

00-034

ADMINISTRATION OF GOVERNMENT GENERALLY: COMPREHENSIVE SERVICES ACT FOR AT-RISK YOUTH AND FAMILIES.

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS – VIRGINIA JUVENILE COMMUNITY CRIME CONTROL ACT.

Family assessment and planning team may not refer juvenile for services funded under Juvenile Community Crime Control Act rather than Comprehensive Services Act, where juvenile is eligible under both acts for services not yet funded by either act.

Mr. Robert W. Bendall
City Attorney for the City of Manassas
July 28, 2000

You inquire concerning the Virginia Juvenile Community Crime Control Act¹ ("JCA") and the Comprehensive Services Act for At-Risk Youth and Families² ("CSA"), and whether a family assessment and planning team may refer a juvenile, who is eligible under both acts for services that have not yet been funded by either act, for services funded under JCA rather than CSA.

In your opinion request,³ you advise that CSA is a mandatory program, requiring each county and city to participate either individually or in combination with other counties or cities. Furthermore, you advise that the CSA fund is "sum sufficient," meaning that the General Assembly and localities must appropriate sufficient sums of money for three mandated categories of eligible youths. You observe that JCA is a voluntary program, and that funds provided under the act "shall not be used to supplant funds established as the state pool of funds under § 2.1-757."⁴ You also observe that the state pool of funds under § 2.1-757 constitutes the CSA fund. You report that a disagreement has arisen concerning whether a youth who is eligible for services under both acts, and who has been referred to a family assessment and planning team for the first time, may receive JCA-funded services. You conclude that when a juvenile is eligible for JCA and CSA services that have not yet been funded by either act, the family assessment and planning team may elect to refer the juvenile for services funded by JCA rather than CSA.

The 1992 Session of the General Assembly enacted CSA "to create a collaborative system of services and funding ... when addressing the ... needs of troubled and at-risk youths and their families."⁵ CSA establishes a state executive council⁶ and a state advisory team.⁷ The state executive council oversees the administration of CSA, including the administration of the policies governing the use and distribution of the state pool of funds established under § 2.1-757(A) and the state trust fund established under § 2.1-759(A).⁸

The state executive council appoints the members of the state advisory team.⁹ Prior § 2.1-748(2) authorized the state advisory team to "[d]evelop and recommend to the state executive council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund."¹⁰ Pursuant to this authority, the state advisory team recommended, and the state executive council adopted, the Comprehensive Services Act for At Risk Youth and Families ("CSA") Manual.¹¹ The Office of Comprehensive Services for Youth and Families administers CSA¹²

CSA also requires "[e]very county, city, or combination of counties, cities, or counties and cities [to] establish a community policy and management team"¹³ and requires each team to establish one or more family assessment and planning teams.¹⁴ A community policy and management team includes the local agency heads or their designees of the following community agencies: the community services board established under § 37.1-195; the juvenile court services unit; the local

departments of health and social services; and the local school division.¹⁵ These community agencies deliver services under CSA and generally are referred to as "stakeholder agencies."

The state pool of funds established under § 2.1-757(A) funds CSA.¹⁶ The pool consists of General Assembly appropriations.¹⁷ Funds from the state pool are to be allocated to community policy and management teams "in accordance with the appropriations act and appropriate state regulations" and are to be "expended for ... nonresidential or residential services for troubled youths and families."¹⁸

Section 2.1-757(B) states:

The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children.... The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs ...;
2. Children with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or ... special education day schools ...;
3. Children for whom foster care services ... are being provided to prevent foster care placements, and children placed ... in suitable family homes, child-caring institutions, residential facilities or independent living arrangements ...;
4. Children placed by a juvenile and domestic relations district court ... in a private or locally operated public facility or nonresidential program; and
5. Children committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility

The 1995 Session of the General Assembly enacted JCA to provide funding to localities to implement a continuum of programs and services to meet the needs of youths involved in the juvenile justice system.¹⁹ Section 16.1-309.2 clearly and unambiguously sets forth the intent of JCA:

The General Assembly, to ensure the imposition of appropriate and just sanctions and to make the most efficient use of correctional resources for those juveniles before intake on complaints or the court on petitions alleging that the juvenile is a child in need of services, child in need of supervision, or delinquent, has determined that it is in the best interest of the Commonwealth to establish a community-based system of progressive intensive sanctions and services that correspond to the severity of offense and treatment needs. The purpose of this system shall be to deter crime by providing immediate, effective punishment that emphasizes accountability of the juvenile offender for his actions as well as reduces the pattern of repeat offending. In furtherance of this purpose, counties, cities or combinations thereof are encouraged to develop, implement,

operate and evaluate programs and services responsive to their specific juvenile offender needs and juvenile crime trends.

[JCA] shall be interpreted and construed to accomplish the following purposes:

1. Promote an adequate level of services to be available to every juvenile and domestic relations district court.
2. Ensure local autonomy and flexibility in addressing juvenile crime.
3. Encourage a public and private partnership in the design and delivery of services for juveniles who come before intake on a complaint or the court on a petition alleging a child is in need of services, in need of supervision or delinquent.
4. Emphasize parental responsibility and provide community-based services for juveniles and their families which hold them accountable for their behavior.
5. Establish a locally driven statewide planning process for the allocation of state resources.
6. Promote the development of an adequate service capacity for juveniles before intake on a complaint or the court on petitions alleging status or delinquent offenses.

Funding for JCA began in January 1996²⁰ with the predispositional and postdispositional components of the formula.²¹ The 1996 Session of the General Assembly added the first offender and diversion components, providing additional funding to JCA.²² The 1999 Session continued to support community programs by adding a hold harmless clause so that no locality would receive less than it received in fiscal year 1998.²³ The 2000 Session added a funding floor to provide a minimum level of funding so that no locality would receive less than the mid-point of the lowest quartile of funding.²⁴

To participate in JCA, a county, city or combination of counties and/or cities is encouraged to work toward developing a system of predispositional and postdispositional services "for juveniles before intake on complaints or the court on petitions alleging that the juvenile is a child in need of services, in need of supervision, or delinquent."²⁵ Community-based services instituted under JCA are required to be administered by a county, city or combination of counties and/or cities, and "may be administered through a community policy and management team established under § 2.1-750 or a commission established under § 16.1-315."²⁶ "Funds provided to implement [JCA] shall not be used to supplant funds established as the state pool of funds under § 2.1-757."²⁷

There are several rules of statutory construction that should be applied to this matter. Obviously, the primary goal of statutory construction is to ascertain and give effect to legislative intent.²⁸ "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."²⁹ Statutes should not be construed to frustrate their purpose.³⁰ In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.³¹ Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.³² Statutes are also to be read as a whole rather than in isolated parts.³³

The General Assembly does not define the term "supplant" as it is used in § 16.1-309.3(C). Consequently, the term must be given its ordinary meaning within the statutory context.³⁴ "Supplant" generally means "to supersede (another)"; "to take the place of; oust from a position and serve as a substitute."³⁵ The term "supersede" generally means "to take the place of and outmode by superiority: supplant and make inferior by better or more efficiently serving a function"; "to cause to be supplanted in a position or function."³⁶

The General Assembly enacted CSA three years before it enacted JCA. The state advisory team has promulgated the CSA Manual which has been adopted by the state executive council. Stakeholder agencies have been delivering services under CSA pursuant to the CSA Manual for three years longer than JCA has been in effect. Under JCA, the Department of Juvenile Justice is required to "devise, develop and promulgate a statewide plan for the establishment and maintenance of a range of institutional and community-based, diversion, predispositional and postdispositional services."³⁷ The program funding for JCA continues to be phased in by the General Assembly. The funding for JCA community-based services is to be used "to make the most efficient use of correctional resources ... before intake on complaints or the court on petitions."³⁸ In order to ensure an efficient use of correctional resources, funds provided to implement JCA may not be used in the place of CSA funding established under § 2.1-757.

It is my view that a family assessment and planning team may not refer a juvenile for services funded under JCA when CSA funding is available for such purposes. Therefore, when a juvenile is eligible under both JCA and CSA for services that have not yet been funded by either act, it is my opinion that the local family assessment and planning team may not refer the juvenile for services funded under JCA rather than CSA.

¹Tit. 16.1, ch. 11, art. 12.1, §§ 16.1-309.2 to 16.1-309.10.

²Tit. 2.1, ch. 46, §§ 2.1-745 to 2.1-759.1.

³Any request by a city attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." Section 2.1-118.

⁴Section 16.1-309.3(C).

⁵1992 Va. Acts ch. 837, at 1560, 1561; *id.* ch. 880, at 1647, 1648 (quoting § 2.1-745, not set out in Code).

⁶See § 2.1-746.

⁷See §§ 2.1-747, 2.1-748.

⁸Section 2.1-746(5).

⁹Section 2.1-746(2).

¹⁰The 2000 Session of the General Assembly rewrote § 2.1-748. See 2000 Va. Acts ch. 937.

¹¹See CSA Manual (Sept. 1998) (unpublished manual, on file with Office of Comprehensive Services for Youth and Families). The CSA Manual sets out a certification requirement, whereby the locality certifies to the state executive council that it is in compliance with the programmatic and fiscal policies established by the CSA and the council. See *id.* at 32. The CSA Manual states that, upon signing of the certificate by the chairmen of the community policy and management

team and the state executive council, the CSA Manual constitutes an agreement between the locality and the state. See *id.* at 2.

¹²The state executive council established the Office of Comprehensive Services for At-Risk Youth and Families pursuant to its duty under § 2.1-746(9) to "[p]rovide administrative support ... for the establishment and operation of local comprehensive service systems." See CSA Manual, *supra*, at 7.

¹³Section 2.1-750; see also §§ 2.1-751, 2.1-752.

¹⁴See §§ 2.1-753 to 2.1-755.

¹⁵Section 2.1-751.

¹⁶In addition, § 2.1-759(A) establishes a state trust fund. Monies in the state trust fund are to be expended to develop "[e]arly intervention services for young children and their families" and "[c]ommunity services for troubled youths." Section 2.1-759(A)(1), (2).

¹⁷See § 2.1-757(C).

¹⁸Section 2.1-757(A).

¹⁹1995 Va. Acts, ch. 698, at 1145, 1145-48; *id.* ch. 840, at 1775, 1776-78; see *id.* ch. 853, at 1842, 2168-70 (enacting Item 578(J)-(L)).

²⁰See *id.* chs. 698, 840, cl. 3, at 1150, 1780, respectively.

²¹1995 Va. Acts ch. 853, *supra* note 19, at 2168-70.

²²1996 Va. Acts ch. 912, at 1741, 2028-31 (citing Item 478(D)).

²³1999 Va. Acts ch. 935, at 1796, 2222 (citing Item 497(E)(7)).

²⁴2000 Va. Acts chs. 1072, 1073.

²⁵Section 16.1-309.3(A).

²⁶Section 16.1-309.3(B).

²⁷Section 16.1-309.3(C).

²⁸See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); Op. Va. Att'y Gen.: 1999 at 15, 15; 1993 at 266, 269.

²⁹*Turner v. Commonwealth*, 226 Va. at 459, 309 S.E.2d at 338.

³⁰See 1982-1983 Op. Va. Att'y Gen. 309, 311 (illogical result frustrates purpose of statute).

³¹See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1999 at 44, 45; 1991 at 238, 240.

³²See 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5th ed. 1992 & Supp. 1999); Op. Va. Att’y Gen.: 1992 at 145, 146; 1989 at 252, 253.

³³See Jones v. Conwell, 227 Va. 176, 314 S.E.2d 61 (1984); Gallagher v. Commonwealth, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); Op. Va. Att’y Gen.: 1996 at 26, 27; 1994 at 93, 95; 1985-1986 at 177, 178.

³⁴See Grant v. Commonwealth, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982); Loyola Fed. Savings v. Herndon, 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978).

³⁵Webster’s Third New International Dictionary of the English Language Unabridged 2296 (1993).

³⁶*Id.* at 2295.

³⁷Section 16.1-309.4. I am advised that the Department of Juvenile Justice is continuing to develop, but has not yet finalized, such a statewide plan. When the Department completes this process, I must defer to the interpretation of JCA by the agency charged with administering JCA, unless the agency interpretation is clearly wrong. See Forst v. Rockingham, 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981); Dept. Taxation v. Prog. Com. Club, 215 Va. 732, 739, 213 S.E.2d 759, 763 (1975); Op. Va. Att’y Gen.: 1999 at 3, 5; 1996 at 124, 126, 127 n.7.

³⁸Section 16.1-309.2.