



Frequently Asked Questions

on the

*Interagency Guidelines on Foster Care Services for Specific Children in Need of Services
Funded through the Comprehensive Services Act*

1. Why and how were the Interagency Guidelines developed?

The Guidelines resolved the long-standing problem of custody relinquishment, which refers to the practice of parents giving up legal custody of a child to the Department of Social Services (DSS) in order to access mental health treatment that the parent can no longer afford for the child. Typically, these are children who have chronic and severe emotional/behavioral problems that have drained the family over time both financially and emotionally. Prior to the adoption of the Guidelines, in some areas of Virginia the Code was interpreted that the only means of access to services, particularly for residential treatment, was for the parent to relinquish custody of the child to the local DSS to make the child “mandated” under the Comprehensive Services Act (CSA).

An earlier attempt to serve these children and families was made in 1994 when the Code [SB557 1994 session](#) was revised to permit “agreements between the local board or agency designated by the community policy and management team, where the parent or guardian retains legal custody.” ([COV 63.2-905](#)) The law provided a mechanism for children to access mandated services under the statutory definition of foster care services, but did not require the parent to relinquish custody.

However, these agreements, which came to be known as “Non-Custodial Foster Care Agreements”, were problematic. Typically, the local department for social services was assigned case management responsibility. Both federal and state law required that DSS serve these children as they did foster children in such ways as determination of Title IV-E eligibility, referral to the Division of Child Support Enforcement, documentation of the child’s services in the state official foster care record (OASIS) and submission of service plans to the court and periodic review of the plan by the Court.

Consequently, even though parents retained legal custody, many stated that it still felt like their children were in foster care and complained of the stigma of DSS and court involvement when they were trying to obtain mental health treatment for their children. Additionally, the law did not require local governments to offer non-custodial agreements and so, in some areas they were not an option. However, it should always be noted that local governments often served these children and families through other funding streams, VDSS funds such as Promoting Safe and Stable Families, non-mandated funding, Mental Health Initiative, etc.

The issue of custody relinquishment was the subject of a legislative study published in 2004 ([Custody Relinquishment Report](#)) and in December 2006, the Attorney General rendered an opinion ([AG Opinion on Custody Relinquishment](#)) regarding the provision of mental health services to children and families under the Comprehensive Services Act. This opinion and a subsequent JLARC follow-up study, published in March, 2007 ([JLARC Report](#)) triggered the development of the Guidelines.

An interagency workgroup of over 40 stakeholders was created in early April 2007 by the Executive Director of the Office of Comprehensive Services. This group worked exhaustively over several months to develop and clarify the guidelines. A period of public review and comment was held from May 18, 2007 until July 20, 2007. Comments included the need for a standardized way of determining eligibility under the Guidelines and for a template of a Parental Agreement. Two subgroups were formed which developed these documents, which along with the Guidelines, were submitted to the State Executive Council in October 2007. The SEC authorized the Guidelines, but allowed an additional thirty day comment period. The Guidelines became effective on December 3, 2007. In July of 2008, the Guidelines were revised to reflect a statutory change which removed the requirement for a court review for families served through CSA parental agreements.

2. What is the statutory authority for provision of services under the Interagency Guidelines?

The Guidelines were adopted by the State Executive Council as policy for services provided through the Comprehensive Services Act. In accordance with the Code of Virginia §2.2.2648, the SEC has the responsibility to “provide for the establishment of interagency programmatic and fiscal policies...which support the purposes of the Comprehensive Services Act...” ([COV 2.2-2648](#))

3. Are Children in Need of Supervision (CHINSup) the same as the CHINS referred to in the Interagency Guidelines?

No. The Code provides definitions for these two similarly-named categories of children at [COV 16.1-228](#)

4. Are youth who are delinquent eligible for foster care services under the Interagency Guidelines?

Refer to pages 1-2 of the Guidelines for a listing of who is not eligible. Children who are “solely” delinquent are not eligible. However, a delinquent youth may present with significant mental health issues and need treatment. This is a FAPT decision and should be made on a case by case basis. One of the eligibility criteria is that the family must be willing to work to keep the child in the home for foster care prevention services or to have the child returned home as soon as possible if placed through a parental agreement.

4. Are all services provided under the Interagency Guidelines, including parental agreements, considered foster care prevention?

No. The Code of Virginia provides for three separate and distinct types of “foster care services.” ([COV 63.2-905](#))

Foster care services are defined as “the provision of a full range of casework, treatment and community services, including but not limited to independent living services, for a planned period of time to a child...when the child

- has been identified as needing services to prevent or eliminate the need for foster care placement,
- has been placed through an agreement between the local board or the public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardian or
- has been committed or entrusted to a local board or licensed child placing agency.” §63.2-905 (*formatting added.*)

The first bullet refers to the provision of foster care prevention services. Foster care prevention services are offered in the home and community. The second bullet refers to either Non-custodial Foster Care Agreements or CSA Parental Agreements, which provide out-of home services to the child. The third bullet refers to children placed in the custody of either a local DSS or a licensed child placing agency. These three categories do not overlap or supersede one another; each is “mandated” in its own right.