

# 3

## ENTERING FOSTER CARE

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# 3

## ENTERING FOSTER CARE

### 3.1 Introduction

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Children enter foster care through:

- Court commitment based on an abuse or neglect petition.
- A CHINS (children in need of services) petition.
- An entrustment.
- Delinquency or request for relief of care and custody petitions.
- Non-custodial foster care agreements.

### 3.2 The date a child is considered to enter foster care

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Federal law and regulation provide specific criteria for calculating timelines for determining when a child is considered to have “entered foster care” for the specific purpose of ensuring that court hearings are held according to federal requirements. Virginia’s court hearing requirements surpass federal requirements and as a result, ensure that the case of each child in foster care is heard more frequently than required by federal requirements, as long as the LDSS:

- Provides the court with the contact information necessary to invite the foster, adoptive, or resource parent to participate in the dispositional hearing.
- A foster care review hearing (including notice to the foster, adoptive or resource parent of the hearing and their right to participate in the hearing) is held within twelve (12) months of the hearing that brings the child into foster care.

By following Virginia's requirements for who shall receive notice of hearings (starting with the dispositional hearing) and adhering to the timeline for hearings, the LDSS will be in compliance with federal requirements regarding the date a child enters foster care. Federal requirements are based on:

- The date of the first judicial finding that the child has been subjected to child abuse or neglect; or
- The date that is 60 days after the date on which the child is removed from the home ([Social Security Act, Title IV, § 475 \(5\) \(F\) \[42 USC 675\]](#)).

For the purpose of providing services and assuming placement and care responsibility for the child, the LDSS shall consider the date of removal as the date a child enters foster care.

### 3.3 Best interests of child requirements

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The initial court order shall contain language stating that the child was removed from the home pursuant to a judicial determination that:

- Continuation in the home would be contrary to the welfare of the child; or
- It is in the child's best interests to be placed in foster care; or
- There is no less drastic alternative than removal of the child from his or her home.

Nunc Pro Tunc (now for then) orders or affidavits attesting that the judicial determination occurred at a previous hearing that changes the substance of a prior judicial determination or constitutes a judicial determination not previously made are not acceptable documentation in support of a judicial determination for IV-E eligibility.

### 3.4 Reasonable efforts requirements

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Both federal ([Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272](#)) and state law (§§ [16.1-251](#), [16.1-253](#), and [16.1-278](#)) require that reasonable efforts are made to prevent or eliminate the need for removal of the child from the home and to make it possible for the child to be returned home. The safety of the child is paramount in this decision.

#### 3.4.1 Initial judicial determination of reasonable efforts

At the time of the initial court hearing to commit a child to the custody of the LDSS, approve an entrustment agreement or approve the plan for placement in foster care through a non-custodial foster care agreement, a judicial determination shall be made as to whether reasonable efforts to prevent removal have been made. In order

for the court to determine whether reasonable efforts have been made to prevent removal, the LDSS shall document and submit the following to the court:

- Service needs of the child and family including the safety of the child in the home.
- Services offered to meet the needs.
- The family's participation in service planning.
- The family's response to the services offered.

#### **3.4.2 Requirements for the court order**

The Code of Virginia requires that the initial court order state that reasonable efforts have been made to prevent or eliminate the need for removal. To meet federal requirements, reasonable efforts shall be documented in a court order within 60 days of entry into care or, for an entrustment or non-custodial foster care placement, within six months of placement. Compliance with Virginia law will assure compliance with federal regulations.

#### **3.4.3 Reasonable efforts after LDSS receives custody or accepts placement**

Annually, for every child in foster care, there shall be a judicial determination that reasonable efforts have been made to either:

- Safely reunite the child with his or her prior family if return home is the goal; or
- Finalize an alternate permanent placement for the child as quickly as practicable in accordance with his or her permanency plan if reunification cannot be achieved.

Documentation of reasonable efforts to reunify the child and family or achieve permanency for the child shall be recorded on the initial 60-day service plan, in the case record, and in every foster care review and administrative plan review thereafter.

#### **3.4.4 Reasonable efforts not required**

The LDSS having custody of the child is not required by the court to make reasonable efforts to reunite the child with a parent if the court finds that

- The residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated;

- The parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child;
- The parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or
- Based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to [§16.1-283 D](#).

Agencies are not required to make reasonable efforts to reunite children with a parent who has been convicted of one of the following felonies or who has been found by the court to have subjected any child to aggravated circumstances.

(§ [16.1-283 E](#)). “Aggravated circumstances” means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such child or in serious bodily injury to such child.

“Chronic abuse” or “chronic sexual abuse” means recurring acts of physical abuse which place the child’s health, safety, and well being at-risk.

“Serious bodily injury” means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

“Severe abuse” or “severe sexual abuse” may include an act or omission that occurred only once but otherwise meets the definition of “aggravated circumstances”

If the LDSS determines that reasonable efforts to reunify do not need to be made based on the felony convictions or circumstances listed above, the LDSS shall petition the court to make that determination. This petition may be filed at any court hearing. **Within 30 days** of the court’s determination that reasonable efforts to reunify do not need to be made, the court shall hold a permanency planning hearing.

If the request for such a determination is made at a permanency planning hearing, it will not be necessary to hold another hearing.

The court order shall document that reasonable efforts to reunify are not required, because the parents have been convicted of offenses listed above or had parental rights of a sibling involuntarily terminated.

The law does not require that reasonable efforts be omitted in these cases. Agencies may decide to make reasonable efforts to reunite children with parents even when a court has convicted parent(s) of the crimes listed above or the parental rights of a sibling have been involuntarily terminated. This decision should be made on a case-by-case basis.

#### **3.4.5 When children in custody remain in their own home**

In situations where custody is given to the LDSS and the child remains in the home of the parent(s) or prior custodian, a judicial determination as to reasonable efforts to prevent removal is not necessary. However, if foster care placement becomes necessary, all of the legal requirements shall be met.

### **3.5 Title IV-E funding restrictions**

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Failure to meet requirements regarding best interests and reasonable efforts will result in the child being ineligible for Title IV-E funding. Additional criteria for establishing and maintaining Title IV-E eligibility are explained in the [VDSS Title IV-E Eligibility Manual](#). Placement costs for children found to be ineligible for Title IV-E funding shall be paid from state pool funds.

### **3.6 Authority for placement and dispositional alternatives**

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If reasonable efforts have been made and the child still needs to be temporarily placed in foster care, the LDSS may accept placement of the child through several legal alternatives:

- Entrustment by the parent(s) or guardian(s);
  - *The LDSS shall make diligent efforts to have both parents sign the entrustment agreement if the identity of both parents is reasonably ascertainable. Diligent efforts to identify and locate parents should be documented in OASIS.*
  - *An entrustment agreement is considered valid on the date in which the last required party has signed.*
- Commitment by any court of competent jurisdiction; or

- Placement through an agreement between the LDSS and the parent(s) or guardian(s) where legal custody remains with the parent(s) or guardian(s) ([§ 63.2-900.A](#)).

At each of the different types of court hearings concerning the child's health and safety, the court shall consider placement of the child with a relative or other interested individual as an alternative to foster care. Placements across state lines shall comply with the Interstate Compact on the Placement of Children (ICPC). Refer to the following websites for specific ICPC guidance and procedures:

- [SPARK](#)
- [DSS public website](#)

### 3.6.1 Court hearings

A child may be committed to the local board by a court order. The court order shall meet the reasonable efforts requirements in [Section 3.4](#). The commitment shall be made before the child is 18 years old. The different types of court commitment hearings are:

#### 3.6.1.1 Emergency removal hearing

An emergency removal order may be issued ex parte (defined as "hearings in which the court hears only one side of the controversy") by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer in situations where safety of the child precludes services to prevent removal. The judge may deem that reasonable efforts have been made.

In the emergency removal order, the court shall give consideration to temporary placement of the child with a relative or other interested individual, including grandparents. The LDSS shall supervise this placement, pending the preliminary removal hearing. If the LDSS is providing supervision, a case record should be opened and maintained in OASIS.

As the initial court order, the emergency removal order shall indicate that placement is in the child's best interest (see [Section 3.3](#)) ([§ 16.1-251](#)).

#### 3.6.1.2 Preliminary removal hearing

This is a hearing where the court determines that a child who is alleged to be abused or neglected needs to be placed in foster care.

At this hearing, the court shall find that reasonable efforts have been made to prevent removal and enter that finding on the preliminary removal order. In

situations where safety of the child precludes services to prevent removal, the judge may deem that reasonable efforts have been made.

At the preliminary removal hearing, the court may make an adjudication as to whether the child was abused or neglected as defined in [§ 16.1-228](#). The LDSS, parents, or Guardian ad Litem (GAL) may request that adjudication not occur that day. The court shall then schedule an adjudication hearing to occur within 30 days. The results of the adjudication shall be entered on a court order.

The court will address child support at this hearing ([See Section 4.7.2](#))

The court should consider and may transfer temporary custody to a relative or other interested individual at the preliminary removal hearing if the court finds that the relative or other interested individual is:

- Willing and qualified to receive and care for the child.
- Willing to have a positive, continuous relationship with the child.
- Willing and able to protect the child from abuse and neglect.

If the court orders transfer of temporary custody to a relative or other interested individual, the order will provide for the initiation and completion of an investigation of the relative or other interested individual; and will require the LDSS to continue supervision until disposition. The order will provide for compliance with any preliminary protective order and as appropriate, ongoing provision of social services to the child and temporary custodian.

At this hearing, the court shall schedule a dispositional hearing to occur within 75 days and provide notice to those present to attend that hearing ([§ 16.1-252](#)).

### **3.6.1.3 Dispositional hearing**

This hearing occurs within 75 days of the preliminary removal order hearing; the hearing that brought the child into care; or the date the child came into care if there was no previous hearing (see [Section 3.2](#) for the date a child is considered to enter foster care). At this hearing, the court will enter an order (foster care plan dispositional order- dc- 553) indicating what the disposition of the case will be. The court will also review the initial foster care service plan.

On the petition submitted to the court with the service plan, the LDSS shall include the names and contact information of the foster, resource or adoptive parent so that the court can provide them notice of this hearing. Foster, resource, or adoptive parents' attendance at this hearing is solely for the purpose of the court's review of the service plan and to provide input into this discussion. The initial part of the hearing where the facts about the case are

heard and the judge enters a dispositional order are not open to the foster, resource, or adoptive parent.

The dispositional order shall include a statement as to whether reasonable efforts have been made to return the child home and that continuation in the home would be contrary to the welfare of the child, or that placement is in the best interests of the child, or that there is no less drastic alternative. If there has not been a previous order that states reasonable efforts were made to prevent or eliminate the need for removal, the final dispositional order shall include a statement to this effect.

The court will schedule a foster care review hearing to occur within six months of this hearing to review progress in the case. The court will provide notice to those present to attend the next hearing.

The court should consider the transfer of legal custody of the child to the relative or other interested individual at the dispositional hearing. The order granting legal custody to the relative or other interested individual shall be entered only upon a finding, based upon a preponderance of the evidence from the court directed investigation. The order shall state that the relative or other interested individual is:

- Willing and qualified to receive and care for the child.
- Willing to have a positive and continuous relationship with the child.
- Committed to providing a permanent suitable home for the child.
- Willing and able to protect the child from abuse and neglect.

The court's order should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare, court review of the placement, and provision of ongoing services based on the needs of the child and custodian ([§ 16.1-278.2](#)).

### **3.6.2 Temporary entrustment agreement**

Parent(s) or guardians may voluntarily request that the LDSS take custody of the child for a temporary period. In this case, the local board may accept the child through a temporary entrustment agreement for up to 180 days. Title IV-E eligibility can extend beyond 180 days only when the court approves the temporary entrustment within 180 days of placement and determines that the best interests and reasonable efforts requirements have been met.

Conditions for use of temporary entrustment agreements are:

- To return the child home. A temporary entrustment agreement may also be used for purposes of adoption planning. It is not to be used where the goal for the child is other than return home or adoption planning.
- To specify the rights and obligations of the child, the parent(s) or guardians and the LDSS. The agreement shall include the responsibility of the parent(s) for financial support of the child and the authority of parent(s) and LDSS for medical care of the child.
- Entrustments cannot be used for educational purposes or to make the child eligible for Medicaid.
- Parent(s), prior custodians, or the LDSS may terminate the entrustment agreement within ten days with written notice. The agreement is considered to be revoked unless the LDSS opposes the request and obtains a judicial decision that return is not in the child's best interest.

There are two types of temporary entrustments, those issued for less than 90 days, and those issued for more than 90 days ([§§ 63.2-903](#) and [16.1-277.01](#)).

### **3.6.2.1 Entrustments for less than 90 days**

This type of entrustment is used when a situation related to the child or his family can be resolved within 90 days. Documentation of the plan for services is required. Use of the foster care service plan form is not required. The plan may be an identifiable part of the narrative, or a separate page attached to the agreement.

If the child does not return home within 90 days, the LDSS shall petition the court for a hearing to approve the service plan and entrustment by the 89<sup>th</sup> day after placement ([§ 16.1-277.01](#)). A service plan shall accompany the petition. The service plan shall document that reasonable efforts have been made to prevent removal and to return the child home and that continuation in the home would be contrary to the welfare of the child.

If the LDSS decides to terminate the entrustment and seek court commitment during the first 90 days, the LDSS shall petition the court for custody and submit the service plan for approval.

Federal regulations allow Title IV-E eligibility for temporary entrustment cases that meet all other eligibility requirements for up to 180 days. However, if the entrustment goes beyond 90 days, procedures in [Section 3.6.2.2](#) shall be followed ([§ 16.1-277.01](#)).

### 3.6.2.2 Court hearings to approve entrustments for more than 90 days

The entrustment agreement shall be approved by the court at a court hearing. The LDSS shall petition the court for approval within 30 days of signing the agreement and submit a service plan with the petition (§§ [63.2-903](#) and [16.1-277.01](#)). The court shall set a hearing to approve the entrustment agreement and the service plan within 45 days of receiving the petition of the LDSS. The service plan submitted shall meet all requirements of [Section 12](#) of this chapter.

There shall be a judicial determination regarding best interests (see [Section 3.3](#)) and reasonable efforts (see [Section 3.4](#)) at the hearing approving the entrustment agreement. The initial court order form ([DC-553](#)) shall state that continuation in the home would be contrary to the welfare of the child and that reasonable efforts have been made to prevent removal and obtain alternative permanent placement. A statement that it is in the child's best interest to be placed in foster care or that there is no less drastic alternative than removal of the child from his or her home can substitute for the "contrary to the welfare" statement. These requirements shall be met for the child to continue to remain eligible for Title IV-E beyond 180 days.

At this hearing, the court shall schedule a foster care review hearing to occur within six months and provide notice of this hearing to those present (§ [16.1-281](#)).

In accordance with requirements of the Code of Virginia, any court order transferring custody of an entrusted child to a relative or other interested individual shall be entered only upon a finding, based upon a preponderance of the evidence from a court directed investigation. The order shall state that the relative or individual is:

- Willing and qualified to receive and care for the child.
- Willing to have a positive and continuous relationship with the child.
- Committed to providing a permanent suitable home for the child.
- Willing and able to protect the child from abuse and neglect.

The court's order transferring custody to a relative or other interested individual will provide, if appropriate, any terms and conditions for the child's welfare, ongoing social services for the child and custodian, and court review of the child's placement (§ [16.1-277.01 D1](#)).

### 3.6.3 Permanent entrustment agreement

This agreement provides a method for the parent(s) to voluntarily relinquish parental rights and give the LDSS authority to place the child for adoption. The use of Permanent Entrustment Agreements is described in [Section 9.5.3.1](#).

Federal regulations allow Title IV-E eligibility for children who enter care through a permanent entrustment agreement only when court approval is obtained within 180 days of placement. The court shall make a judicial determination that placement is in the best interest of the child (see [Section 3.3](#)) and that reasonable efforts have been made (see [Section 3.4](#)).

Once the court approves the permanent entrustment agreement, all parental rights are terminated. The parent can no longer revoke the permanent entrustment agreement.

If a parent is incarcerated, the court may authorize the Department of Corrections to have the prisoner transported to provide necessary testimony in hearings related to child welfare. The testimony of prisoners can also be acquired using electronic video and audio communication systems or telephonic communication systems in lieu of a personal appearance if authorized by the court ([§§ 16.1-276.3](#) and [16.1-93.1](#)).

The adoption progress report shall be submitted to the court within six (6) months of the court's approval of the permanent entrustment.

### 3.6.4 Relief of care and custody

Parents may request temporary or permanent relief of care and custody.

On receipt of a petition for relief of custody, the court should refer requests for relief to LDSS initially for investigation and provision of services ([§ 16.1-277.02](#)). The intent of this requirement is to determine whether the provision of services will prevent placement.

At the hearing, the court will determine, based on evidence presented, including the report from the LDSS, whether the parent should be relieved of custody. If permanent relief is requested, the court will determine whether, based on clear and convincing evidence, termination of parental rights is in the child's best interests. Parental rights can be terminated only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child ([§ 16.1-277.02](#)).

If a parent is incarcerated, the court may authorize the Department of Corrections to have the prisoner transported to provide necessary testimony in hearings related to child welfare. The testimony of prisoners can also be acquired using electronic video

and audio communication systems or telephonic communication systems in lieu of a personal appearance if authorized by the court.

If relief is granted, the court will schedule a dispositional hearing within 75 days.

If permanent relief of custody is granted and termination of parental rights is ordered, the LDSS shall submit an adoption progress report to the court within six (6) months of the hearing (§§ [16.1-277.02](#) and [16.1-278.3](#)).

### **3.6.5 Services to children through agency agreements with parents who retain custody**

When a child is placed outside of the home, there are two types of agreements between a public agency and the parents or legal guardians who retain custody of the child. The type of agreement depends primarily on which public agency serves as case manager for the child placed outside of the home.

- When the LDSS serves as the case manager, the child shall be considered in foster care and a Non-Custodial Foster Care Agreement is used. (See [Section 3.6.5.1](#))
- When another public agency, other than the LDSS, is designated by the CPMT or the court to serve as the case manager, the child shall not be in foster care and a CSA Parental Agreement is used. (See [Section 3.6.5.2](#))

Parents or legal guardians do not have to relinquish physical or legal custody of their children to the LDSS in order to obtain necessary mental health services. Such services may be available through a CSA parental agreement and may include a full range of casework, treatment, and community services for a planned period of time. Services should be based on the assessed strengths and needs of the children and their family and documented in the service plan.

#### **3.6.5.1 Non-Custodial Foster Care Placements**

Parent(s) or guardians may enter into an agreement with the LDSS to voluntarily place a child under age 18 outside of the home in 24-hour substitute care while the parent(s) or guardians retain legal custody. The child is considered in foster care with the LDSS assuming placement, care and case management responsibility for the child ([45 CFR 1355.20](#)). Legal custody of the children by the state child welfare agency (or its local counterparts) is not required in the federal definition. Thus, children placed through non-custodial agreements are in foster care.

All federal and state requirements shall be met, as with all children in foster care. The formal agreement between the parents and the LDSS is called a non-custodial foster care agreement.

Prior to entering a non-custodial foster care agreement, services to prevent the need for foster care placement shall be offered and shall be documented in the service plan. In emergency situations where services cannot be offered, the reasons shall be recorded on the service plan.

Before choosing this placement alternative and entering into a non-custodial foster care agreement, the LDSS shall assess and determine that:

- Leaving custody with the parent(s) or guardians is in the best interests of the child and will not place the child at risk.
- The parent(s) or guardians will remain actively involved with the child during the placement.

These determinations shall be documented on the Non-Custodial Foster Care Agreement (see [Section 3.6.5.1.1](#)). If these conditions do not exist, transferring custody to the LDSS should be considered.

#### **3.6.5.1.1 LDSS Non-Custodial Foster Care Agreements**

Non-Custodial Foster Care Agreements are between the LDSS and the parent(s) or custodians. *When a non custodial foster care agreement is executed, the permanency goal shall be reunification.* The non-custodial foster care agreement shall address the conditions for care and control of the child, and the rights and obligations of the child, parent(s) or guardians, and the LDSS and include:

- The legal status of the child. With this agreement, the child would remain in the legal custody of the parent(s) or guardians.
- A statement that leaving custody with the parent(s) or guardians is in the best interests of the child and will not place the child at risk.
- A statement that this is a voluntary agreement between the parent(s) or guardians and the LDSS; and that the child will be returned to the parent(s) or guardians if the agreement is revoked.
- A statement that if the parent wishes to revoke the agreement after the court approves the agreement, judicial approval for terminating the agreement shall be obtained.
- A statement that the LDSS has the right to seek judicial determination regarding custody of the child in a situation where the parent(s) or guardians revoke the agreement and the LDSS opposes return of the child.

- Requirements of the parent(s) or guardians for financial support, including a statement that the case will be referred to the Division of Child Support Enforcement (DCSE).
- Authority of the parent(s) or guardians and the LDSS in making medical care and treatment decisions.
- Expectations of the parent(s) or guardians during the placement, including a statement that the parent(s) or guardians will remain actively involved with the child during the placement.
- Expectations of the LDSS providing services to the child;
- Visitation arrangements.
- The date of the placement.
- Other conditions for placement.
- When the placement is an interstate placement, a statement pertaining to responsibility for return of the child if the placement agreement is revoked.
- *A non-custodial foster care agreement may extend beyond a child's 18<sup>th</sup> birthday with the consent of all parties in keeping with the child's needs and with the family and youth's cooperation to continuing services and placement.*

A copy of the agreement should be given to the parent(s) or guardians, to the placement provider, and be kept in the child's record. (See the DSS internal website for a template [Non-custodial Foster Care Agreement Form](#).)

#### **3.6.5.1.2 Court approval of plan for placement through a non-custodial foster care agreement**

The LDSS shall file a foster care plan with the Juvenile and Domestic Relations District Court within 60 days following the board or LDSS' placement of the child unless the court, for good cause, allows an extension of time, which shall not exceed an additional 60 days (§ [16.1-281 A](#)). The LDSS should file a CHINS petition to place the case on the court's calendar and submit the foster care plan.

The court shall hold a hearing within 75 days of the child's initial foster care placement to review and approve the plan (§ [16.1-281 C](#)).

The court order shall include statements that:

- Reasonable efforts have been made to prevent the placement.
- Continuation in the home is contrary to the child's welfare, or it is in the child's best interest to be placed in foster care, or that there is no less drastic alternative than removal of the child from his or her home.

All foster care requirements shall be met. Time frames for administrative panel reviews and hearings are based on the date of the initial non-custodial foster care placement. The foster care review hearing shall occur within six (6) months of the 75-day hearing, if the child remains in non-custodial foster care placement longer than six months. Refer to [Section 12.2](#) for legal requirements pertaining to foster care reviews.

#### **3.6.5.1.3 Other requirements**

The case shall be entered into OASIS as a foster care case.

The case shall be referred for Medicaid, Title IV-E screening and child support. Child support is to be addressed in the non-custodial foster care agreement. Parents are responsible for paying support from the beginning of placement ([§ 63.2-909](#)). A claim for good clause may be made when appropriate. Child support is to be based upon [DCSE guidelines](#).

Since the child's parent(s) retain custody, they are responsible for signing the required referral and application forms.

Maintenance and service costs for non-Title IV-E children will be paid from State Pool Funds.

If the LDSS agrees to the return of the child and all required conditions for the child's safe return are met, the child may be sent home on a home visit pending final court approval.

#### **3.6.5.2 CSA Parental Agreements**

CSA Parental Agreements are agreements between a public agency other than the LDSS, designated by the CPMT, and a parent or guardian who retains legal custody of the child. CSA Parental Agreements are only used when the FAPT determines that a child requires placement outside of the home to address the child's service needs.

The public agency designated by the CPMT assumes case management responsibilities. The LDSS cannot be the case manager. If the LDSS is the case manager, the child shall be in foster care and a Non-Custodial Foster Care Agreement shall be used.

Thus, when a child is placed outside of the home through an agreement between a public agency, other than the LDSS, as designated by the CPMT, and the parent(s) or custodians retain legal custody of the child, and this other public agency provides case management services, this child is not considered in foster care and is not subject to the requirements, policies, and protocols (i.e., court hearings, Title IV-E eligibility determinations, etc.) required for children in foster care.

While these children are not in foster care, they are eligible for foster care services since they have been placed under an agreement between the local public agency designated by the CPMT and the parents or custodians who retain legal custody ([§ 63.2-905](#)).

These CSA Parental Agreements, where a public agency other than the LDSS provides case management services, are subject to Final Interagency Guidelines established by the State Executive Council (SEC) of CSA. The LDSS never uses these agreements. (See the [CSA Policy Manual](#), Appendix D.)

The CSA guidelines specify the criteria for FAPT, or an approved multi-disciplinary team, to use in determining when a child meets the statutory definition of a “child in need of services” and is eligible for foster care services, consistent with CPMT policies. (See the [CSA Policy Manual](#), Appendix D.)

A CSA Parental Agreement delineates the responsibilities of both the parent(s) or custodians and the local case management agency, which cannot be the LDSS, in the provision of services. For the CSA Parental Agreement form, go to the [CSA Policy Manual](#), Appendix D.

The CSA interagency guidelines, checklist, FAQs, tools and additional information is available in the [CSA Policy Manual](#), Appendix D for the VDSS.

## 3.7 Special populations

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### 3.7.1 The minor child of a foster youth

- The foster care provider is responsible for providing room and board and ensuring that the payment is used to meet the child’s needs. (Refer to [Section 3.7.1.1](#) for payment information.)
- The minor child of a foster youth remains the responsibility of his or her parent, unless custody has been removed.
- The minor child shall be listed in OASIS with the foster youth (parent).

- The minor child is not subject to requirements for plans, reviews, or hearings. However, the needs and safety of the minor child should be considered and documented when developing the service plan for the (foster youth) parent.
- The minor child is eligible for Medicaid, services, and child support services.

#### **3.7.1.1 Paying maintenance for minor child of foster youth**

The minor child of a youth in foster care, who is living in a foster home or residential facility with his or her parent and who is in the custody of the parent, shall be eligible to receive a foster care maintenance payment and shall not be eligible for TANF. The foster care provider should receive a maintenance payment for the minor child in the amount appropriate for the age of the child and from the same funding source as the parent of the child (i.e., Title IV-E or state pool funds).

The service worker does not open a case for the minor child; all costs are paid under the foster youth's case. The maintenance payment should be added to the foster youth's foster care payment. If the foster youth resides in a residential facility with her minor child, the rate paid will be the rate negotiated with the facility for maintenance for the minor child. If the foster youth lives in an independent living arrangement, the minor child may be eligible for TANF.

- If the minor child of a foster youth has his or her own income (i.e., SSI, SSA, or child support), these resources shall be used toward the maintenance cost.
- If the LDSS finds it necessary to assume custody of a child of a foster youth, the child of the foster youth may be eligible for Title IV-E or state pool funds. Eligibility for the child of the foster youth is determined in the same manner as are all other children in foster care.

#### **3.7.2 Indian child of a tribe**

Children of Native American or Alaskan Eskimo or Aleut heritage of a federally recognized tribe are subject to the Indian Child Welfare Act. If the LDSS suspects or knows that a child in foster care or one about to be placed in foster care is of American Indian or Alaskan Eskimo or Aleut heritage, and the child belongs to a tribe located outside Virginia, the LDSS shall contact the designated tribal agent about the child. A listing of recognized tribes and designated tribal representatives with addresses and phone numbers can be found at the [U. S. Department of the Interior Bureau of Indian Affairs](#). The Federal Register provides the [2011 List of Indian Child Welfare Act Designates](#).

Because Virginia has no federally recognized tribes, a child belonging to a Virginia tribe is not subject to the Indian Child Welfare Act, and the local court has

jurisdiction. However, when a child entering care is believed or known to have Virginia Indian heritage, the LDSS shall immediately contact the [Bureau of Indian Affairs Eastern Regional Office](#) at its website or Franklin Keel at 615-564-6700 for guidance on ICWA for notification procedures of the proper tribe. The LDSS should consider tribal culture and connections in the placement and care of the child.

For more information, see the [Child Protective Services Manual, Section 1.9, Appendix A.](#)

### 3.7.3 Youth in DJJ custody

The purpose of this section is to identify procedures for the LDSS in order to provide services for foster care youth committed to the Department of Juvenile Justice (DJJ). These procedures will require coordination and cooperation between DJJ and LDSS staff. These procedures chronologically outline the responsibilities of a LDSS once a foster care youth is committed to DJJ. These procedures are in compliance with §§ [16.1-291](#), [16.1-293](#), and [16.1-294](#).

#### 3.7.3.1 Youth committed to Department of Juvenile Justice

At the time a youth in custody of the LDSS is committed to DJJ, the juvenile and domestic relations court service unit shall maintain contact with the youth during commitment.

A youth committed to DJJ is no longer in the custody of the LDSS and shall be discharged from foster care. The date of the court order will be the discharge date as documented in OASIS.

*Although the youth is no longer in DSS custody, the LDSS service worker shall maintain contact with the youth and DJJ during the commitment time period when it is anticipated that the youth will return to LDSS custody at the end of the DJJ commitment.*

#### 3.7.3.2 Post-release supervision

Post-release supervision is the period that begins after a youth who has been committed to the DJJ returns to a local community for supervision.

Post-release supervision or parole supervision of a youth is the responsibility of DJJ and not the LDSS.

In the event that the youth was in the custody of the LDSS immediately prior to his commitment to DJJ and has not attained the age of 18 years, the LDSS shall resume custody upon the youth's release, unless an alternative arrangement for the custody has been made and communicated in writing to DJJ. DJJ will consult with LDSS **twelve weeks prior** to the youth's release

from commitment on parole supervision concerning return of the youth to the locality and the placement of the youth (§ [16.1-293](#)).

### 3.7.3.3 Children returned to the LDSS and placed in out-of-home placement

- The case shall be opened in OASIS to foster care (see [Section 3.7.3.4](#)).
- The youth is eligible for foster care maintenance and services. These cases are subject to requirements governing service plans, supervisory or panel reviews and dispositional hearings.
- The service worker shall refer the youth and provide information on the [Title IV-E/Medicaid Eligibility Form](#) to the eligibility worker. The eligibility worker shall determine the youth is not eligible for Title IV-E Foster Care and determine whether the youth is eligible for Medicaid.

### 3.7.3.4 OASIS requirements

When a youth returns to LDSS custody from a DJJ commitment, the youth must be re-opened to foster care. The day the child is returned to LDSS custody is the date of the new foster care episode. If the youth was part of a foster care case in OASIS that remained open because siblings were still in foster care, the client's information should be updated. If the youth's OASIS foster care case was closed when he was committed to DJJ, that case should be re-opened.

- If the case is still open, delete the end date on the Client General Information screen to reactivate the youth.
- If the case is closed, reopen the case:
  - Select "Reopen" on the Summary screen.
  - Enter "Foster Care" as the case type with the begin date as the date the youth returned to LDSS responsibility.
  - Delete the end date on the Client General Information screen to reactivate the youth.
  - Delete the end date on any other client who will be active in the case.

The service worker shall then enter required information into the Physical Removal Screen and Legal Basis for Custody Screen in OASIS as follows:

#### Physical Removal Screen:

<b>Date Child Removed from Home:</b>	Date left DJJ returned to DSS custody
<b>Child Removed From:</b>	Legal Guardian
<b>Type of Removal:</b>	Court Ordered
<b>Caretaker Family Structure:</b>	Unable to Determine
<b>Conditions:</b>	Child's Behavior Problem

**Legal Basis for Custody Screen:**

<b>Begin Date:</b>	Date left DJJ returned to DSS custody
<b>Official Custody:</b>	Court Ordered
<b>Custody Disposition:</b>	DSS Custody
<b>Legal Basis for Custody:</b>	Needs Services

**3.7.3.5 Submission of the Foster Care Service Plan to court**

When a youth is returned to foster care from DJJ, the LDSS should file a CHINS petition to schedule a foster care review hearing. The date a child is returned from DJJ to LDSS custody, is considered to be the date the child entered foster care. The LDSS shall submit a service plan on the youth to the court no later than 60 days from the date that the child is considered to have entered foster care.