

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: HB893 H3

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: McClure

3. Committee: Passed both Houses

4. Title: Standards for attorneys appointed to represent parents or guardians; child dependency cases.

5. Summary: This bill requires the Judicial Council, in conjunction with the Virginia State Bar and the Virginia Bar Association, on or before January 1, 2026, to adopt standards for the qualification and performance of attorneys appointed pursuant to § 16.1-266 (appointment of counsel and guardian ad litem) to represent a parent or guardian of a child when such child is the subject of a child dependency case. The bill outlines criteria for the standards.

The bill requires that, beginning July 1, 2026, the Judicial Council must maintain a list of attorneys admitted to practice law in Virginia who are qualified to be appointed to represent indigent parents and guardians involved in a child dependency case based on the standards required by this section. The bill requires that such names must be made available to the courts.

The bill requires that counsel appointed for a parent or guardian pursuant to subsection D of § 16.1-266 (outlines right to counsel for certain parents and guardians) prior to July 1, 2026, must be selected from the list of attorneys who are qualified to serve as guardians ad litem. On or after July 1, 2026, such counsel must be selected from the list of attorneys who are qualified to be appointed to represent indigent parents and guardians established in accordance with the provisions in the paragraph above.

The bill sets the amount that counsel must receive when representing a parent, guardian, or other adult in a child dependency case. In addition, a second enactment provides that up to two multidisciplinary law offices or programs may be established for the purpose of representing parents in child dependency court proceedings, and a third enactment requires that any such multidisciplinary law office or program submit an annual report on program outcomes, expenses, recommendations, and any other information pertinent to the measurement of how the program impacts progression of child dependency cases to the Office of the Children's Ombudsman and the Chairs of the House Committees for Courts of Justice, Health and Human Services and Appropriations and the Senate Committees for Courts of Justice, Education and Health and Finance and Appropriations.

The substitute bill has a delayed effective date of January 1, 2025.

6. **Budget Amendment Necessary:** Yes, Items 31, 33, and 36. Also, see Item 8 below.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** The bill raises the fee cap for appointed counsel in child dependency cases (i.e., abuse or neglect, relief of custody, entrustment, initial foster care, foster care review, and permanency planning cases) in district court from the current rate of \$120 to \$330, as well as the cap for termination of parental rights cases in district court from the current rate of \$120 to \$680. The rate would be raised for cases heard de novo in circuit court as well, from \$158 to \$330 in child dependency cases, and from \$158 to \$680 in termination of parental rights cases.

According to the Office of the Executive Secretary of the Supreme Court (OES), the average annual number of cases where counsel was appointed to represent parents in child dependency cases heard in Juvenile and Domestic Relations (JDR) courts between FY 2021 and FY 2023 was 19,517 cases and the average annual number of cases where counsel was appointed for termination of parental rights during the same time was 2,139.

The OES reports that in circuit courts, the average annual number of abuse or neglect and foster cases with a de novo appeal from FY 2021 through FY 2023 was 827 cases, and the average annual number of terminations of parental rights cases with such a noted appeal was 328 cases.

Based on the information provided above, the estimated impact of raising the fee caps for court-appointed counsel would have on the Criminal Fund is estimated at \$5.6 million general fund annually as detailed below.

JDR Child Dependency Cases		JDR Termination of Parental Rights Cases	
Current fee	\$ 120	Current fee	\$ 120
Proposed fee	\$ 330	Proposed fee	\$ 680
Difference	\$ 210	Difference	\$ 560

Circuit Court Child Dependency Cases		Circuit Court Termination of Parental Rights Cases	
Current fee	\$ 158	Current fee	\$ 158
Proposed fee	\$ 330	Proposed fee	\$ 680
Difference	\$ 172	Difference	\$ 522

Costs based on average case count data			Costs based on average case count data		
Court	# cases	Cost = # cases * \$210 (JDR)/\$172 (Circuit)	Court	# cases	Cost = # cases * \$560 (JDR)/\$522 (Circuit)
JDR	19,517	\$ 4,098,570	JDR	2,139	\$ 1,197,840
Circuit	827	\$ 142,244	Circuit	328	\$ 171,216
Total		\$ 4,240,814	Total		\$ 1,369,056
Total impact on Criminal Fund			\$ 5,609,870		

Additionally, the OES reports that another employee would be needed to assist with developing the new standards and to maintain the list of qualified attorneys required by the bill. The annual compensation for this employee is estimated at \$100,060 (salary and benefits) general fund, beginning in the second half of FY 2026. OES reports that system enhancements would also be necessary to maintain the automated list of qualified attorneys. OES believes that much of the existing structure currently used to manage the qualification of guardians' ad litem could be repurposed for such a system. If this assumption is correct, OES estimates that the one-time cost for the system enhancements would be \$739,560 general fund, which would be needed in FY 2026. Given the delayed effective date of January 1, 2025, a total of \$2.8 million general fund will be required in FY 2025, with \$6.4 million general fund required in FY 2026, and \$5.7 million general fund required each year thereafter after removing one-time startup costs and annualizing the cost for one position.

Enactment clauses provide that up to two multidisciplinary law offices or programs may be established for the purpose of representing parents in child dependency court proceedings or, prior to the initiation of such proceedings, pursuant to a child protective services assessment or investigation in localities, jurisdictions, or judicial districts that affirm they have met criteria developed by the work group established by Chapter 305 of the Acts of Assembly of 2022. Costs associated with such law offices or programs are not known at this time.

In addition, such multidisciplinary law offices must utilize the Interdisciplinary Practice Model developed by the American Bar Association and the Family Justice Initiative and develop such protocols, goals, and outcome measures that are consistent with those required for federal financial participation for legal representation under Title IV-E of the Social Security Act, 42 U.S.C. § 673 (Title IV-E). Consistent with this, any private or local public entities establishing a multidisciplinary law office may enter into an agreement with a local department of social services or the Department of Social Services to receive Title IV-E funding for eligible administrative costs of providing legal representation for a child who is a candidate for Title IV-E foster care or in foster care and his parent to prepare for and participate in all stages of foster care legal proceedings, including court hearings related to the child's removal from the home. The fiscal impact as a result of this provision is unknown at this time.

9. Specific Agency or Political Subdivisions Affected: Courts, Department of Social Services, localities

10. Technical Amendment Necessary: No

11. Other Comments: None