

**OP. NO. 04-012**

**COURTS NOT OF RECORD: JUVENILE AND DOMESTIC  
RELATIONS DISTRICT COURTS – DISPOSITION.**

**Authority for juvenile court to order local board of social  
services to accept noncustodial entrustment of child found to  
be in need of services.**

The Honorable Frank D. Hargrove, Sr.  
Member, House of Delegates  
March 22, 2004

**Issue Presented**

You inquire regarding the authority of a juvenile and domestic relations district court ("juvenile court") judge to order a local social services board to accept a noncustodial entrustment of a child. Specifically, you ask whether the judge, after making the necessary findings, may order the local social services board to accept a noncustodial entrustment in order to place the child in a suitable facility, while legal custody remains with the parents.

**Response**

It is my opinion that a juvenile court judge has the authority to order a local board of social services to accept noncustodial entrustment of a child found to be in need of services.

**Background**

You relate that § 16.1-278.4 permits a local social services board to enter into noncustodial entrustment agreements for the placement of children in appropriate residential facilities while legal custody remains with the parents. You further relate that § 16.1-278 authorizes a judge, after notice and an opportunity to be heard, to order any governmental agency or institution to render only such services as are provided for by law.

**Applicable Law and Discussion**

"The jurisdiction, practice, and procedure of the juvenile ... courts are entirely statutory,"<sup>1</sup> and are set forth in Chapter 11 of Title 16.1, §§ 16.1-226 through 16.1-361. Section 16.1-278(A) provides that a juvenile court judge

may order, after notice and opportunity to be heard, any state, county or municipal officer or employee or any governmental agency or other governmental institution to render *only* such information, assistance, services and cooperation as may be provided for by state or federal law or an ordinance of any city, county or town. [Emphasis added.]

The use of the word "only" in § 16.1-278(A) clearly limits a juvenile court judge's authority to order only those services to be rendered as are provided by law or ordinance.<sup>2</sup>

Section 16.1-278.4 provides that, where a child is found to be in need of services,<sup>3</sup> the juvenile court may enter an order pursuant to § 16.1-278<sup>4</sup> and may also permit the local board of social services to place the child in an appropriate facility while legal custody remains with the parents.<sup>5</sup> Because the local board of social services is authorized by law to enter into noncustodial entrustment agreements, the juvenile court judge may also order that governmental agency to render that service. In 1995, the Court of Appeals of Virginia held that the juvenile court judge may, pursuant to § 16.1-278(A), order a local governmental entity to provide necessary services.<sup>6</sup>

### **Conclusion**

Accordingly, it is my opinion that a juvenile court judge has the authority to order a local board of social services to accept noncustodial entrustment of a child found to be in need of services.

<sup>1</sup>Walker v. Dep't of Pub. Welfare, 223 Va. 557, 562, 290 S.E.2d 887, 890 (1982), *quoted in* 2001 Op. Va. Att'y Gen. 82, 83.

<sup>2</sup>1995 Op. Va. Att'y Gen. 111, 113, 114 n.10 (use of word "only" in statute connotes limiting language).

<sup>3</sup>"Child in need of services" means that (1) a child's behavior, conduct or condition presents a clear and substantial danger to the life or health of the child or another person; (2) the child or his family needs, but is not receiving, treatment, rehabilitation or services; and (3) the court's intervention is essential to provide the child or his family with necessary treatment, rehabilitation or services. Va. Code Ann. § 16.1-228 (LexisNexis Repl. Vol. 2003)

<sup>4</sup>Section 16.1-278.4(1).

<sup>5</sup>Section 16.1-278.4(5) authorizes a juvenile or circuit court to enter an order permitting the local board of social services to place a child in need of services, subject to a foster care plan, in a suitable family home, child-care institution, residential facility, or independent living arrangement while legal custody remains with the parents or guardians. Any order allowing a local board to place a child whose legal custody is with the parents or guardians "shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state." *Id.*

<sup>6</sup>See Fauquier County Dep't of Social Servs. v. Robinson, 20 Va. App. 142, 455 S.E.2d 734 (1995) (holding that court had authority to compel Family Assessment and Planning Team and Community Policy and Management Team to provide necessary residential treatment services for child).

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