the same parties, not $240. The mediator will receive $240 for conducting a mediation involving custody/visitation of multiple children and child and spousal support between the same parties, not $120.

The mediator is paid for conducting the mediation; it does not matter whether the parties reached an agreement(s) in mediation.

If the appointment(s) results in no mediation, the mediator will receive no payment. Examples: If the parties attend the orientation session as ordered, but decline to mediate, then the mediator did not conduct a mediation and receives no payment. If the mediator 1) is unable to contact the parties to schedule an orientation session, or 2) schedules an orientation session and only one or none of the parties attend, then the mediator did not conduct a mediation and receives no payment.

The appointing court should enter a DC-604, Order of Referral for Custody, Visitation and Support Cases as follows:

- In custody/visitation cases involving one or more than one child between the same parties, enter one order.
- In cases involving child support or spousal support or both child and spousal support between the same parties, enter one order.
- In cases involving both custody/visitation and support issues between the same parties, enter one order.

The parties' last name(s) should be written on the order of referral with multiple case numbers. The first name of the child[ren] should not be placed on the order.

The fee of any mediator appointed by the court shall be paid from the funds used for appointments under Va. Code § 16.1-267 (B).

The court should secure an interpreter, if needed, for the mediation session. The interpreter will receive payment for services by submitting the DC-44, INTERPRETER SERVICES LOG AND CERTIFICATION along with a copy of the DC-604, ORDER OF REFERRAL AND MEDIATOR APPOINTMENT FORM-CUSTODY, VISITATION AND SUPPORT CASES.

Educational Seminars

The parties in any contested proceeding for custody, or visitation must show the court proof that they have attended within the twelve months prior to their initial court appearance or that they shall attend within forty-five days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court. Parties to uncontested cases may be required to attend an educational seminar if the court finds good cause. The program must be at least four hours in length and should address the effects of separation and divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. A list of Parent Education Providers can be found on the court's homepage. The fee charged a party by the program shall be based on the party's ability to pay, but shall not exceed fifty dollars to each party may be charged. The court may grant an exemption from attendance for good cause shown or if there is no program reasonably available.

Whenever possible, each party should attend taborativehe educational seminar before participating in mediation or alternative dispute resolution. If desired, the court may use DC-605, ORDER OF REFERRAL TO PARENT EDUCATION SEMINAR to ensure attendance by the parties.

Investigations and Reports

When the appropriate local department of social services is ordered to conduct an investigation in connection with a custody, or visitation matter, the court may assess a fee (pursuant to a state fee schedule) against either the petitioner or the respondent or both not to exceed the actual cost. The fee is to be paid to the local Department of Social Services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for

payment for such services shall be determined by the Department of Social Services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

Appeals

Any final order regarding custody or visitation may be appealed to the circuit court. Use DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS. If the case being appealed required a filing fee in the district court, the clerk should assess and collect the appropriate writ tax established by the local circuit court (which will include the court's technology fund fee of $10.00), and applicable service fees. If the parties are unable to pay the appeal fees, the clerk should have them a CC-1414, PETITION FOR PROCEEDING IN CIVIL CASE WITHOUT PAYMENT OF FEES OR COSTS. The circuit court clerk should provide in writing information regarding the total funds to be collected for appellate fees. If the parties appeal custody and visitation, or cases involving multiple children, at the same time, collect one set of fees only. The monies are receipted in escrow account 509 and disbursed to the circuit. If the appeal requires a bond, once the bond is posted the appeal cannot be withdrawn in the district court. The appeal should then be immediately taken to the circuit court. If no appeal bond is required, the appeal can be withdrawn in the district court within the ten-day period. If the appeal is not withdrawn, the appeal is then taken to the circuit court. Make copies of the case papers as dictated by local policy, and send appealed case documents, the check (or DC-409), (if appropriate), a copy of the JDR PCR receipt indicating the amount and date appellate fees paid, DC-25, CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET and DC-575, CONFIDENTIAL MATERIALS - JUVENILE CASE APPEAL/TRANSFER TRANSMITTAL to the circuit court. Once perfected, the appeal cannot be withdrawn. **Note:** No appeal fees are collected for cases that originated on a Motion to Amend. Va. Code § 16.1-296.2.

Note: Because any appeal monies collected are disbursed directly to Circuit Court, the Court's Technology Fund fee of $10.00 is included in the amount collected under Code 509. It will not be receipted as a separate account code on the PCR receipt.

Special Immigrant Juvenile Status

Virginia code section § 16.1-241 (A1) grants the juvenile and domestic relations courts jurisdiction to make specific findings of fact required by state and federal law to enable a child to apply for or receive a state or federal benefit until such child reaches 21 years. Courts may receive petitions filed for Special Immigrant Juvenile Status. The pleading does not require another filing for which the court has jurisdiction. Virginia code section § 16.1-260 applies in that non-attorney filers must go through the Intake Office at the Court Service Unit. The case type is 'SI' with valid disposition codes of 'GR', 'W' or 'D'.

Paternity

Parentage Determinations

The issue of paternity may arise in a number of proceedings that involve children. Parentage may be established:

- *prima facie*, for a woman, by proof of having given birth to the child. Va. Code § 20-49.1 (A).
- by scientifically reliable tests, including blood tests, which affirms at least a 98% probability of paternity. Va. Code § 20-49.1 (B).
- by voluntary acknowledgment of parentage. Va. Code § 20-49.1 (B).
- by administrative establishment pursuant to Va. Code § 63.2-1913.
- by court order after hearing pursuant to Va. Code § 20-49.8.
- for an adoptive parent, by proof of lawful adoption. Va. Code § 20-49.1 (C).

A DC-511, PETITION to determine parentage may be filed by the child, a parent, a person claiming parentage, a person standing *in loco parentis* to the child, a party having legal custody or a representative of the Department of Social Services or the Department of Juvenile Justice. The DC-641, PARENTAGE SUPPLEMENT TO PETITION must be filed with the DC-511, PETITION. If the child is made a party, a guardian *ad litem* must be appointed for the child. The decision on parentage is not binding on anyone who is not made a party to this proceeding.

Parentage must be proven by clear and convincing evidence and a DC-644, ORDER DETERMINING PARENTAGE must be entered except where parentage is not proven by genetic test affirming at least 98% probability or paternity or a voluntary acknowledgment has been provided.

Evidence Regarding Paternity

Upon a motion of either party or upon the court's own motion in any matter in which the question of paternity arises (when the motion is accompanied by an affidavit affirming or denying paternity), the judge may order the alleged father, the mother and the child to submit to scientifically reliable genetic tests, including a blood test pursuant to Va. Code § 20-49.3. A DC-623, MOTION FOR GENETIC TESTING may be used. However, if paternity is at issue in a child support matter, the judge shall order the blood tests.

The DC-624, PARENTAGE TEST ORDER should be used in ordering such tests, with copies distributed as shown in the data elements for completing the form (*See* DISTRICT COURT FORMS MANUAL). The form order provides numerous details regarding the procedures and filing deadlines. The judge, at their discretion, may order the person requesting such tests

to pay for such tests. Va. Code § 20-49.3. The scientifically reliable genetic test, including a blood test may be admitted as evidence in criminal desertion/non-support cases and in civil support cases. Va. Code § 20-49.4. If the evidence is by sworn written report, it must be filed with the court at least fifteen days prior to the hearing or trial to comply with Va. Code § 20-49.3.

There are two methods in which the court may handle the assessment of paternity costs. The court may receipt the payment to revenue code 509 and disburse to the laboratory when the bill comes to the court. The other method is to set up a "Dummy Case Number" (JA999999-01-00) or use a JA case file number assessing the costs to the party or parties who are ordered to pay. Set up an FAS account only, TYPE: **OT** (other), FAS TYPE: **V** (civil), use revenue code 133 for the amount billed by the laboratory and advance the DUE ON: by 30 days (allowing time for payment). The following day the BU53 will indicate a district court form DC-224, NOTICE TO PAY needs to be processed and mailed.

Voluntary Acknowledgment of Paternity

A voluntary written statement of the father or mother made under oath acknowledging paternity and confirming that the parties have been provided with a statement of the rights and responsibilities of paternity and the consequences arising from the signed acknowledgment, shall have the same legal effect as a judgment of paternity, after the passage of sixty days from its signing. It shall be conclusive, unless the person challenging it establishes that the acknowledgment was the result of fraud, duress or material mistake of fact. Va. Code § 20-49.1. However, the voluntary acknowledgment should be used as evidence and the DC-644, Order Determining Parentage still is required if the acknowledgment is accepted by the court.

Petition for Relief from Legal Determination of Paternity

An individual may file a petition for relief from a legal determination of paternity. Va. Code § 20-49.10. Juvenile courts and circuit courts have concurrent jurisdiction over these proceedings. Va. Code § 20-49.2.

The petition maybe filed on a district court form DC-511, PETITION, in the manner as other petitions. However, upon the filing of the petition with the court, the clerk shall have a copy of the petition served on the local office of the Division of Child Support Enforcement along with the mother and guardian ad litem for the child. This should be done with regard to every proceeding and the clerk need not verify that the proceeding at hand involves a DCSE case.

The court shall appoint a guardian ad litem to represent the best interests of the child. The petitioner shall pay the costs of any genetic test taken to demonstrate non-paternity.

If the genetic test excludes the petitioner as the father, the court may set aside any legal determination of paternity, shall order the completion of a new birth record, and may set aside an obligation to pay child support. A support order may not be retroactively modified, but may be modified from the date on which the petition was served on the other parties to the matter.

The court shall not grant relief to the petitioner if the individual named as the father either (i) acknowledged paternity knowing that they were not the father, (ii) adopted the child or (iii) knew that the child was conceived through artificial insemination.

Uniform Collaborative Law Act

"Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons sign a collaborative law participation agreement and are represented by collaborative lawyers.
"Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.
"Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution that is described in a collaborative law participation agreement and that is between family or household members or arises under the family or domestic relations laws of the Commonwealth, including (i) marriage, divorce, dissolution, annulment, and property distribution; (ii) child custody, visitation, and parenting time; (iii) alimony, spousal support, maintenance, and child support; (iv) adoption; (v) parentage; and (vi) negotiation or enforcement of premarital, marital, and separation agreements. "Family abuse" has the same meaning as set forth in § 16.1-228.
§ 20-172. Proceedings pending before tribunal; status report. A. Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the collaborative law participation agreement after it is signed. Subject to subsection D and §§ 20-173 and 20-174, the filing operates as an application for a stay of the proceeding. B. In the event that a stay is not granted by the tribunal, the proceeding shall be nonsuited by the parties before the collaborative law process may continue. C. In the event that a stay of the proceeding is granted by the tribunal, the parties shall promptly file with the tribunal a notice in a record when their collaborative law process concludes. A stay of the proceeding under subsection A is lifted when the notice is filed. The notice shall not specify any reason for termination of the process. D. A tribunal in which a proceeding is stayed under subsection A may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It shall not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a 3 of 5 collaborative law process or collaborative law matter. E. A tribunal shall not consider a communication made in violation of subsection D. F. A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute. § 20-173. Emergency order. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a

party or a party's family or household member. § 20-174. Affirmation of agreement by tribunal. A tribunal may affirm, ratify, and incorporate into a court order any agreement resulting from a collaborative law process.
§ 20-181. Confidentiality of collaborative law communication. A collaborative law communication is confidential to the extent agreed upon by the parties in a signed record or as provided by another law of the Commonwealth.

Judicial Authorization of Abortion (Judicial Bypass Proceedings)

Virginia Code § 16.1-241 (W) requires consent by or notice to a parent (or another authorized person) before a doctor may perform an abortion on an unemancipated minor. Consent is not required if the minor fits within certain narrow exceptions or if they receive judicial authorization for the abortion.

A minor may petition a juvenile and domestic relations district court for judicial authorization of an abortion without consent or notice. Venue lies in the jurisdiction where the petitioner resides or is present when the proceedings commence. Va. Code § 16.1-243 (A)(1)(d). There are no fees associated with these cases.

Judicial bypass proceedings are subject to a greater depth of confidentiality than other juvenile court proceedings. No person, other than the juvenile petitioner, their counsel and any guardian *ad litem* appointed for that case may have access to the records relating to the bypass proceedings. The parents, guardians or legal custodians of a juvenile filing a bypass petition are not considered parties to the proceeding and do not receive notice of the hearing.

Case Initiation

Petitions under Va. Code § 16.1-241 (W) are filed:

- with the intake officer by a juvenile petitioner who is *pro se*, or
- with the clerk by counsel for a juvenile petitioner.

The DC-502 (A), PETITION FOR JUDICIAL AUTHORIZATION OF ABORTION should be used instead of DC-511, the generic petition form. If the petition is filed with the intake officer, the intake officer may set the date and time of the hearing by telephone with the clerk's office, or may escort the petitioner to the clerk's office for the setting of a hearing date and time. If the petition is filed directly with the clerk's office by counsel, the clerk will set the date and time of hearing. The date of the hearing must not be later than four days after the filing of the petition. If the petition is filed with an intake officer, the four-day period begins when the petition is filed with the intake officer, not when the petition is later filed with the clerk.

In those jurisdictions where an intake officer is not present every day and is in a neighboring jurisdiction when a petitioner seeks to file their petition, the *pro se* petitioner may either (i) travel to the intake officer's current location or (ii) return to the original location when the intake officer will be present. The choice rests with the petitioner.

The data field on form DC-502 (A) for a contact telephone number is explicitly identified as "optional." Petitions shall be accepted without this optional data field being completed. It is anticipated that most petitioners will not have a contact telephone number which they wish to list and, therefore, that the data field will be left blank on most petitions.

Due to the short time frame for these proceedings and the depth of confidentiality required, courts must make every effort to complete all the necessary pre-hearing tasks while the petitioner is present in the clerk's office (or the intake office).

The date and time of the hearing should be noted in the space provided for that information on form DC-502 (A). If the petition is filed in a jurisdiction where a judge does not sit every day, arrangements must be made for a judge to return and hear the case within four days of the filing. If the hearing is not held within that period, the court must authorize a physician to perform the abortion without the consent of or notice to an authorized person. There is also a place on this form for an acknowledgment by the petitioner that they have received notice of the hearing date and time. The petitioner receives a copy of the completed petition, including the hearing date and time.

Right to Counsel

A petitioner in a judicial bypass case may participate in the proceedings on their own behalf. In addition, they hahave the right to be represented by counsel. Upon their request, the court shall appoint counsel for them. The Commonwealth shall pay the cost of such appointed counsel. Va. Code § 16.1-267. Accordingly, it is important to determine at the time the petition is filed whether the petitioner has retained their own attorney and if not, whether they desires either to have counsel appointed for them or to waive their right to counsel.

The court may also choose to appoint a guardian *ad litem* for the petitioner. A guardian *ad litem* appointed in a bypass proceeding is compensated in the same manner and at the same rate as other guardians *ad litem* appointed for juveniles.

- If the judge is available at the time the petition is filed, the judge may advise the petitioner of their right to counsel and appoint counsel, a guardian *ad litem* or both. The DC-502 (B), ADVISEMENT OF YOUR RIGHT TO COUNSEL and the DC-502 (C), ACKNOWLEDGMENT OF RIGHT TO COUNSEL AND APPOINTMENT OF COUNSEL should be used to

apprise the petitioner of their right to counsel and to reflect the appointment of counsel and/or a guardian *ad litem*.

- If the judge is not likely to be available when a judicial bypass petitioner is present, the judge may authorize the clerk, deputy clerk and/or intake officer to advise the petitioner of their right to counsel and direct the clerk to select counsel and/or a guardian *ad litem* from a pre-approved list. The forms described above will be used to advise the petitioner regarding counsel, to note their request for representation, and to eventually appoint counsel and/or a guardian *ad litem*. The judge may sign the DC-502 (B), ADVISEMENT OF YOUR RIGHT TO COUNSEL in advance. The availability of counsel and/or the guardian *ad litem* is to be ascertained while the petitioner is present, so that they can then be informed of their identity. The judge would not sign the DC-502 (C), ACKNOWLEDGMENT OF RIGHT TO COUNSEL AND APPOINTMENT OF COUNSEL until counsel and/or the guardian *ad litem* are actually appointed by the court, prior to or at the hearing.
- Copies of the petition, with the hearing date and time, are to be provided to counsel and to the guardian *ad litem*.

Confidentiality and Notice of Hearing

Because of the extremely confidential nature of these proceedings, notice of the hearing is provided only to the petitioner, their counsel and the guardian *ad litem*. The petitioner's parents, guardians or legal custodians are not parties to the petition and are not to be sent a summons or notice. The clerk's office should not confirm the existence of pending petitions to anyone other than the petitioner, their counsel or the guardian *ad litem*.

Judicial bypass petitions are to be numbered JJ-999999-01-01 through JJ-999999-01-99. They are entered into the case management system using case type "JB." In the field for the juvenile's name, the following should be entered:

First Initial of Last Name of Petitioner and "**In re: Va. Code 16.1-241(W).**

The case papers should be kept in a locked drawer or office. The docket page for these cases must not be distributed or posted and shall be destroyed after the hearing.

Hearing

The judge will determine whether the minor meets the criteria established in Va. Code § 16.1-241 (W) for granting the bypass petition. The court's findings are conveyed using the DC-502 (D), ORDER IN PROCEEDING FOR JUDICIAL AUTHORIZATION OF ABORTION.

Regardless of the court's disposition of the petition, an attested copy of the order reflecting the judge's finding is to be provided to the petitioner. A copy may be provided to counsel and/or to the guardian *ad litem*.

If the court denies the petition, the petitioner may appeal to the circuit court of that jurisdiction. An order granting judicial authorization of an abortion cannot be appealed.

If the court fails to hold a hearing within the four days required by the statute, the court must enter an order authorizing a physician to perform an abortion. The DC-502 (D), ORDER IN PROCEEDING FOR JUDICIAL AUTHORIZATION OF ABORTION should be used to enter this "default authorization."

Appeal

A petitioner whose petition is denied or granted without consent but requires notice is entitled to an expedited confidential appeal to circuit court. The appeal may be noted within ten days of the date of entry of the order denying the petition. The DC-502 (E), NOTICE OF APPEAL - JUDICIAL AUTHORIZATION OF ABORTION should be used to note the appeal. Because the circuit court must hear and decide the appeal no later than five days after the appeal is filed, a hearing time and date should be obtained from the clerk of the circuit court while the petitioner is present to note their appeal and entered in the appropriate space on DC-502 (E). A copy of this form is then given to the petitioner, which they acknowledge by signing the notice. Counsel may note the appeal on behalf of the petitioner.

After the appeal is heard, the circuit court shall file a copy of its order with the juvenile court. Va. Code § 16.1-297.

Involuntary Mental Commitments

Overview

A juvenile may be admitted to a mental health facility in three ways: voluntarily, involuntarily with parental admission, or by petition for involuntary commitment, and may be initiated by an Emergency Custody Order or Temporary Detention Order. A juvenile over the age of 14 who is voluntarily committed to a facility or ordered to mandatory outpatient treatment and who appeals the case is prohibited from purchasing, possessing or transporting a firearm, regardless of the outcome of the appeal.

There are no Clerk's fees or costs associated with the filing or appeal of the involuntary commitment process.

Any special justice, as defined in Va. Code § 37.2-100, and any district court substitute judge who presides over hearings pursuant to the provisions of Va. Code § 53.1-133.04 shall receive a fee as provided in Va. Code § 37.2-804 for each proceeding under Va. Code § 53.1- 133.04 and their necessary mileage.

Every physician or clinical psychologist who is not regularly employed by the Commonwealth who is required to serve as a witness for the Commonwealth in any proceeding under Va. Code § 53.1-133.04 shall receive a fee as provided in Va. Code § 37.2-804. Other witnesses regularly summoned before a judge shall receive such compensation for their attendance and mileage as is allowed witnesses summoned to testify before grand juries. It is recommended the sitting Judge sign the DC-60 for payment of professionals used in the commitment hearings.

Every attorney appointed under Va. Code § 53.1-133.04 shall receive a fee as provided in Va. Code § 37.2-804 for each proceeding under Va. Code § 53.1-133.04 for which they are appointed.

The procedures set out below will address involuntary commitments for those fourteen+ year old objecting to parental admission.

The following procedures are recommended when presented by Parental Admission of an objecting minor fourteen years of age or older. Va. Code § 16.1-339.

STEP	DESCRIPTION
1	The juvenile has been admitted to a mental health facility by a parent and is objecting to the admission. The juvenile can be admitted up to 120 hours and must be examined by a qualified evaluator within twenty-four hours of admission to the facility. The facility must immediately file the petition with the J&DR Court where the facility is located. The facility to which the juvenile is admitted files a DC-511, PETITION in the JDR court in the jurisdiction in which the facility is located. The petition is to be stamped with the date and time received. The evaluator's report is to be filed with the court prior to the review or hearing. The report is to be stamped with the date and time received and is made a part of the court's record. Upon receipt of the petition AND the evaluator's report the court shall appoint a guardian *ad litem* and counsel for the juvenile. A copy of the petition and report shall be provided to the guardian *ad litem* and counsel.
2	Index in JCMS using the Juvenile CIVIL entry screen; with the case type MC for mental commitment. The hearing type will be **RG**-Review Hearing.
3	There are three possible results at the initial hearing, release of juvenile to parent(s), involuntary commitment, or continuation to a commitment hearing.

STEP	DESCRIPTION
	The juvenile may be hospitalized for up to ninety days. If released, direct the facility to release the juvenile to the custody of the parent who consented to the minor's admission. If the case is finalized at this hearing, use the follow codes to conclude the case: **RL** Juvenile released to parents **I** Involuntarily committed **CH** Continued Hospitalization The Judge will sign DC-597, ORDER FOR INPATIENT TREATMENT – ADMISSION BY PARENTAL CONSENT either committing or releasing juvenile. If the Judge finds information is insufficient to permit an informed determination at this time, a commitment hearing will be conducted, and the minor may be detained in the facility for up to 120 hours additional hours pending the next hearing. The date the case is finalized should be the date the DC-597 was entered.
4	The petition filed under this proceeding shall serve as the required petition. Proceed to hearing pursuant to Va. Code 16.1-341. Because the case was continued at the initial hearing, continue the case using C as hearing result, and use the code **AJ** (Adjudicatory) for the next hearing type. DC-512, NOTICE OF HEARING must be served immediately on the parents and minor.
5	Appeal can be noted by either the minor or the petitioner and must be noted within 10 days of the entry of a final order. The appeal is processed immediately and sent to the circuit court where the juvenile has been committed or hospitalized. Original case papers are sent to circuit court. Retain copies for file.

Quick Reference Summary

JUVENILE CIVIL ENTRY SCREEN	
Case type	**MC**
Pleading	Inv Comm
Code	Va. Code § 16.1-339
Hearing type	**RG** Review Hearing
Date finalized should be date the order is signed	
F/C	**F** if released or committed
DISP	**RL** Juvenile released to parent
	I Involuntarily committed
	CH Continued Hospitalization

Involuntary Commitment for Juvenile (Not Objecting)

The following procedures are recommended when involuntary commitment is presented by petition and may be filed by a parent, or any responsible adult. Va. Code §§ 16.1-341, 16.1-342, 16.1-343, 16.1-344, 16.1-345.

STEP	DESCRIPTION
1	A DC-511, PETITION for involuntary commitment is filed through the intake office and forwarded to the clerk's office in which the minor is located. The petition may be filed by a parent, or if not available, unable or unwilling, by any responsible adult. If the hearing is a result of a petition filed under Va. Code § 16.1-338, that petition shall serve as the required petition. The petition is to stamped with the date and time received. The petition should be entered in the juvenile CIVIL entry screen using the **MC** case type.
2	The Court shall schedule a hearing no sooner than twenty-four hours and no later than 96 hours from the filing of the petition. If the 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 96-hour shall be extended to the next day the court is open. **NOTE:** If the juvenile was being held in a detention facility pursuant to an order of another JDR Court when the involuntary commitment process begins, the clerk's office shall notify the attorney for the juvenile in the delinquency case, the attorney for the Commonwealth in the other jurisdiction, and the JDR Court of the other jurisdiction. This information should be contained in the pre-screening report. It is recommended that the clerk's office document in the file the method by which the notice was given. Notice should be given to the facility and counsel of record. The hearing type should be **AJ**-Adjudicatory. Copies of the petition with a DC-512, NOTICE OF HEARING must be served immediately on the minor, and the minor's parents, if they are not petitioners. Counsel and GAL shall be appointed for the juvenile at least twenty-four hours prior to the hearing. The Court shall direct the Community Services Board (CSB) serving the area in which the minor is located to arrange for an evaluation of the minor by a

STEP	DESCRIPTION
	qualified, independent evaluator. The evaluator, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. A transportation order should be entered for the sheriff's department to transport the juvenile to the hearing or a DC-4000, ORDER FOR ALTERNATIVE TRANSPORTATION PROVIDER, should be entered. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the minor given the specific security, medical, or behavioral health needs of the minor. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary detention, transportation of the minor to the alternative facility of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith utilizing DC-5044, NOTICE OF ALTERNATIVE FACILITY OF TEMPORARY DETENTION (JUVENILE), to the clerk of the issuing court of the name and address of the alternative facility. If custody has been transferred, the magistrate will enter an order of transportation to the new facility, DC-5046, ORDER FOR TRANSPORTATION TO ALTERNATIVE FACILITY OR TEMPORARY DETENTION (JUVENILE).
3	The commitment hearing is held. The hearing shall be closed to the public unless the minor and the petitioner request that it be open to the public. The evaluator's report shall be received by the court, date and time stamped and admitted into evidence as a part of the court's record. The CSB must attend hearing, and if MOT considered, the CSB from the jurisdiction where the minor resides must attend or have the local CSB represent recommendations at the hearing. Appearance may be by electronic means. Finalize the case using the following codes: D Dismissed I Involuntarily committed MO Mandatory Outpatient Treatment

STEP	DESCRIPTION
	TO Transferred MOT RL Released to parents The Judge will sign DC-598, ORDER FOR INVOLUNTARY COMMITMENT FOR INPATIENT TREATMENT - JUVENILE either committing or releasing juvenile. The juvenile may be hospitalized for up to ninety days. If not committed, direct the facility to release the juvenile. If Mandatory Outpatient Treatment is ordered, the judge will utilize the DC-599, ORDER FOR INVOLUNTARY ADMISSION TO MANDATORY OUTPATIENT TREATMENT - JUVENILE. The date the case is finalized should be the date the order was entered. Juveniles in detention are not eligible for mandatory outpatient treatment. Juveniles in detention or shelter care shall be returned to the detention home or shelter care after treatment or finalization of the hearing. A juvenile who is 14 years of age or older and involuntary admitted to a facility, ordered to mandatory outpatient treatment or the subject of a temporary detention order and then agreed to voluntary admission is prohibited from purchasing, possessing or transporting a firearm. The judge will advise the juvenile of this prohibition. Upon the issuance of the order the clerk is required to submit a SP-237 and a copy of the order to the Central Criminal Records Exchange (CCRE) of the State Police as soon as practicable but no later than the close of business on the next following business day. Upon receipt of the dispositional order for mandatory outpatient treatment, the clerk shall provide a copy of the order to the person who is subject of the order, their attorney and to the CSB required to monitor the compliance with the plan. The clerk should use the DC-5020, TRACKING DOCUMENT FOR SENDING OR RECEIVING MANDATORY OUTPATIENT TREATMENT ORDER UPON ENTRY when providing a copy of the order as required to the CSB, unless the case has been transferred, then the DC-5022, TRACKING DOCUMENT FOR SENDING OR RECEIVING MANDATORY OUTPATIENT TREATMENT ORDER UPON TRANSFER, should be used. The clerk should fax the forms to the CSB and attorney. The CSB should fax the acknowledgement back to the clerk. The copy to the person subject to hearing may be mailed.
4	Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment.

STEP	DESCRIPTION
	Pursuant to § 16.1-345.2, no later than five business days after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board that is responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court where the juvenile resides, not the special justice, for approval. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment. (For monitoring of the MOT order, please *see* Mandatory Outpatient Treatment for Juveniles – Review Hearings section below).
5	The minor or petitioner shall have the right to appeal. Appeal must be noted within 10 days of any final order committing the minor or dismissing the petition. Original case papers are forwarded to circuit court immediately. Retain copies for the file. J&DR Court shall appoint an attorney and a GAL to represent any minor desiring to appeal who does not appear to be currently represented by counsel.

Quick Reference Summary

JUVENILE CIVIL ENTRY SCREEN	
Case type	**MC**
Pleading	Inv Comm
Code	Va. Code § 16.1 - 341
Hearing type	**AJ** - Adjudicatory
Date finalized should be date the order is signed	
F/C	**F**
DISP	**D** Dismissed
	I Involuntarily committed
	MO Mandatory Outpatient Treatment
	TO Transferred Outpatient Treatment

Involuntary Commitment by Emergency Admission-Magistrate Issued

The following procedures are recommended when a minor is taken into custody and admitted for inpatient treatment pursuant to the procedures specified in Va. Code §§

16.1-340 or 16.1-340.1, which state that an ECO or TDO shall only be issued if the minor meets the commitment criteria in § 16.1-340.1.

The magistrate shall consider any request to authorize transportation by an alternative transportation provider which may be a person, facility or agency. Va. Code §§ 37.2-808, 37.2-810.

No person who provides alternative transportation shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

If the transportation provider providing transportation of the minor who is the subject of a temporary detention order or who is being transported pursuant to Va. Code §§ 16.1-345, 37.808 or 37.2-810 becomes unable to continue providing that transportation after taking custody, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time the provider becomes unable to continue providing transportation shall take custody of the minor and transport the minor to the proper facility. If the alternative transportation provider originally authorized to provide transportation is not the minor's parent, the alternative transportation provider shall notify the minor's parent that the law-enforcement agency has taken custody of the minor and is transporting the minor to the temporary detention facility and provide the name of the law-enforcement officer providing the transportation.

The magistrate, on sworn petition, or on their own motion based on probable cause to believe the juvenile is mentally ill and in need of hospitalization, may issue an ECO or TDO.

STEP	DESCRIPTION
1	Once executed and the juvenile hospitalized, law enforcement files the return of the ECO and/or the TDO with the Court. Orders for ECO and TDO may be filed, issued, served, or executed by electronic means, and signatures on those documents are to be treated as originals. The clerk's office receives one or more of the following documents: • EMERGENCY CUSTODY ORDER - JUVENILE or the TEMPORARY DETENTION ORDER. • All case papers are to be stamped with date and time received. • Enter the case in the juvenile CIVIL entry screen using **EC** (Emergency Custody Order) or **TD** (Temporary Detention Order) case types.
2	DC-592, EMERGENCY CUSTODY ORDER - JUVENILE Issued by the magistrate and takes the juvenile into custody for eight hours, while the Community Service Board conducts a pre-screening evaluation to

STEP	DESCRIPTION
	assess the need for hospitalization or treatment. The evaluation is conducted immediately. ECO must be executed within eight hours of issuance; however, this order is valid for an additional four hours if a facility of temporary detention cannot be identified after eight hours and the person is detained in a state facility. Index and finalize in JCMS using the following codes: Hearing type: **MI** Magistrate Issued (no court hearing) Final disposition codes: **EU** ECO not executed **ES** ECO served
3	DC-895, TEMPORARY DETENTION ORDER – MAGISTRATE (JUVENILE) TDO may accompany ECO or be filed on its own. It is returned to the court in the jurisdiction in which it was issued. Must be executed within the time period specified in the order, while CSB conducts pre-screening evaluation to assess the need for hospitalization or treatment. Index and finalize in JCMS using the following codes: Hearing type: **MI** Magistrate Issued (no court hearing) Final disposition codes: **TU** TDO not executed **T** TDO served **NOTES:** If ECO is accompanied by a TDO, the TDO is indexed as a subsequent number of the ECO. The magistrate may initiate a paperless process for the ECO. If this occurs and an extension is issued, the court would index the extension as a whole number rather than a sub-action.

Involuntary Commitment by Emergency Admission-Judge Issued

The following procedures are recommended when a minor is taken into custody and admitted for inpatient treatment pursuant to the procedures specified in Va. Code §§ 37.2-808 or 37.2-809 (emergency custody order or temporary detention order).

The Judge issues the ECO and the order(s) is executed by law enforcement.

An ECO is issued by the Judge and takes the juvenile into custody for –eight hours, while the Community Services Board conducts a pre-screening evaluation to assess the need for hospitalization or treatment. The evaluation is conducted immediately. ECO must be executed within eight hours of issuance.

DC-592, Emergency Custody Order

Enter the case in the juvenile CIVIL entry screen using the **EC** case type.

Hearing type:
AJ Adjudicatory
Final disposition codes:
EU ECO not executed
ES ECO served

Mandatory Outpatient Treatment for Juveniles – Review Hearings

For the purposes of review of a mandatory outpatient treatment order, the "court" shall not include a special justice.

If the CSB responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the minor are not available, it shall notify the court within 5 business days of the entry of the order for MOT. Within 5 business days of receiving such notice, the judge, after notice to the minor, the minor's attorney, and the CSB responsible for developing the comprehensive mandatory outpatient treatment plan, shall hold a hearing. 16.1-345.2 The CSB will file the DC-5005, MOTION FOR REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT with the court to request the hearing on the unavailability of services.

The community services board where the minor resides shall monitor the minor's compliance with the mandatory outpatient treatment plan ordered by the court pursuant to § 16.1-345.2 If the community services board determines that the minor materially failed to comply with the order, it shall file with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review of the mandatory outpatient treatment order as provided in § 16.1-345.4, using the DC-5005, MOTION FOR REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT. The community services board shall file the motion for review of the mandatory outpatient treatment order within three business days of making that determination or within 24 hours if the minor is being detained under a temporary detention order and shall recommend an appropriate disposition. Copies of the motion for review shall be sent to the minor, their parents, their attorney, and their guardian *ad litem* by the clerk's office.

If the community services board determines that the minor is not materially complying with the mandatory outpatient treatment order or for any other reason, and that because of mental illness, the minor (i) presents a serious danger to themself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of the ability to care for themself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, it shall immediately request that the magistrate issue an emergency custody order or a temporary detention order pursuant to § 16.1-340.

If the community services board determines at any time prior to the expiration of the mandatory outpatient treatment order that the minor has complied with the order and that continued mandatory outpatient treatment is no longer necessary, it shall file a motion to review the order with the juvenile and domestic relations district court for the jurisdiction in which the minor resides. The court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-345.4.

Pursuant to § 16.1-345.4 the juvenile and domestic relations district court judge shall hold a hearing within 15 days after receiving the motion for review of the mandatory outpatient treatment plan; however, if the fifteenth day is a Saturday, Sunday, or legal holiday, the hearing shall be held on the next day that is not a Saturday, Sunday, or legal holiday. If the minor is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 16.1-340. The clerk shall provide notice of the hearing to the minor, their parents, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner for the minor's involuntary treatment. If the minor is not represented by counsel, the judge shall appoint an attorney to represent the minor in this hearing and any subsequent hearings under § 16.1-345.5, giving consideration to appointing the attorney who represented the minor at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The judge shall also appoint a guardian *ad litem* for the minor. The community services board shall offer to arrange the minor's transportation to the hearing if the minor is not detained and has no other source of transportation.

The juvenile and domestic relations district court judge may order an evaluation and appoint an evaluator in accordance with § 16.1-342 who shall personally examine the minor and certify to the court whether or not they have probable cause to believe that the minor meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment as specified in § 16.1-345 and subsection A of § 16.1-345.2. The DC-5008, ORDER OF APPOINTMENT OF EVALUATOR – EVALUATION FOR INVOLUNTARY TREATMENT IS USED TO MAKE THIS APPOINTMENT.

The evaluator's report may be admitted into evidence without the appearance of the evaluator at the hearing if not objected to by the minor or their attorney. If the minor is not detained in an inpatient facility, the community services board shall arrange for the minor to be examined at a convenient location and time. The community services board shall offer to arrange for the minor's transportation to the examination, if the minor has no other source of transportation. If the minor refuses or fails to appear, the community services board shall notify the court, and the court shall issue a mandatory examination order and a civil show cause summons. The minor shall remain in custody until a temporary detention order is issued or until the minor is released but in no event shall the period exceed eight hours.

If the minor refuses or fails to appear, the community services board shall notify the court, and the court shall issue a mandatory examination order, DC-5009, NOTICE AND MANDATORY EXAMINATION ORDER, and a civil show cause summons. The return date for the civil show cause summons shall be set on a date prior to the review hearing scheduled pursuant to subsection A, and the examination of the minor shall be conducted immediately after the hearing thereon, but in no event shall the period for the examination exceed eight hours.

After hearing the evidence regarding the minor's material noncompliance with the mandatory outpatient treatment order and the minor's current condition, and any other relevant information, the juvenile and domestic relations district court judge may make one of the following dispositions:

- Upon finding by clear and convincing evidence that the minor meets the criteria for involuntary admission and treatment specified in § 16.1-345, the judge shall order the minor's involuntary admission to a facility designated by the community services board for a period of treatment not to exceed 30 days;

- Upon finding that the minor continues to meet the criteria for mandatory outpatient treatment specified in subsection A of § 16.1-345.2, and that a continued period of mandatory outpatient treatment appears warranted, the judge may renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the minor's treatment. In determining the appropriateness of outpatient treatment, the court may consider the minor's material noncompliance with the previous mandatory treatment order; or

- Upon finding that neither of the above dispositions is appropriate, the judge may rescind the order for mandatory outpatient treatment. The Court will use the DC-5007, ORDER - REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT to record this disposition.

At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the community services board that is required to monitor the minor's compliance with the order may file a DC-5015, MOTION TO CONTINUE MANDATORY OUTPATIENT TREATMENT ORDER, with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review to continue the order for a period not to exceed 90 days. The court shall grant the motion for review and enter an appropriate order without further hearing if it is joined by (i) the minor's parents and the minor if 14 years of age or older, or (ii) the minor's parents if the minor is younger than 14 years of age. If the minor's parents and the minor, if necessary, do not join the motion, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-345.4.

Upon receipt of the motion for review, the court shall appoint a qualified evaluator who shall personally examine the minor pursuant to § 16.1-342.

After observing the minor and considering the appointed qualified evaluator's report and any other relevant evidence, the court may make one of the dispositions specified in subsection D of § 16.1-345.4. If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 90 days. Any order of mandatory outpatient treatment that is in effect at the time a motion for review for the continuation of the order is filed shall remain in effect until the court enters a subsequent order in the case. Form DC-5017, ORDER - CONTINUE MANDATORY OUTPATIENT TREATMENT ORDER is used to record the disposition.

- Forms

DC-44	LIST OF ALLOWANCES - INTERPRETER
DC-60	INVOLUNTARY ADMISSION HEARING INVOICE
DC-592	EMERGENCY CUSTODY ORDER - JUVENILE
DC-895	TEMPORARY DETENTION ORDER – MAGISTRATE (JUVENILE)
DC-511	PETITION
DC-512	NOTICE OF HEARING
DC-514	ORDER FOR APPOINTMENT OF GUARDIAN *AD LITEM*
DC-575	CONFIDENTIAL MATERIALS - JUVENILE CASE APPEAL/TRANSFER TRANSMITTAL
DC-581	NOTICE OF APPEAL - JUVENILE CIVIL APPEALS
DC-597	ORDER FOR INPATIENT TREATMENT - ADMISSION BY PARENTAL CONSENT
DC-598	ORDER FOR INVOLUNTARY COMMITMENT FOR INPATIENT TREATMENT - MINOR
DC-599	ORDER FOR INVOLUNTARY ADMISSION TO MANDATORY OUTPATIENT TREATMENT – JUVENILE
DC-4000	ORDER FOR ALTERNATIVE TRANSPORTATION PROVIDER

DC-5044	NOTICE OF ALTERNATIVE FACILITY OF TEMPORARY DETENTION(JUVENILE)
DC-5046	ORDER FOR TRANSPORTATION TO ALTERNATIVE FACILITY OR TEMPORARY DETENTION (JUVENILE)
DC-5024	ORDER – TRANSFER OF JURISDICTION
DC-5020	TRACKING DOCUMENT FOR SENDING OR RECEIVING MANDATORY OUTPATIENT TREATMENT ORDER UPON ENTRY
DC-5022	TRACKING DOCUMENT FOR SENDING OR RECEIVING MANDATORY OUTPATIENT TREATMENT ORDER UPON TRANSFER
DC-5005	MOTION FOR REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT ORDER
DC-5008	ORDER OF APPOINTMENT OF EVALUATOR
DC-5007	ORDER – REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT
DC-5015	MOTION TO CONTINUE MANDATORY OUTPATIENT TREATMENT
DC-5017	ORDER – CONTINUE MANDATORY OUTPATIENT TREATMENT
SP 237	DEPARTMENT OF STATE POLICE NOTIFICATION

- References

§ 16.1-337	Inpatient treatment of minors; general applicability.
§ 16.1-338	Parental admission of minors younger than fourteen and nonobjecting minors fourteen years of age or older.
§ 16.1-339	Parental admission of an objecting minor fourteen years of age or older.
§ 16.1-340	Emergency admission; temporary detention order.
§ 16.1-340.1	
§ 16.1-340.2	Alternative Transportation Provider
§ 16.1-341	Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.
§ 16.1-342	Involuntary commitment; clinical evaluation.
§ 16.1-343	Involuntary commitment; duties of attorney for the minor; compensation.
§ 16.1-344	Involuntary commitment; hearing.
§ 16.1-347	Fees and expenses for qualified evaluators. (§ 37.2-804)
§ 16.1-345.2	Mandatory outpatient treatment; criteria; orders.
§ 16.1-345.3	Monitoring mandatory outpatient treatment; motion for review.
§ 16.1-345.4	Court review of mandatory outpatient treatment plan.
§ 16.1-345.5	Continuation of mandatory outpatient treatment order.
§ 16.1-345.6	Appeals Process

Emancipation of Minors

In certain factual situations, a juvenile who has reached their sixteenth birthday may be found by a judge to be capable of being an adult for certain purposes. This process is called emancipation of minors. The DC-507, PETITION FOR ORDER OF EMANCIPATION to start this proceeding may be filed by the minor or any parent or guardian of such minor, in the JDR court for the county or city in which either the minor or their parents or guardian resides. The petition must include the requirements contained in Va. Code § 16.1-262 plus the juvenile's gender and, if filed by someone other than the juvenile, the relationship of the petitioner to the juvenile. A service fee of $12.00 per service issued is assessed and must be paid before the service can be issued in the case.

A guardian *ad litem* must be appointed for the juvenile. The court may appoint counsel for the juvenile's parents or guardian.

The court can order the limited emancipation provided in Va. Code § 16.1-334 only if one of the situations described in Va. Code § 16.1-333 exists:

- the juvenile entered into valid marriage, whether or not the marriage has been terminated by dissolution, or
- the juvenile is on active duty in any U.S. armed services, or
- the juvenile willingly lives separate and apart from their parents or guardian, with the consent or acquiescence of the parents or guardian, and the juvenile is or is capable of supporting themself and competently managing their own financial affairs.

In emancipation of minors' cases, a copy of the order shall be issued to the child if emancipated. Upon application to the Department of Motor Vehicles and submission of the copy, an identification card containing the minor's photograph, a statement that such minor is emancipated, and a listing of all effects of the emancipation order shall be issued to the minor.

A list of the effects of the emancipation order can be found in § 16.1-334.

Standby Guardians

A proceeding for the appointment of a standby guardian facilitates the appointment of a temporary guardian for a minor child in the event that a parent, who suffers from a progressive or chronic condition, disease or illness, dies, becomes incompetent or becomes debilitated. The standby guardian will assume the role of guardian of the person or guardian of the property, or both, of the minor child until a permanent guardian can be appointed. A standby guardian may either be approved by the court or designated by the parent prior to the "triggering event:" death, consent, incompetence or debilitation. Article 17 of Title 16.1 of the

Virginia Code provides for proceedings for approval of a standby guardian by the court prior to the triggering event, approval of a designated standby guardian after the occurrence of the triggering event and revocation by the parent or refusal by the appointed standby guardian.

Appointment of Standby Guardian Prior to the Triggering Event

A petition may be filed by any person requesting that the juvenile and domestic relations district court approve a person as a standby guardian for a child of a qualified parent upon the occurrence of a triggering event. The petition may also request that the court appoint an alternate standby guardian. Va. Code § 16.1-350.

A "qualified parent" is one who has been diagnosed by a licensed physician to be suffering from a progressive or chronic condition caused by an injury, disease or illness from which, to a reasonable degree of medical probability, the patient cannot recover. Va. Code § 16.1-349.

In cases where the standby guardian is judicially approved, the "triggering event" occurs:

- where there is a determination that the parent is incompetent, and/or
- upon the death of the parent, and/or
- upon the provision of the parent's written consent to the commencement of the standby guardian's authority.
- Upon anticipation of possible detention, incarceration or deportation connected to an immigration action. Va. Code § 16.1-349.

The petition must contain the information requested at Va. Code § 16.1-350 (B). The DC-503, PETITION FOR COURT APPROVAL OF STANDBY GUARDIAN has been designed specifically to elicit the information required by this section.

Notice of the filing of the petition must be given promptly to each parent of the child whose identity and whereabouts are known to the petitioner. Va. Code § 16.1-350 (C). The DC-504, NOTICE OF PETITION FOR COURT APPROVAL OF STANDBY GUARDIAN must be used. Summonses should be served in accordance with Va. Code § 16.1-264 upon:

- the child, if theyare twelve years of age or older.
- the proposed standby guardian.
- the proposed alternate standby guardian, if any.
- any other persons that appear to the court to be proper or necessary parties to the proceedings including the child's parents, guardian, legal custodian or other person standing *in loco parentis*, if the identity and whereabouts are known.

An order approving the standby guardian may be entered without a hearing unless:

- a known parent, stepparent, adult sibling or other adult related to the child by blood, marriage or adoption requests a hearing within ten days of the date the notice of filing was sent, or
- if there is other litigation pending regarding the custody of the child.

If a hearing is held, the court may appoint and, in the case of a petition filed by someone other than a parent, shall appoint a guardian *ad litem* to represent the child. Va. Code § 16.1-350(C).

Following consideration of the best interests of the child as provided in Va. Code § 20-124.3, the court shall issue an order on the DC-505, ORDER APPROVING STANDBY GUARDIAN appointing a proper and suitable person as the standby guardian and an alternate, if requested upon finding that

- The child's parent is a qualified parent, and
- Appointment of a standby guardian is in the best interest of the child.

The order must specify the triggering event. If one of the triggering events is written consent by the qualified parent, the standby guardian's authority will not become effective until the written consent is filed with the court. Va. Code § 16.1-351.

The DC-505, ORDER APPROVING STANDBY GUARDIAN should be served on the standby guardian as soon as is practicable.

Court Approval of a Written Designation of a Standby Guardian

A parent may execute a written designation of a standby guardian at any time. The written designation must be signed by the parent, or another adult on behalf of the parent if the parent is physically unable to do so, provided the designation is signed at the express request of and in the presence of the parent. It must contain:

- the name, address and birth date of the child affected
- the triggering event
- the name and address of the person designated as standby guardian. Va. Code § 16.1-352 (A).

The triggering event in the case of a designated standby guardian may be:

- a determination of incompetence of the parent, and/or
- the death of the parent, and/or
- a determination of debilitation and written consent of the parent to the commencement of the authority of the standby guardian. Va. Code § 16.1-349.

The standby guardian's authority to act shall commence upon the occurrence of the specified triggering event and receipt by him of evidence of that event as specified in Va. Code § 16.1-352 (B).

As soon as practicable and in no event later than thirty days after the date of commencement of the designated standby guardian's authority, they must file a DC-503, PETITION FOR COURT APPROVAL OF STANDBY GUARDIAN with the court. Included with the petition should be a copy of the designation and any determinations of incapacity or debilitation or a certificate of death. Va. Code § 16.1-352 (D).

The provisions regarding notice, service of summonses and the holding of a hearing applicable to court approval of a standby guardian prior to the triggering event must be followed here as well. *See* above.

An order approving the designated standby guardian shall be entered upon a finding that:

- The person was duly designated as a standby guardian pursuant to law and the designation has not been revoked; *and*
- A determination of incompetence was made; a determination of debilitation was made and the parent consented to commencement of the standby guardian's authority; or the parent has died as evidenced by a death certificate; *and*
- The best interests of the child will be served by approval of the standby guardian; *and*
- If the petition is by an alternate, the designated standby guardian is unwilling or unable to serve. Va. Code § 16.1-352 (D).

Use the DC-505, Order Approving Standby Guardian.

Revocation, Refusal, Termination of Standby Guardianship

The qualified parent may revoke the authority of a standby guardian approved by the court by filing a notice of revocation with the court. DC-506, NOTICE OF REVOCATION/STATEMENT OF REFUSAL – STANDBY GUARDIAN may be used by the parent but its use is not mandatory. The notice of revocation must identify the standby guardian or alternate to which the revocation will apply and a copy must be delivered to the standby

guardian whose authority is revoked and any alternate standby guardian who may then be authorized to act. Va. Code § 16.1-354 (A).

At any time following approval by the court, a standby guardian may decline to serve by filing a written statement of refusal with the court and having the statement served on the qualified parent and any alternate standby guardian who may then be authorized to act. The DC-506, NOTICE OF REVOCATION/STATEMENT OF REFUSAL – STANDBY GUARDIAN may be used for this purpose but its use is not mandatory. Va. Code § 16.1-354 (A).

When the standby guardian's authority has become effective upon the debilitation or incompetence of the qualified parent, their authority continues even though the parent is restored to health unless the parent notifies the guardian and, if appropriate, the court, in writing that the standby guardian's authority is revoked upon restoration or otherwise. Va. Code § 16.1-354 (C).

If at any time the court finds that the parent no longer meets the definition of "qualified parent," the court shall rescind its approval of the standby guardian. Va. Code § 16.1-354 (C)

Review of Standby Guardian

Under Va. Code § 16.1-355, a child's parent, stepparent, adult sibling, or any adult related to the child by blood, marriage or adoption may petition the court which approved the standby guardian at any time following the approval and prior to any termination for review of whether continuation of the standby guardianship is in the best interests of the child.

Notice of the filing of a petition shall promptly be given to the standby guardian, the child, if the child is twelve years of age or older, and each parent of the child whose identity and whereabouts are known or could reasonably be ascertained.

Virginia Code § 16.1-350 details the requirements of a petition for court approval of a standby guardian. Virginia Code § 16.1-352 (D) requires the filing of a petition by a designated standby guardian no later than thirty days after the occurrence of the triggering event. Therefore, a separate petition form, the DC-503, PETITION FOR COURT APPROVAL OF STANDBY GUARDIAN has been created to encompass both of these proceedings. A notice must be sent to specified persons of the filing of petitions in both of these proceedings. There are also separate forms to approve for standby guardians and to revoke or refuse the guardianship. *See* DC-504, NOTICE OF PETITION FOR COURT APPROVAL OF STANDBY GUARDIAN, DC-505, ORDER APPROVING STANDBY GUARDIAN, and DC-506, NOTICE OF REVOCATION/STATEMENT OF REFUSAL - STANDBY GUARDIAN.

Testing for HIV (Human Immunodeficiency Virus) or Hepatitis B or C Viruses

Upon the conviction of one of the sex offenses described in Va. Code § 18.2-62 (B) the DC-406, PETITION TO REQUIRE BLOOD TEST is filed through the Court Service Unit. The petition is given precedence on the docket so as to be heard within 48 hours of the filing of the petition. If the court is closed the hearing will be held the next day court is in session. The petition is indexed in the juvenile civil division as a 'ST' case type with a hearing type of 'DS'. The dispositional options are 'GR' or 'D'. If the court determines the person has been exposed, the court shall issue an order requiring the blood test and to disclose the test results. The court may use the circuit court form circuit court form CC-1390, ORDER FOR DNA OR HIV TESTING AND/OR FOR PREPARATION OF REPORTS TO CENTRAL CRIMINAL RECORDS EXCHANGE for this purpose. Any person subject to the testing order may appeal the order to the circuit court within 10 days of receiving notice of the order. The record and test results shall be sealed.

Custody/Visitation-Remanded from Circuit Court Divorce Order

Pursuant to § 20-79 (c) In any suit for divorce or suit for maintenance and support, the court may after a hearing, *pendente lite*, or in any decree of divorce *a mensa et thoro*, decree of divorce a *vinculo matrimonii*, final decree for maintenance and support, or subsequent decree in such suit, transfer to the juvenile and domestic relations district court the enforcement of its orders pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children. After the entry of a decree of divorce a *vinculo matrimonii* the court may transfer to the juvenile and domestic relations district court any other matters pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children on motion by either party, and may so transfer such matters before the entry of such decree on motion joined in by both parties. In the transfer of any matters referred to herein, the court may, upon the motion of any party, or on its own motion, and for good cause shown, transfer any matters covered by said decree or decrees to any juvenile and domestic relations district court within the Commonwealth that constitutes a more appropriate forum. An appeal of an order by such juvenile and domestic relations district court which is to enforce or modify the decree in the divorce suit shall be as provided in § 16.1-296.

Indexing the order in the Juvenile and Domestic Relations District Court will depend on the issues addressed in the order. If custody or visitation is ordered, index the remand order from circuit court as a new juvenile case per child for (1) custody and (2) visitation. The court may either utilize a "dummy" number (95000 numbering sequence), use the next juvenile case number if one has been established already, or use a new juvenile base case number. The case types are **RC** for Remand Custody, and **RV** for Remand Visitation, and are entered in the Juvenile Civil Division. If support is ordered and remanded, the remand order is indexed in the Adult Support Division using case type **RS** for Remand Support. The final disposition is **OT**. If support is not determined but all further matters are remanded a new Petition must be filed with CSU when a party requests court hearing to determine support. Index the order if custody and visitation are determined and the order remands further proceedings. If all matters are

remanded but custody and visitation have not been determined, a new Petition must be filed with CSU when a party requests court hearing to determine custody and visitation.

Forms

DC-510	SUMMONS
DC-511	PETITION
DC-570	ORDER
DC-581	NOTICE OF APPEAL - JUVENILE CIVIL APPEALS
	VIRGINIA UNIFORM SUMMONS

References

§ 16.1-228	Definition-Status offender; Status offense.
§ 16.1-278.4	Disposition
§ 16.1-278.6	Status offenders; disposition
§ 16.1-278.8	Delinquent juveniles.