

# COMMENT

## “IN THE LITTLE WORLD”: BREAKING VIRGINIA’S FOSTER-CARE-TO-PRISON PIPELINE USING RESTORATIVE JUSTICE

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## INTRODUCTION

*“In the little world in which children have their existence, whosoever brings them up, there is nothing so finely perceived and so finely felt as injustice.”*<sup>1</sup>

Measuring a nation’s strength by the health of its economy or armed forces is easy. In those regards, the United States is one of the strongest nations on Earth. If we judge our country’s strength by how it cares for the 443,000 children in foster care,<sup>2</sup> however, the result is completely different. The United States has created a foster-care-to-prison pipeline that sweeps vulnerable children into the penal system at alarming rates.

This Comment proposes that integrating restorative justice conferencing into Virginia’s foster care system can help break its foster-care-to-prison pipeline. Part I details Virginia’s foster care system and the foster-care-to-prison pipeline. Part II reviews and explains how restorative conferencing in Glenmona, Northern Ireland’s equivalent foster care system correlates strongly with decreased incarceration of foster children. Part III outlines how Virginia can implement the same restorative conferencing in its foster care system and pioneer a program that could affect its foster-care-to-prison pipeline.

## I. VIRGINIA AND THE FOSTER-CARE-TO-PRISON PIPELINE

In order to understand Virginia’s foster-care-to-prison pipeline, it is important to understand that the foster-care-to-prison pipeline is a national problem. In 2004, the Bureau of Justice Statistics conducted a national survey of 14,500 inmates from state prisons and 3700 inmates from federal prisons using computer-assisted personal interviewing.<sup>3</sup> Of those surveyed, 7% reported having ever been in foster care.<sup>4</sup> Furthermore, of the 999 inmates between

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1. CHARLES DICKENS, GREAT EXPECTATIONS 66 (Heritage Press ed. 1967).

2. CHILDREN’S BUREAU, THE AFCARS REPORT, PRELIMINARY FY 2017 ESTIMATES AS OF AUGUST 10, 2018, <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport25.pdf> [<https://perma.cc/TN3Z-Q99R>]. Data accurate as of September 30, 2017.

3. BUREAU OF JUSTICE STATISTICS, THE SURVEY OF INMATES IN STATE CORRECTIONAL FACILITIES (2004). The sample was selected from 1585 state prisons and 148 federal prisons. *Id.*

4. Youngmin Yi & Christopher Wildeman, *Can Foster Care Interventions Diminish Justice System Inequality?*, 28 FUTURE CHILDREN 37, 39 (2018), <https://files.eric.ed.gov/full>

ages eighteen and twenty-one that were surveyed,<sup>5</sup> 15% reported ever being in foster care.<sup>6</sup> As of September 30, 2004, less than 1% of children under the age of eighteen were placed in foster care.<sup>7</sup> This means foster children are 21% more likely to be incarcerated than children raised by their families.

Before explaining how the national foster-care-to-prison pipeline impacts Virginia's foster youth, this Comment will give an in-depth explanation of how Virginia's foster care system is administered, the makeup of Virginia's foster care population, the factors that lead to a child's placement in the system, and the types of counseling services the system provides to foster youth.

#### A. Virginia's Foster Care System

The primary focus of Virginia's child welfare system is the reunification of families.<sup>8</sup> Children who are not reunified with their families are placed in the foster care system,<sup>9</sup> which currently fails to provide children with the necessary support due to inadequate oversight and training.

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text/EJ1179175.pdf [https://perma.cc/A84J-3EEZ].

5. See Bureau of Justice Statistics, *The Survey of Inmates in State and Federal Correctional Facilities, DS1 Federal Data* (2004), <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/04572/datasets/0001/variables/V0013?archive=nacjd> [https://perma.cc/4PVD-NS43] (documenting ages of federal prisoners surveyed); Bureau of Justice Statistics, *The Survey of Inmates in State and Federal Correctional Facilities, DS2 State Data*, <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/04572/datasets/0002/variables/V0013?archive=nacjd> [https://perma.cc/8X4P-4RHA] (documenting ages of state prisoners surveyed).

6. Yi & Wildeman, *supra* note 4, at 39.

7. CHILDREN'S BUREAU, THE AFCARS REPORT 1 (2006), <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport11.pdf> [https://perma.cc/M5V2-FC3V] (explaining that 517,000 children were in foster care). In 2004, there were 73.3 million children under the age of eighteen in the United States. *Child Population: Number of Children (in Millions) Ages 0-17 in the United States by Age, 1950-2017 and Projected 2018-2050*, CHILDSTATS.GOV, <https://childstats.gov/americaschildren/tables/pop1.asp> [https://perma.cc/G27R-UBYG] (indicating a total child population of 73.3 million in 2004).

8. VA. DEP'T OF SOC. SERVS., CHILD AND FAMILY SERVICES MANUAL, Pt. E, Foster Care, § 1.1 [https://www.dss.virginia.gov/files/division/dfs/fc/intro\\_page/guidance\\_manuals/fc/07\\_2019/section\\_1\\_foster\\_care\\_overview.pdf](https://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/07_2019/section_1_foster_care_overview.pdf) [https://perma.cc/Z87Z-XCA7] [hereinafter FC GUIDANCE MANUAL § 1].

9. VA. DEP'T OF SOC. SERVS., CHILD AND FAMILY SERVICES MANUAL, Pt. E, Foster Care, § 3 [https://www.dss.virginia.gov/files/division/dfs/fc/intro\\_page/guidance\\_manuals/fc/07\\_2019/section\\_3\\_entering\\_foster\\_care.pdf](https://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/07_2019/section_3_entering_foster_care.pdf) [https://perma.cc/4ZDQ-4QYV] [hereinafter FC GUIDANCE MANUAL § 3].

Virginia's foster care system is locally administered and state-supervised.<sup>10</sup> This means that rather than having direct state oversight, local departments oversee the care and placement of foster children.<sup>11</sup> In turn, these departments are supervised by local boards that report to the state.<sup>12</sup> Virginia's foster care system is also subject to review by the Children's Bureau (or "Bureau"), an office of the United States Department of Health and Human Services ("DHHS").<sup>13</sup> The Children's Bureau conducts federal reviews to ensure that state practices conform to federal law.<sup>14</sup>

In its reviews, the Children's Bureau looks into the safety and well-being of foster youth.<sup>15</sup> The Bureau also focuses on whether caseworkers diligently seek out permanent homes for foster children.<sup>16</sup> In 2004, 2009, and 2017, the Bureau expressed concerns with Virginia's practices relating to the safety and well-being of foster youth,<sup>17</sup> caseworker trainings,<sup>18</sup> and the state's efforts to find permanent homes.<sup>19</sup> Caseworkers in Virginia are responsible for facilitating where children are placed as well as supervising their well-being during placements.<sup>20</sup> In its previous review, the Bureau found that caseworkers were not consistently taking the basic steps necessary to ensure foster children's well-being.<sup>21</sup> For one, many caseworkers do not complete their regular monthly visits.<sup>22</sup> This step alone can result in care giver maltreatment remaining undiscovered.<sup>23</sup> As for placements themselves, caseworkers place children in settings that would not typically be approved but for the use of emergency placement protocol.<sup>24</sup> In fact, Virginia's Department of Social Services ("VDSS") found that in ninety-eight cases (4%), basic placement safety requirements for emergency

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10. JOINT LEGISLATIVE AUDIT & REV. COMM'N, IMPROVING VIRGINIA'S FOSTER CARE SYSTEM 3 (2018) [hereinafter IMPROVING VA.'S FOSTER CARE].

11. *Id.* at 4.

12. *Id.*

13. *Id.* at 5.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 5.

18. *Id.* at 71.

19. *Id.* at 45–46, 51.

20. *Id.* at 61–62.

21. *Id.* at 18.

22. *Id.* at 19–20.

23. *Id.* at 19.

24. *Id.*

placements were not met.<sup>25</sup> These cases were spread across thirty-four of Virginia’s departments of social services.<sup>26</sup>

As for caseworker training, in 2017 the Bureau noted that new staff routinely skipped their required initial trainings.<sup>27</sup> Another external review revealed that VDSS failed to provide effective on-the-job training.<sup>28</sup> Of those surveyed, 25% of caseworkers felt they had not received sufficient guidance and training, while 23% of responding supervisors believed most caseworkers did not have the necessary skills and knowledge to effectively manage their cases.<sup>29</sup>

With respect to permanent placements, a higher proportion of children “age out” of foster care in Virginia than in other states.<sup>30</sup> In 2016, 19% of children exiting Virginia’s foster care system aged out, which was more than double the national median of 8%.<sup>31</sup> This has been a common trend for Virginia since 2007.<sup>32</sup> Virginia’s high age out rate correlates with insufficient efforts by caseworkers to reunify children with their parents or find them permanent placements. For instance, local departments made “concerted efforts” to find permanent homes for foster youth in only 25% of the cases sampled in a federal review, which is much less than other states’ 45%.<sup>33</sup>

A lack of a permanent placement affects a foster child’s ability to develop emotional connections and community ties.<sup>34</sup> When foster children have multiple temporary placements in nonrelative or congregate care, their ability to form secure attachments to any care giver is disrupted.<sup>35</sup> This attachment disruption essentially

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25. *Id.*

26. *Id.*

27. *Id.* at 71.

28. *Id.*

29. *Id.*

30. *Id.* at 44; *Children Exiting Foster Care by Exit Reason in Virginia: Emancipation*, KIDS COUNT DATA CENTER, (2016), <https://datacenter.kidscount.org/data/tables/6277-children-exiting-foster-care-by-exit-reason?loc=48&loct=2#ranking/2/any/true/870/2632/13051> [<https://perma.cc/HW72-EAQK>] [hereinafter *Children Exiting Foster Care*]. Only New Hampshire has a higher percentage of children “aging out” of foster care. *Children Exiting Foster Care, supra*.

31. IMPROVING VA.’S FOSTER CARE, *supra* note 10, at 44.

32. *Id.*

33. *Id.* at 45–46.

34. BETH TROUTMAN, EFFECTS OF FOSTER CARE PLACEMENT ON YOUNG CHILDREN’S MENTAL HEALTH: RISKS AND OPPORTUNITIES 1 (2011), <http://www.ocfcpcourts.us/assets/files/list-751/file-921.pdf> [<https://perma.cc/95SN-PLAK>].

35. *Id.*; LINDSAY ZAJAC, GROUP CARE IN THE UNITED STATES: A BRIEF REVIEW OF

stunts a child's ability to develop healthy emotional relationships and negatively impacts a child's psychiatric development.<sup>36</sup> Younger foster children are particularly susceptible to the negative effects of attachment disruption.<sup>37</sup> Understanding the makeup of Virginia's foster care population will provide more insight as to the number of children at risk of or suffering from attachment disruption.

### B. *Virginia's Foster Care Population*

Over the past decade, Virginia's foster care population has generally decreased.<sup>38</sup> As of September 2016, Virginia had the lowest rate of children in foster care of any state in the country, with 2.6 per 1000 children in the system.<sup>39</sup> However, the current population of children in Virginia's foster care system is increasing in accordance with a nationwide trend.<sup>40</sup> Between 2007 and 2013, the number of children in Virginia's foster care system decreased from 6700 to 4270.<sup>41</sup> As of June 2018, however, the number increased by 9% from 2013 to 4670.<sup>42</sup> The creation of the Fostering Futures program, which raised the exit age for foster care from eighteen to twenty-one, further increased Virginia's foster care population.<sup>43</sup> As of June 2018, 667 additional children between the ages of eighteen and twenty were in the system, increasing Virginia's total foster care population to 5340.<sup>44</sup> Thus, Virginia's foster care population increased by 25% between 2013 and June 2018.<sup>45</sup>

Despite raising the age limit of foster care to twenty-one, a majority of the population consists of younger children.<sup>46</sup> In 2007, 45% of all children in Virginia's foster care system were younger than

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PREVALENCE, PROBLEMATIC OUTCOMES AND ALTERNATIVES 1 ("Children who develop insecure attachments with their care givers are at increased risk for problematic outcomes, including externalizing behaviors and psychopathology.").

36. ZAJAC, *supra* note 35, at 1–2.

37. *See id.* at 1.

38. IMPROVING VA.'S FOSTER CARE, *supra* note 10, at 6.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* at 8.

twelve.<sup>47</sup> By 2018, this proportion grew to 58% of the foster care population.<sup>48</sup> Furthermore, Virginia's foster care population has seen a pronounced increase of children under five in recent years.<sup>49</sup> The number of kids younger than five in the system increased by 21% between 2013 and 2018—more than double the 9% overall rate of increase for children under eighteen during the same period.<sup>50</sup>

There is a strong correlation between the increasing number of young children in Virginia's foster care system and the opioid crisis.<sup>51</sup> The number of children who entered Virginia's foster care system as a result of parental drug abuse increased by 71% between 2007 and 2016.<sup>52</sup> While Virginia's growth rate is unfortunately in line with a nationwide trend, it is significantly higher than the national growth rate of 47%.<sup>53</sup> Even though the primary objective of the Virginia foster care system is reunification and permanency,<sup>54</sup> this objective is harder to achieve where parental drug abuse is involved.

Separating children from their parents, however, is traumatizing for foster children.<sup>55</sup> In fact, long-term studies have shown that impoverished children placed in foster care are more likely to suffer emotional problems than children raised by abusive or neglectful parents.<sup>56</sup> However, the state cannot turn a blind eye to children suffering parental abuse and neglect. In such circumstances, Virginia state courts usually begin the process of terminating parental rights and seeking foster care placement.<sup>57</sup>

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47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *See id.* at 9.

52. *Id.*

53. *Id.*

54. *See supra* note 8 and accompanying text.

55. TROUTMAN, *supra* note 34, at 1.

56. *Id.*

57. *Id.*

### C. Termination of Parental Rights and Available Placements

In Virginia, Termination of Parental Rights (“TPR”) is a process initiated when parents or care givers threaten a child’s well-being.<sup>58</sup> A Juvenile and Domestic Relations judge determines whether TPR is in the best interest of the child using clear and convincing evidence.<sup>59</sup> TPR can only occur where (1) reasonable efforts have been made to prevent a child’s removal; and (2) allowing the child to remain in their home would be contrary to the child’s welfare.<sup>60</sup> Once TPR is granted, Virginia has four primary placement options for foster children: relative placement; nonrelative placement; nonrelative therapeutic placement; or congregate care.<sup>61</sup>

Relative placement involves a child being placed with a family friend or relative who has been trained and approved as a licensed parent.<sup>62</sup> Nonrelative placement occurs when a child is placed with a licensed foster parent previously unknown to the child.<sup>63</sup> Nonrelative therapeutic placement is where a child with special care needs is placed with foster parents who are trained, licensed, and supported through a child placing agency rather than the local departments of social services.<sup>64</sup> Lastly, a child can be placed in congregate, or group home, care where strict supervision procedures are in place.<sup>65</sup> Children placed in congregate care have complex physical and behavioral health needs and require intense treatment and supervision.<sup>66</sup>

Virginia law prioritizes relative placement care for foster children unless it is inappropriate or unavailable.<sup>67</sup> State law also requires foster children to be placed in the “least restrictive” placement that suits their needs.<sup>68</sup> Studies show that the best practice

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58. FC GUIDANCE MANUAL § 3, *supra* note 9 (citing VA. CODE ANN. § 16.1-277.02) (Cum. Supp. 2019)).

59. *Id.*

60. *Id.*

61. IMPROVING VA.’S FOSTER CARE, *supra* note 10, at 27–28.

62. *Id.* at 27.

63. *Id.*

64. *Id.* at 27–28.

65. *Id.* at 28.

66. *Id.*

67. *Id.* Departments of social services are also directed to “engage ‘other individuals who have significant relationships with the child.’” *Id.* These individuals are referred to as “fictive kin.” *Id.*

68. *Id.*



for ensuring the overall well-being of a child is to prioritize relative placements and to utilize congregate care as a last resort.<sup>69</sup> In relative care, children suffer less trauma, enjoy increased stability, and better maintain their sense of community.<sup>70</sup> Conversely, congregate care should only be used where a child has a “clear clinical need for intense treatment and supervision, and no other placement options can meet those needs.”<sup>71</sup> As a result, children are expected to receive nonrelative placements if relatives are ruled out and congregate care is deemed unnecessary.<sup>72</sup> If a nonrelative placement is unavailable in a child’s locality, the child may then be placed in nonrelative care in a different locality, or in congregate or therapeutic care.<sup>73</sup> These alternative placements could result in children being removed from their community or being placed in an overly restrictive environment.

As of 2016, local departments of social services placed only 6% of children with relatives, approximately one-fifth as often as the national average, despite legal requirements and established best practices.<sup>74</sup> Recent interviews conducted by VDSS suggest that this low rate of relative placement relates to inadequate efforts by local departments to secure relative care.<sup>75</sup> At the time, only 22% of 970 sample cases used the “person locator” tool available to local departments for finding relatives.<sup>76</sup> Furthermore, letters asking relatives to be foster care providers were not sent in 44% of 965 sample cases.<sup>77</sup>

Virginia’s low rate of relative placement care is not solely due to insufficient efforts by social workers. In the past twelve months,

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69. *Id.*

70. *Id.*; see also PEW CHARITABLE TRS. & GENERATIONS UNITED, TIME FOR REFORM: SUPPORT RELATIVES IN PROVIDING FOSTER CARE AND PERMANENT FAMILIES FOR CHILDREN 3–5 (2007) [https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster\\_care\\_reform/supportingrelativespdf.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/supportingrelativespdf.pdf) [<https://perma.cc/K7FT-AZJD>]. As of 2007, 78% of foster children living with relatives in Virginia reported a stable home. *Id.* at 11 app. B.

71. IMPROVING VA.’S FOSTER CARE, *supra* note 10, at 28.

72. *Id.*

73. *Id.*

74. *Id.* The national average was 32%. *Id.*; see also Bridget Balch, *Virginia Lags Behind National Average for Placing Children in Foster Care with Relatives, Report Says*, RICH. TIMES DISPATCH (Apr. 4, 2019), [https://www.richmond.com/news/virginia/government-politics/virginia-lags-behind-national-average-for-placing-children-in-foster/article\\_023e026a-3bc5-5994-905c-65a37644ad67.html](https://www.richmond.com/news/virginia/government-politics/virginia-lags-behind-national-average-for-placing-children-in-foster/article_023e026a-3bc5-5994-905c-65a37644ad67.html) [<https://perma.cc/Z87S-SHHW>].

75. IMPROVING VA.’S FOSTER CARE, *supra* note 10, at 28.

76. *Id.* at 28–29.

77. *Id.* at 29.

half of the 161 caseworkers surveyed by VDSS stated that relatives declined to provide foster care.<sup>78</sup> The four commonly given reasons were “(1) the high needs of the child in foster care, such as challenging behavioral or medical needs, (2) an inability or unwillingness to go through the foster parent approval process, (3) an inability to meet the criteria for approval, and (4) an inability to assume the financial responsibilities of caring for the child.”<sup>79</sup> Other obstacles to relative placement include parents’ unwillingness to provide information about a child’s relatives<sup>80</sup> and failure by local departments to use existing procedures to expedite the approval of relatives as foster parents.<sup>81</sup>

A consequence of Virginia’s low relative placement rate is that the system places children in congregate care more often than needed.<sup>82</sup> In 2016, 17% of children in Virginia’s foster care system lived in congregate care, compared to 12% nationwide.<sup>83</sup> Furthermore, the proportion of Virginia’s foster children placed in congregate care has increased over the last five years, whereas the proportion of children in congregate care placements nationwide has decreased in the same time period.<sup>84</sup> This increase in congregate care placement has been especially prevalent for children over the age of twelve.<sup>85</sup> For Virginia foster youth over the age of twelve, the rate of using congregate care as a child’s predominant placement increased from roughly 27% to 39% between 2012 and 2017.<sup>86</sup>

National experts agree that states should use congregate care, such as treatment facilities and group homes, only for a short term when a child has a clinical need.<sup>87</sup> A “substantial proportion” of

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78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 30.

82. *Id.* at 32; see also *Editorial: No More Foster Care Excuses*, FREDERICKSBURG.COM (Dec. 15, 2018), [https://www.fredericksburg.com/opinion/editorials/editorial-no-more-foster-care-excuses/article\\_23b22272-f52c-5171-9fd9-c25f79d747eb.html](https://www.fredericksburg.com/opinion/editorials/editorial-no-more-foster-care-excuses/article_23b22272-f52c-5171-9fd9-c25f79d747eb.html) [<https://perma.cc/P8EM-XSUB>] (“A substantial proportion of children in congregate care settings in Virginia do not have a clinical need to be there.”).

83. IMPROVING VA.’S FOSTER CARE, *supra* note 10, at 37.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 3; see also CHILDREN’S BUREAU, A NATIONAL LOOK AT THE USE OF CONGREGATE CARE IN CHILD WELFARE 7–10 (2015) [https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare\\_brief.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf) [<https://perma.cc/6JN5-3SFP>] (“Child development theory, federal legislation, and best practice confirm what we know intuitively—children should be placed in settings that are developmentally appropriate and least restrictive.”).

Virginia's foster youth in congregate care, however, do not have a clinical need for the placement.<sup>88</sup> In fact, 60% of children who entered congregate care in Virginia between 2012 and 2016 did not meet the threshold standards required for such a placement.<sup>89</sup> Studies have shown that when states unnecessarily place children in congregate care, these children and teenagers later have a limited ability to form healthy attachments with care givers.<sup>90</sup> These overly restrictive placements also limit foster children's ability to develop an age-appropriate level of independence.<sup>91</sup>

Although Virginia provides counseling services for foster youth to help address their mental wellness issues, the following section explains why these services are not helping foster youth successfully manage any of these developmental issues.

#### D. *Counseling Services for Virginia's Foster Youth*

Virginia's Medicaid program provides mental health and intellectual disability services to the state's foster children.<sup>92</sup> Community service boards and private providers primarily provide for sixteen mental health-related services, including crisis intervention and stabilization.<sup>93</sup> There are several indicators, however, that foster youth are not receiving the mental health services they need.<sup>94</sup> First, multiple mental health services, including intensive community treatment and therapeutic behavior services, require approval before treatment can begin.<sup>95</sup> Second, a 2017 federal review found that local departments of Virginia's social services did not properly assess the mental and behavioral health needs of children in foster care for nine of thirty-four applicable cases.<sup>96</sup>

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88. IMPROVING VA.'S FOSTER CARE, *supra* note 10, at 38.

89. *Id.* AFCARS indicated that as of 2016, 23% of children in congregate care had no indicators necessitating the intense level of treatment and supervision provided in congregate care. *Id.*

90. *Id.* at 36; *see also* ZAJAC, *supra* note 35, at 1.

91. IMPROVING VA.'S FOSTER CARE, *supra* note 10, at 36.

92. VA. DEPT OF SOC. SERVS., CHILD AND FAMILY SERVICES MANUAL, Pt. E, Foster Care, § 13.8.3.8, Mental Health Treatment and Intellectual Disability Services (Apr. 2013 ed.) [https://www.dss.virginia.gov/files/division/dfs/fc/intro\\_page/guidance\\_manuals/fc/04\\_2013/Section\\_13\\_Providing\\_Foster\\_Care\\_Services.pdf](https://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/04_2013/Section_13_Providing_Foster_Care_Services.pdf) [<https://perma.cc/ME7R-BFUD>] [hereinafter FC GUIDANCE MANUAL § 13].

93. *Id.*

94. IMPROVING VA.'S FOSTER CARE, *supra* note 10, at 23.

95. FC GUIDANCE MANUAL § 13, *supra* note 92.

96. IMPROVING VA.'S FOSTER CARE, *supra* note 10, at 24.

Federal reviews further discovered that foster parents struggle to obtain mental and behavioral health services for children in their care.<sup>97</sup> Of the foster parents who indicated that children in their care needed behavioral or mental health services in the twelve months before the 2017 survey was conducted, 46% indicated they were “rarely or only sometimes” able to obtain the necessary treatment.<sup>98</sup> Many of the foster parents pointed to lack of follow through or responsiveness from local department staff as a primary obstacle to children receiving treatment they needed.<sup>99</sup>

The lack of sufficient counseling services, in combination with Virginia’s young foster care population and low relative and permanent placement rates, contribute to undermining and eliminating the community ties and developmental capacity of Virginia’s foster youth. In turn, this leads children to act out and engage in delinquent behavior that ultimately funnels them into the prison pipeline.<sup>100</sup>

#### E. *Virginia’s Prison Pipelines*

There are several descriptors for the system that funnels children into prison. Scholars have written about the cradle-to-prison pipeline,<sup>101</sup> the school-to-prison pipeline,<sup>102</sup> and the foster-care-to-prison pipeline.<sup>103</sup> In 2007, the Children’s Defense Fund reported on Virginia’s cradle-to-prison pipeline.<sup>104</sup> The report noted that while poverty is the primary driving force behind children being

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97. *Id.*

98. *Id.*

99. *Id.*

100. See Miriam Aroni Krinsky, *Disrupting the Pathway from Foster Care to the Justice System—A Former Prosecutor’s Perspectives on Reform*, 48 FAM. CT. REV. 322, 324–25 (2010).

101. See, e.g., CRADLE TO PRISON PIPELINE: VIRGINIA, CHILDREN’S DEFENSE FUND (2007) <https://www.childrensdefense.org/wp-content/uploads/2018/08/cradle-prison-pipeline-virginia-2008-fact-sheet.pdf> [<https://perma.cc/U86X-PA46>].

102. See, e.g., Cassie Powell, “One of the Worst:” *The School-to-Prison Pipeline in Richmond, Virginia*, RVAGOV (Mar. 2016), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1128&context=law-student-publications> [<https://perma.cc/8663-YHDD>].

103. See, e.g., Rachel Anspach, *The Foster Care-to-Prison Pipeline: What It Is and How It Works*, TEENVOGUE (May 25, 2018), <https://www.teenvogue.com/story/the-foster-care-to-prison-pipeline-what-it-is-and-how-it-works> [<https://perma.cc/9SXX-VT9H>].

104. CRADLE TO PRISON PIPELINE, *supra* note 101.

funneled into the prison system, children in foster care were at a higher risk of being trapped in the pipeline.<sup>105</sup>

While few scholars have compiled evidence on this subject, the available statistics surrounding Virginia's foster care alumni indicate that a foster-care-to-prison pipeline does exist. According to a 2017 study, 25% of Virginia's surveyed foster youth were incarcerated by age twenty-one, compared to the national average of 22%.<sup>106</sup> In the 2000s, studies revealed that children under government care in Northern Ireland were being swept into a prison pipeline similar to Virginia's.<sup>107</sup> To address this problem, Northern Ireland began implementing restorative conferencing in its comparable congregate care units.

## II. NORTHERN IRELAND AND ITS OUT-OF-HOME CARE EVOLUTION

Northern Ireland's out-of-home care system is similar to the foster care systems established in Virginia and throughout the United States. Comparing the United States to Northern Ireland implicates societal externalities that have played a role in shaping the foster care landscape in the two countries; but any such incongruities notwithstanding, the underlying problems, and the proposed policy responses thereto, are highly analogous. Most importantly, the evolution of Northern Ireland's out-of-home care system is illustrative of the immense benefits that foster youth can reap from targeted policy initiatives designed to encourage more robust investment in the infrastructure of a system failing its intended beneficiaries.

While local departments administer Virginia's foster care system, the United Kingdom's Department of Health, Social Services and Public Safety supervises Northern Ireland's out-of-home care

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105. *Id.*

106. ELIZABETH JORDAN ET AL., CHILD TRENDS FOR THE BETTER HOUS. COAL. & CHILDREN'S HOME SOC'Y OF VA., SUPPORTING YOUNG PEOPLE TRANSITIONING FROM FOSTER CARE: VIRGINIA FINDINGS FROM A NATIONAL SURVEY AND POLICY SCAN 12 (2017) <https://www.childtrends.org/publications/supporting-young-people-transitioning-foster-care-virginia-findings-national-survey-policy-scan> [<https://perma.cc/4Q8K-NPEG>].

107. WILLIE MCCARNEY, UNICEF, A RESTORATIVE JUSTICE APPROACH TO WORKING WITH CHILDREN IN RESIDENTIAL CARE 2, 4 (2010) <https://www.unicef.org/tdad/4williemccarney.pdf> [<https://perma.cc/w54S-AXZB>].

on a national level.<sup>108</sup> Children in Northern Ireland's out-of-home care system are referred to as "looked after" children.<sup>109</sup>

During the 1980s and 1990s, Northern Ireland focused on enhancing preventative and interventionist foster care programs, but these programs led to the decline of residential services for looked after children.<sup>110</sup> By the mid-1990s, residential homes were a place of last resort for Northern Ireland's looked after youth because years of neglect had led to a decline in available volunteer service providers and residential care locations.<sup>111</sup>

In October 1998, Northern Ireland's Department of Health, Social Services and Public Safety released the *Children Matter* report detailing the department's findings after a regional review of residential care homes.<sup>112</sup> The report revealed that, like Virginia's current foster care system, there were inadequate residential homes available for looked after children, and children were inappropriately placed.<sup>113</sup> The report further revealed that a majority of residential homes had an unacceptable level of violence and overly relied on the accommodation's security to effect control.<sup>114</sup> In response to the report's findings, the Department of Health, Social Services and Public Safety created the Ministerial Children Matter Task Force, which created a two-part Regional Action Plan.<sup>115</sup> This action plan resulted in the creation of Northern Ireland's Intensive Support Units.<sup>116</sup>

#### A. *Northern Ireland Implements Intensive Support Units*

By 2001, the Children Matter Task Force had created Intensive Support Units ("ISUs") as residential homes within the out-of-home care system that would serve as regional specialist accommodations for looked after youth.<sup>117</sup> Like children in Virginia's congregate care facilities, regional specialist accommodations provide a heightened level of supervision and care focused on helping the

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108. *See id.* at 2.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *See id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

most problematic looked after children deal with complex emotional issues.<sup>118</sup>

Unfortunately, placements in ISUs increased the likelihood that looked after children would become entangled in the criminal justice system.<sup>119</sup> Surveys conducted at youth offender institutions in England and Wales similarly found that 29% of boys and 44% of girls in these institutions reported having been looked after youth at some point in their childhood.<sup>120</sup> In fact, offenses committed in children's homes were more likely to be reported to the police than those committed by children elsewhere.<sup>121</sup> These statistics strongly indicated that ISUs were creating a pipeline to juvenile justice centers.

To fight this phenomenon, Northern Ireland began introducing restorative conferencing into its out-of-home care system so that looked after children could receive similar treatment to those who live among their families.<sup>122</sup>

#### B. *Restorative Conferencing in the ISUs of Glenmona, Northern Ireland*

In April 2005, ISUs in Glenmona, Northern Ireland were selected as the experimental locations for implementing restorative conferencing.<sup>123</sup> The experiment's goal was to reduce the number of looked after children transferred from the Glenmona ISUs to the Juvenile Justice Center.<sup>124</sup> The Glenmona ISUs partnered with several community programs so that the ISUs' staff could receive sufficient restorative conferencing training.<sup>125</sup> Barnardo's, the ISUs' primary partner in the Glenmona experiment, is the oldest

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118. *Id.*

119. *Id.* at 4.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 15, 19.

124. *Id.* at 15.

125. *Id.*

and largest children's charity in the United Kingdom.<sup>126</sup> Barnardo's volunteers administered restorative conferencing training to ISUs throughout the experiment.<sup>127</sup>

The process involved fully training senior staff of the ISUs in informal and formal restorative conferencing techniques as well as Therapeutic Crisis Intervention tactics on the children and staff.<sup>128</sup> Staff who had daily and direct contact with the children participated in two-day trainings on restorative conferencing.<sup>129</sup> The target of the staff training was to cast restorative justice practices in the light of building restorative communities where good relationships are of primary importance. Before discussing the benefits restorative conferencing had on the community development of Glenmona's looked after children, this Comment will review the informal and formal restorative conferencing methods taught to Glenmona ISUs' staff.

### 1. Informal Restorative Conferencing in Glenmona ISUs

Informal restorative conferencing uses casual and spontaneous communication techniques to help participants respectfully and thoughtfully communicate their perspective on a situation while also challenging participants to reflect on how their behavior affects others.<sup>130</sup> The Glenmona ISUs used four specific informal restorative conferencing methods: restorative enquiry, affective statements, impromptu mini-conferencing, and weekly circles.<sup>131</sup>

Restorative enquiry is the foundation of every restorative conference method.<sup>132</sup> Restorative enquiry asks participants to actively listen to each other without judgment.<sup>133</sup> The enquiry involves five questions, which can be adapted to the participants:

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126. *Our Organisation*, BARNARDOS, <https://www.barnardos.org.uk/who-we-are/our-organisation> [https://perma.cc/G3T4-KVBJ].

127. MCCARNEY, *supra* note 107, at 15; *see also* Marie Gibben, BELIEVE IN CHILDREN: OBJECTIVES, INT'L INST. FOR RESTORATIVE PRACTICES (2010).

128. MCCARNEY, *supra* note 107, at 7, 15–16.

129. *Id.* at 15.

130. *Id.* at 8–9, 11.

131. *Id.* at 9, 24–26 app. 3.

132. *Id.* at 24, app. 3; *see also* Thalia N. C. González & Benjamin Cairns, *Moving Beyond Exclusion*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 243–44 (Nancy E. Dowd ed., 2011) (discussing various restorative practices and theories utilized in schools).

133. MCCARNEY, *supra* note 107, at 24 app. 3.



- (1) What has happened?
- (2) Who has been affected?
- (3) What needs to be done to repair the damage caused?
- (4) How can we involve everyone who has been affected in finding a way forward?
- (5) How can everyone do things differently in the future?<sup>134</sup>

In conjunction with restorative enquiry, affective statements are part of informal conferencing.<sup>135</sup> Affective statements communicate a person's feelings about an altercation or situation.<sup>136</sup> ISU staff regularly used these two methods to address nonemergency daily issues that arose within the home.<sup>137</sup> These situations could involve something as simple as children failing to return clothes they borrowed from another housemate or failing to complete assigned chores.

A third informal restorative conferencing method Glenmona ISUs staff used was impromptu mini-conferencing.<sup>138</sup> While impromptu conferencing is more structured than restorative enquiry, it was part of the informal conferencing training as it was used to address daily communication issues rather than serious altercations or behavioral issues.<sup>139</sup> Impromptu mini-conferencing required staff to act as mediators between the children who had a conflict, using restorative enquiry to guide the discussion and ensure affective statements were used.<sup>140</sup> The key to this conference method is that staff do not act as a judge, but rather as conversation facilitators whose goal is to help the children come to a mutual conclusion.<sup>141</sup>

Lastly, the Glenmona ISUs used restorative conferencing circles on a weekly basis as part of the informal restorative conferencing.<sup>142</sup> When using the restorative conferencing circle informally, everyone in the ISU—children and care providers—gathered in a circle and took turns discussing concerns or updates on the

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134. *Id.*

135. *Id.* at 9.

136. *Id.*

137. *Id.* at 9, 16, 24 app. 3.

138. *Id.*

139. *Id.* at 25–26 app. 3.

140. *Id.* at 25 app. 3.

141. *Id.*

142. *Id.* at 26 app. 3.

house.<sup>143</sup> Unlike a circle responding to a behavioral issue, the circle here never addressed serious behavioral problems; rather, the circle was a method of grounding the placement home and developing stronger social and communication skills amongst the staff and children.<sup>144</sup>

While the Glenmona ISUs used informal restorative conferencing methods on a regular basis, children in ISUs still needed more formal and intensive restorative conferencing to address more severe altercations such as interpersonal violence or behavioral crises.<sup>145</sup> Glenmona ISUs use Restorative Conferencing and Therapeutic Crisis Intervention as formal restorative conferencing methods.

## 2. Formal Conferencing in Glenmona ISUs

Formal conferencing is a scheduled, highly structured process used to address serious behavioral problems or altercations. In the Glenmona ISUs, staff used Restorative Conferencing and Therapeutic Crisis Intervention to address severe problems such as petty theft, behavioral crises, and interpersonal violence.<sup>146</sup> Restorative conferencing required the ISU staff, children, Barnardo's trainers, and other affected parties to sit down with the looked after child to address and resolve the altercation using restorative enquiry and affective statements.<sup>147</sup>

The second formal conferencing method used in the Glenmona ISUs, Therapeutic Crisis Intervention ("TCI"), is a specialized technique that helped staff adequately respond to a child in a crisis situation.<sup>148</sup> A crisis situation occurs when a child's inability to cope results in a sharp change of behavior that could result in harm to others or the child.<sup>149</sup> Central to the TCI approach is that it required ISU staff to ask the child what they were feeling and how the environment was affecting them, which made the child's needs the central focus of the intervention.<sup>150</sup>

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143. *Id.*

144. *Id.* at 9–10.

145. *Id.* at 16, 26 app. 3.

146. *Id.* at 7, 16, 26 app. 3.

147. *Id.* at 26 app. 3.

148. *Id.* at 7.

149. *Id.*

150. See *TCI System Overview*, CORNELL RESIDENTIAL CHILD CARE PROJECT, <http://rccp>.

### 3. Restorative Conferencing and Community Development

The goal of restorative conferencing is restoring and rebuilding relationships.<sup>151</sup> Research indicates that through a mutual exchange of expressed affect, which involves children expressing their emotions to each other,<sup>152</sup> foster children can build communities through the emotional bonds restorative conferencing creates.<sup>153</sup> In particular, restorative conferences provide a safe space for children to exchange and express intense emotions.<sup>154</sup> This exchange of emotions leads children to build critical social capital.<sup>155</sup> Social capital refers to “the connections among individuals and the trust, mutual understanding, shared values and behaviours that bind us together and make cooperative action possible.”<sup>156</sup> By addressing this social capital deficit in its ISU, the Glenmona experiment improved the relationships within the ISU among children and staff.<sup>157</sup>

Staff reported that restorative conferencing allowed them to work longer with children in a crisis who would typically have been referred to the Juvenile Justice Centre.<sup>158</sup> Furthermore, staff remained “highly motivated” to continue working in the ISUs, which in turn led to less turnover in the facility.<sup>159</sup> Looked after children in the ISU also reported that they felt safe and cared for.<sup>160</sup> Along with anecdotal reports of improvement, the Glenmona experiment had positive empirical effects on the out-of-home-care-to-prison pipeline.

### 4. Quantitative Results of Glenmona ISUs

Since the initial restorative conferencing program was implemented in the Glenmona ISUs, Barnardo’s went on to train and

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cornell.edu/tci/tci-1\_system.html [https://perma.cc/Q52-SXDA].

151. See MCCARNEY, *supra* note 107, at 9.

152. See *Expressed Affect*, CHILD MIND INST. GLOSSARY, <https://childmind.org/glossary-entry/expressed-affect> [https://perma.cc/NV8T-79GB].

153. See MCCARNEY, *supra* note 107, at 9.

154. *Id.*

155. *Id.*

156. *Id.* (citations omitted).

157. See *id.* at 20–21.

158. *Id.*

159. *Id.*

160. *Id.* at 20.

support staff in eight other care units by 2010.<sup>161</sup> Juvenile Justice Centre statistics indicate that implementing restorative conferencing in ISUs strongly correlated with a decline in the percentage of looked after children in youth detention facilities.<sup>162</sup> Between 2004 and 2006, 35% of children admitted to the Juvenile Justice Centre were looked after children.<sup>163</sup> In 2007, after restorative conferencing was implemented in multiple ISUs, that percentage dropped to 29%.<sup>164</sup> In 2008, 19% of Juvenile Justice Centre youth were looked after children.<sup>165</sup> As of July 2009, the majority of looked after children referred to the Juvenile Justice Centre were coming from residential care units that did not use restorative conferencing.<sup>166</sup>

In light of these results, Virginia should use similar restorative conferencing practices to help break its own foster-care-to-prison pipeline.

### III. BREAKING VIRGINIA'S FOSTER-CARE-TO-PRISON PIPELINE USING RESTORATIVE CONFERENCING

Using restorative justice practices with children in the United States is not a novel practice.<sup>167</sup> While restorative justice practices are often used when youth enter the juvenile justice system, this Comment proposes a plan to integrate restorative conferencing throughout the foster care system in order to break the foster-care-to-prison pipeline in Virginia. As discussed in Part II, formal and informal restorative conferencing practices and models can be used to help foster children develop the sense of community and connection Virginia's foster care system currently fails to supply. Restorative conferencing would not only create a community for foster children to rely upon, it could be integrated cost-effectively throughout the foster care process to develop the social capital that is necessary to divert children from the prison pipeline.

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161. *Id.* at 19.

162. *Id.* at 20.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *See, e.g.*, Press Release, State of Ill. Cook Cty. Circuit Court, Restorative Justice Cmty. Court Arrives in North Lawndale (July 20, 2017), <http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2564/Restorative-JusticeCommunity-Court-arrives-in-North-Lawndale.aspx> [<https://perma.cc/3EJF-RDCE>].

### A. *Restorative Conferencing Methods*

There is no one-size-fits-all approach to restorative conferencing, nor should there be. In fact, the foster care system's generic approach to every case causes many foster children to feel as though their individual identities, goals, and struggles are overlooked or ignored.<sup>168</sup> The Glenmona experiment illustrated that using restorative conferencing throughout the foster care process can empower children by giving them an avenue to control their own journey, providing them with a sense of community, protecting their voices, and ultimately, breaking the foster-care-to-prison pipeline<sup>169</sup>

Virginia can also begin dismantling its foster-care-to-prison pipeline by implementing restorative conferencing throughout the foster care process in three specific situations. First, nonemergency Family Group Conferencing should be utilized prior to TPR. Second, Virginia should give foster care providers and caseworkers informal and formal restorative conference training. Third, local departments of social services should create school response units trained in restorative conferencing to interact with local schools.

#### 1. Nonemergency Family Group Conferencing Pre-TPR

Family Group Decision Making ("FGDM") is a model of restorative conferencing used in child welfare systems across the globe.<sup>170</sup> FGDM was first introduced in New Zealand to counter traditional decision-making models in child welfare systems that ceded control to child welfare professionals and experts.<sup>171</sup> The purpose of the FGDM model is to place control back into the hands of children's communities by respecting and protecting their cultural ties.<sup>172</sup> Family Group Conferencing is a tool used within the FGDM model. FGCs are conferences that often deal with the aftermath of a harmful event by building partnerships among families and focusing on

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168. See Amma Mante, *8 Things All Kids in Foster Care Want People to Know*, ELITE DAILY (May 15, 2016), <https://www.elitedaily.com/life/kids-in-foster-care-want-you-to-know/1492485> [<https://perma.cc/JZXX-3XFX>] ("Foster kids aren't actually 'foster kids.' They are young people who happen to have experienced foster care. What they are not, is a monolith with uniform feelings or responses on every issue.")

169. MCCARNEY, *supra* note 107, at 2, 18–21.

170. LEE BARNSDALE ET AL., SCOTTISH EXECUTIVE, EXAMINING THE USE AND IMPACT OF FAMILY GROUP CONFERENCING 10 (2007).

171. *Id.* at 11.

172. See *id.* at 11–12.

a family's strengths and the child's community.<sup>173</sup> Most importantly, FGCs provide children with time to meet privately with their community, without professionals, where the focus is on the child's wellness.<sup>174</sup>

While FGCs were not used during the Glenmona experiment, Northern Ireland has used FGCs throughout its child welfare system.<sup>175</sup> The focus of these FGCs has been to transfer power traditionally held by welfare systems back to the family using community resources already in place.<sup>176</sup> As a result, a child's community acts as the guardian of her overall well-being while the state acts as a child's protector.<sup>177</sup> This structure has resulted in children maintaining stronger connections with their communities during their formative years.<sup>178</sup> In contrast, Virginia's current rate of non-relative and congregate care placement has resulted in foster children becoming isolated from their communities at critical points in their lives.<sup>179</sup>

Throughout Virginia, local departments of social services already utilize some variations of FGC before TPR.<sup>180</sup> Several localities invite a child's parents, care givers, caseworkers, guardians ad litem, and other significant members of the child's community together for the group conference.<sup>181</sup> In its current incarnation, however, FGCs are usually used only when changing a child's placement.<sup>182</sup> In order to help a child maintain the sense of community temporary placements tend to undermine, however, the state should expand its use of FGCs beyond the placement decision process and include it as part of TPR rehabilitation.

Currently, Virginia's Juvenile and Domestic Relations courts order parents to follow a rehabilitation process when their parental rights are initially at risk of termination.<sup>183</sup> The State also requires

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173. *Id.* at 11.

174. *Id.* at 12.

175. *Id.* at 2.

176. *Id.* at 12.

177. *Id.*

178. *Id.* at 20.

179. IMPROVING VA.'S FOSTER CARE, *supra* note 10, at 28–29.

180. *See, e.g.*, CITY OF RICHMOND DEP'T OF SOC. SERVS., TEAM DECISION-MAKING MEETING 2 (June 25, 2009) [https://www.dss.virginia.gov/files/division/dfs/fe/intro\\_page/toolkit/local\\_resources/richmond/tdm\\_policy.pdf](https://www.dss.virginia.gov/files/division/dfs/fe/intro_page/toolkit/local_resources/richmond/tdm_policy.pdf) [<https://perma.cc/32Y5-QKXE>].

181. *Id.* at 3–4.

182. *Id.* at 2.

183. Act of Mar. 18, 2019, ch. 434, 2019 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 16.1-283 (Cum. Supp. 2019)); *see also* Toms v. Hanover Dep't of Soc. Servs., 46 Va. App. 257, 267–75, 616 S.E.2d 765, 770–74 (2005).

parents to demonstrate their continued dedication to their child's well-being by maintaining active contact with the child and substantially planning the child's future for the first six months of a child's temporary placement.<sup>184</sup> In this specific context, FGCs could be utilized as a method of helping not only parents maintain the requisite amount of statutory contact with their child but also helping the family develop a community infrastructure and communication techniques that can endure after parental rights are restored.

Unlike most FGCs in place, courts could require that at least one monthly visit involve an FGC that is not a result of disciplinary concerns about the child, but instead focuses on the child's community and addresses the child's typical daily concerns. Under this proposal, nonemergency FGCs would involve the child's parents, care givers, caseworker, guardians ad litem, and other invited members of the community to meet and discuss topics of importance to the child, such as new interests in extracurriculars or case developments.

For example, if a child begins expressing interest in playing basketball, the nonemergency FGC that month would involve the child's parents, care givers, caseworkers, guardians ad litem, and other pertinent community members to gather and discuss what opportunities are available for the child to explore playing basketball, why the sport has become of interest to the child, and plans for helping the child make the goal a reality. By making these discussions a monthly requirement within the TPR process, Virginia could limit the deterioration of a child's social capital.

Unfortunately, nonemergency FGCs are not a magical cure that will always result in family rehabilitation and reunification. While there is evidence that nonemergency FGCs can lead to higher rates of family reunification, there are too many cases where formal TPR is necessary to protect a child's safety.<sup>185</sup> Once the state permanently removes a child from a parent's care, however, Virginia can still help the child maintain a sense of community through other methods of restorative conferencing by training care givers and caseworkers in informal and formal restorative conferencing methods. Specifically, Virginia should create Restorative Conferencing Response Units to interact with schools and train care providers and caseworkers in informal and formal restorative conferencing.

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184. Ch. 434, 2019 Va. Acts at \_\_.

185. TROUTMAN, *supra* note 34, at 1.

## 2. Restorative Conferencing Response Units for Schools

Creating stable school response units in local departments of social services would help bridge the gap between a child's at-home community and the school system. Unlike children who are part of a normative family unit, foster children do not always have a consistent point of contact for schools to reach out to. Constant placement changes prior to or after TPR can leave schools with limited choices of whom to contact when a foster child is a party in an altercation with other students or staff.

By training caseworkers in restorative conferencing tactics, such as restorative enquiry and impromptu conferencing, and dispatching them to local schools, local foster care systems would provide education administrators with a stable point of contact for foster youth enrolled in their schools. In turn, foster children would have a consistent point of contact trained to ensure that the children's voices are heard and protected. Establishing this dependable connection to an ally within the foster care system beyond placement providers would also expand children's community ties beyond their home while providing them with advocates who more properly understand these children's points of view.

## 3. Restorative Justice Training for Foster Care Providers and Caseworkers

A major reason foster children have a high rate of changing homes is that care providers and caseworkers feel ill-equipped to adequately handle a foster child's behavioral and developmental issues.<sup>186</sup> This leads care providers who have other children in the home to request that a child exhibiting behavioral problems be removed for fear that they will not be able to protect their other children.<sup>187</sup> The Glenmona experiment illustrates how the implementation of restorative conferencing can address this training deficiency and turnover rate.

In the Glenmona experiment, the evidence demonstrates that after receiving and implementing informal restorative conferencing and TCI techniques, staff "fe[lt] listened to" while also learning to take responsibility for their own contributions to altercations.<sup>188</sup> This willingness by staff to take accountability developed a sense

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186. See IMPROVING VA.'S FOSTER CARE, *supra* note 10, at 71–72.

187. MCCARNEY, *supra* note 107, at 5.

188. *Id.* at 18.



of mutual respect and trust between the staff and the looked after children in their care.<sup>189</sup> Furthermore, staff using the restorative approach in the Glenmona experiment reported that it made them view their children as “frightened children in crisis and not destructive trouble makers,”<sup>190</sup> a change brought because the restorative training staff made a cultural change in the home—the purpose of restorative conferences.<sup>191</sup> As a result of the restorative approaches, ISU staff reported they were able to work longer with children in crisis who would have previously been transferred to the Juvenile Justice Centre.<sup>192</sup> These results are a compelling reason for Virginia to begin training congregate care providers in restorative justice methods.

Virginia’s congregate care providers should also be trained in informal restorative conferencing, formal restorative conferencing, and TCI. This training will not only provide congregate care providers with the tools to effectively navigate the heightened crisis situations they face with children placed in their care but would also provide children improperly placed in congregate care with a system to protect and express their needs.

Critically, training congregate care providers using the same method as the ISUs in Glenmona will help develop a sense of mutual trust and respect between congregate care providers and the foster children they care for. This mutual respect can provide these children with senses of community, belonging, and civic spirit—things which are vital for children to develop pro-social skills and attitudes.<sup>193</sup>

### B. *Implementing Restorative Conferencing Methods in Virginia*

A primary concern with these restorative conferencing suggestions is that implementation would require extensive training, time, and resources. This concern is valid since studies show that the extensive training requirements contribute to low relative placement acceptances as well as low training turnout among case-workers.<sup>194</sup> The policy infrastructure already in place in Virginia

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189. *Id.*

190. *Id.*

191. *Id.* at 12, 15.

192. *Id.* at 18.

193. *Id.* at 14.

194. IMPROVING VA.’S FOSTER CARE, *supra* note 10, at 28, 70–72.

and within the federal government, however, provides adequate tools and means for implementing the suggested restorative conferencing scheme.

### 1. Restorative Conferencing Time Commitments

Implementing the three restorative practices suggested previously necessarily implicates time commitments for all the parties involved, such as parents, caseworkers, and care providers. Requiring restorative conferencing practices from the initial temporary placement of a child, through the TPR process, and possibly up to the age of twenty-one when Virginia foster children age out of the system<sup>195</sup> would require hundreds of caseworkers and care providers to dedicate time to both training and conferencing. Integrating the three suggested restorative conferencing methods can be done efficiently, however, using the sustainable and attainable training program seen in the Glenmona experiment.

The Glenmona ISUs only required staff to participate in one two-day training session at the ISU rather than extensive outside programming.<sup>196</sup> After the initial two-day training, on-site training and mentorship was provided up to two days per week during the preliminary months of implementation, followed by support from a mentoring group that assisted with any further difficulties, practice issues, and other additional support as needed.<sup>197</sup>

Using Glenmona's implementation practice as a model, Virginia should first develop the Restorative Conferencing Response Units in local departments. The Response Units should not immediately begin responding to local schools, however; the caseworkers in the Response Unit should first act as the on-site trainees for traditional caseworkers, guardian ad litem staff (or their equivalent), and congregate care providers and staff. Using the Response Units to provide an initial wave of training to these specific parties in the foster care system would go a long way toward integrating restorative practices throughout the foster care process.

To avoid placing a substantial burden on the parties' time, caseworkers, guardians ad litem, and congregate care providers should only be required to attend one two-day training conference per year, where the best restorative conferencing practices are discussed and taught. After the initial training, the initial Response

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195. *See id.* at 6.

196. *See* MCCARNEY, *supra* note 107, at 15.

197. *Id.* at 16.

Units should then be built within each local department using a rotation schedule to provide on-site training through the non-emergency FGCs required as a part of the TPR rehabilitation process. Allowing the three programs to interact as both training and care would consolidate time requirements so that local, state, and federal best practices are met without increasing the burden on caseworkers, guardians ad litem, and congregate care staff.

Once congregate care staff transition from weekly on-site training, caseworkers and guardians ad litem can serve as the mentor groups for the home providers while the Response Unit becomes an available resource to the school. Although delaying when Response Units become active may raise concerns about how behavioral concerns of foster children at school are addressed, the Glenmona experiment demonstrated that solely training group care providers in restorative conferencing still led to a decrease in juvenile referrals.<sup>198</sup>

By first implementing restorative conferencing in the foster care community at home, children gain necessary communication skills and a sense of community that will allow them to maintain a greater level of stability, and in turn, better navigate new school environments. This will likely result in fewer foster children lashing out, thus decreasing the need for emergency response units.<sup>199</sup> In addition to time commitment implications, the suggested reforms may also implicate personal privacy concerns, particularly in implementing the School Response Units.

## 2. Privacy Implications of Restorative Conferencing

For the Response Units to be successful, someone would need to inform teachers of their students' current foster care status in order for the Response Unit to be notified as needed. While school administrators may be made aware of a child's custodial status, foster children may not wish to have every teacher they interact with know their personal situation. Older foster children in their teens are likely to feel particularly distressed by this system.

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198. *Id.* at 20.

199. It is inevitable that in the time between response units training local foster care providers and reporting to schools, foster children who have yet to benefit from restorative conferencing will be referred to the juvenile justice system. The point of the suggested implementation plan, however, is not to ignore this reality but to create an efficient and effective solution to our current foster-care-to-prison pipeline problem without substantially draining available resources.

To address a foster child's concern regarding personal privacy in school, Virginia could implement a conditional waiver system to allow a child to opt-out under specific conditions that take into consideration age and the child's personal progress. The central focus of these restorative conferencing reforms is to provide foster children a sense of community and belonging by giving them a voice in the process. Stripping foster children of their autonomy for the sake of ease would likely lead to a continued sense of isolation, and in turn, behavioral choices that feed the foster-care-to-prison pipeline.

### 3. Financial Resources for Restorative Conferencing

As for financial resources, both state and federal legislators have passed bipartisan legislation to provide additional resources for foster care.<sup>200</sup> In 2018, Congress passed the Family First Prevention Services Act, effective as of 2020.<sup>201</sup> The bill provides states with funds to implement TPR prevention services and provides additional funding to states for improved relative placement rates.<sup>202</sup>

In February 2019, Virginia's General Assembly passed a \$2.8 million Foster Care Omnibus bill and implemented its first Foster Care Caucus.<sup>203</sup> This spending bill allocated \$851,000 to implementing the Family First Prevention Services Act.<sup>204</sup> Additionally, the legislature added \$3.2 million dollars to Temporary Assistance for Needy Families ("TANF") to help with relative placement costs.<sup>205</sup> With these newly available funding resources, Virginia

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200. Allison Gilbreath, *2019 Legislative Session Advocating for Kids in Foster Care*, VOICES FOR VIRGINIA'S CHILD. (Feb. 25, 2019), <https://vakids.org/our-news/blog/2019-legislative-session-advocating-for-kids-in-foster-care> [<https://perma.cc/5TSN-PGEL>].

201. As of June 5, 2019, the Family First Prevention Services Act has not released a concrete list of covered services but does restrict federal funding for congregate care services. See John Kelly, *Family First Act Clearinghouse Misses May Goal for First Slate of Approvals*, CHRON. SOC. CHANGE (June 6, 2019), <https://chronicleofsocialchange.org/youth-services-insider/family-first-clearinghouse-misses-may-goal-for-first-slate-of-approvals/35414> [<https://perma.cc/EAH6-R879>].

202. Allison Gilbreath, *Family First Prevention Services Act Will Change Child Welfare for the Better*, VOICES FOR VIRGINIA'S CHILD. (June 18, 2018), <https://vakids.org/our-news/blog/families-first-prevention-act-will-change-child-welfare-for-the-better> [<https://perma.cc/XEH9-Z3TR>].

203. Allison Gilbreath, *Big Year for Foster Care Reform: 2019 Legislative Wrap Up*, VOICES FOR VIRGINIA'S CHILD. (Feb. 25, 2019), <https://vakids.org/our-news/blog/big-year-for-foster-care-reform-2019-legislative-wrap-up> [<https://perma.cc/B2B2-Z45Y>].

204. *Id.*

205. *Id.*

has an unmatched opportunity to break its foster-care-to-prison pipeline by implementing restorative conferencing practices throughout the foster care system.

### CONCLUSION

The latest legislative trend in spending and policy provides Virginia with the opportunity to integrate restorative justice conferencing practices throughout its foster care system. Implementing nonemergency Family Group Conferencing would protect foster children's community bonds and help maintain them during the emotionally traumatic Termination of Parental Rights process rather than allowing these bonds to degrade and disappear. Creating Restorative Conferencing Response Units for schools and training caseworkers and care providers in Restorative Conferencing methods will give children the tools they need to engage with a supportive community system when facing hardships rather than turning to delinquent behavior.

Virginia's implementation of restorative conferencing throughout the Termination of Parental Rights process will help the foster system develop into the community its children so desperately need. Through this community, Virginia will not only improve the lives of thousands of children—it will begin breaking the foster-care-to-prison pipeline currently engulfing children in government care.

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\* J.D. Candidate 2020, University of Richmond School of Law; B.A., 2013, University of North Carolina at Chapel Hill. I would like to share my sincerest gratitude to Professor Doron Samuel-Siegel for generously donating her time and experience throughout the writing process. Most importantly, this Comment is dedicated to my parents, Angela and Harry Steele, whose love and kindness helped reshape the lives of several foster children—including me.