

DEFINITION OF KINSHIP CAREGIVERS

Findings and Recommendations

Finding #1 – There is confusion regarding kinship care and the definition of relatives or “kin”.

- While § 63.2-100 of the *Code of Virginia* defines kinship care as “the full-time care, nurturing, and protection of a child by relatives,” in Virginia, the definition of “relative” varies from program to program.
- The way “relative” is defined for purposes of kinship care is important because it influences placement, access to information, and even eligibility for program benefits.
- For purposes of diverting children from foster care and, when parents agree to a relative placement as an alternative to foster care, a broad definition of relative may be helpful in allowing for case-by-case determinations.
 - A broad definition includes persons who are not related to the child but have an established relationship with the child versus a narrow definition that includes only blood relatives or those related by marriage or adoption.
- Federal law allows states to define relative for purposes of a Title IV-E Guardian Assistance Program (GAP) and will accept a reasonable interpretation of a relative. This may include limiting the term to include biological and legal familial ties including Tribal kin, extended family and friends, or other “fictive kin”.
- A broad definition would allow flexibility for the different circumstances. A definition similar to Minnesota’s, which states that a relative includes an individual with whom the child has resided or has had significant contact, ensures a placement that is best for the child.
- There must be different definitions for different situations. A broad definition may not be appropriate for certain circumstances such as termination of parental rights and custody determinations.

Recommendations

1. Amend § 63.2-100 of the *Code of Virginia* to specify:
 - a. A relative may include anyone related to the child by blood, marriage, adoption or anyone with a significant existing relationship with the child.
 - b. A kinship caregiver is a person, age 18 or older, related to the child by blood or marriage, who is caring for the child in place of the child’s parents. Relatives can include:
 - i. Grandparents, including great, great-great, and great-great-great-grandparents
 - ii. Siblings
 - iii. Aunts, uncles, nephews, and nieces, including any relative with a great, great-great, or grand prefix
 - iv. First cousins and first cousins once removed
 - v. Stepparents and stepsiblings of the child
 - vi. Spouses or former spouses of any of the above
 - vii. A legal guardian or legal custodian of the child
 - c. Relative means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.
2. Request the Department of Social Services (DSS) revise its Foster Care Guidance Manual to define “relative” for purposes of kinship care. (see Recommendation #1)
3. Request DSS to include in its guidance to local departments of social services (LDSS), best practices regarding relative placements, available preventive services, and guidelines for

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assessing relatives for foster care diversion. Guidance will also address placing the child in the least restrictive and the most appropriate level of care to meet the child's needs.

4. Take no action.
5. Other options?

Finding #2 – There is confusion regarding the categories of kinship care.

- Kinship care has been divided into “formal” or “public” kinship care (where a child welfare agency is involved) and “informal” or “private” kinship care (where the state is not involved).
- In Virginia, the majority of kinship care arrangements are “informal”. However, there is no explanation of informal kinship care in statute or policy.
- In Maryland, “informal kinship care” is defined as a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship. COMAR § 13A.08.05.01.
- Statewide, there is inadequate documentation and no formal tracking of informal kinship care placements to support appropriate accountability measures.

Recommendations

1. Request DSS to revise its Foster Care Guidance Manual to define informal kinship care.
2. Request DSS to develop a field in the OASIS database to track diversion data statewide by including kinship diversion in Safe Measures reporting and in the Quality Service Review performance management process.
3. Take no action.
4. Other options?

Finding #3 – Virginia has no standardized policy or guidance on kinship diversion.

- Kinship diversion occurs when LDSS facilitate the placement of a child with relatives to prevent a foster care placement when the child cannot remain at home with their parents.
- Local social service workers are typically tasked with the responsibility of evaluating potential kinship caregivers. Federal law, regulations, and guidance provide states with some flexibility in their approaches to kinship care. There is no guidance specifying when to conduct an assessment and which diversion cases require them.
- Some LDSS workers may conduct a preliminary check and then follow-up with a federal background check. Others may place the child with a relative before conducting any checks.
- LDSS may use safety plans to outline the service recommendations for the parent in order to regain care of her child. However, there is confusion about the legality of the safety plan.
- Additionally, when parents agree to a kinship placement to avoid an abuse and neglect proceeding, there is no defined procedure to ensure that the child returns home or achieves permanency. One study revealed that birth parents are less likely to complete case plan requirements for reunification when their children are placed with relatives.¹ This may be because these parents may feel less pressure to address the issues that led to their children's placement because they have access to their children and confidence in the ability of the relative to care for them.
- Kinship policies should be flexible regarding non-safety requirements. However, guidance regarding assessment and case management would be helpful to inform case decisions.

¹ Green, R. (2004). The evolution of kinship care policy and practice. *Future of Children*, 14(1), p. 137.

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Recommendations

1. Support DSS in the creation of kinship diversion guidelines and request that such guidelines outline best practices and provide guidance to workers on how to carry out diversion practice such when to divert/when to not divert, type of assessments and when to conduct them, and ensuring the child achieves permanency.
2. Request DSS to create a training program to child service and social service workers to address this issue.
3. Take no action.
4. Other?

Finding #4 – Virginia’s relative notification provisions are critical in promoting kinship care.

- The *Fostering Connections Act* requires that, within 30 days after the removal of a child from the custody of his or her parent or parents, the state shall identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence.
- The *Code of Virginia* §§ 63.2-104 and 63.2-105 provide the statutory framework for collecting and maintaining information gathered during a child protective services (CPS) investigation, and for the release of such information and to whom it may be released.
 - Persons identified in the *Code* who may receive information in the course of a CPS investigation are a parent, grandparent, or any other person when such parent, grandparent, or any other person would be considered by the local department as a potential caretaker of the child in the event the local department has to remove the child from the custodian.
- There is uncertainty as to how broadly the discretionary release of confidential information can be interpreted regarding the requirement to notify “all” relatives. Thus, it may be that not all adult relatives are notified regarding the child’s removal from their home. Frequently, the relatives who are not notified are the most stable placement option for the child.
- In Virginia, juvenile court judges are including instructions in their foster care prevention assessment orders that direct the parents to list all family members on both the mother’s and father’s side of the family. This is an effective mechanism to identify all family members and potential placement options.

Recommendations

1. Request that DSS include the kinship diversion guidelines, best practices in establishing partnerships with the courts in the identification of all family members who may be potential placement options.
2. Request the Office of the Executive Secretary, in partnership with DSS, include training at the annual juvenile and domestic relations judges’ conference on judicial strategies that support efforts in locating family members pursuant to the *Foster Connections and Increasing Adoptions Act*.
3. Take no action.
4. Other?

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Finding #5 – Informal kinship caregivers may find it difficult to obtain services for the children placed in their care.

- While federal law allows for custody of the child to transfer from the local department of social service to the eligible relative foster parent and for payment of the foster care maintenance payment, many relatives do not want to subject themselves to the process of becoming a foster parent or the continued monitoring as foster parents. They just want to be family, not foster parents.
- When children are placed with a relative placement, as an alternative to foster care, the only legal process available to the relatives to gain legal authority over the child is to pursue legal custody. However, this is typically not a viable option as it may be cost prohibitive to hire an attorney for representation in the custody proceeding. Additionally, it is undesirable for the relative to testify that it is not in the best interest of the child to remain with the parent, thus pitting the parent against the relative.
- Protection of a child through the use of guardianship may be particularly appropriate where the parent or parents will be temporarily absent from the child's life and thereby unable to provide care. Guardianship is a formal legal arrangement granted by a court that gives another person the legal rights to act on behalf of a child whose parents are dead, missing, or otherwise not able to care for the child.
- Guardianship may also be a valuable alternative to termination of parental rights. It is there are important ties, both psychological and legal, that one wishes to preserve and yet the biological parent is unable to properly care for the child in the foreseeable future.
 - For example, in Michigan there are three types of guardianships: temporary guardianship (until a hearing can be held), general or full guardianship, and limited guardianship.
 - General or full guardianship does not require parental consent and may be petitioned by a person interested in the welfare of a minor or a minor if 14 years or older. The court may at any time, order the minor's parents to pay reasonable support and order reasonable parenting time and contact of the minor ward with his or her parents, legal authority for the provider, stability for the child.
 - Limited guardianship may be useful where a child has been reported as abused or neglected, a placement is being sought, a family partnership meeting is held and the parent consents to the placement, thereby diverting the child from foster care. This type of guardianship is in alignment with the consensual agreement reached in family partnerships in which a parent consents to his or her child living with a relative or another person deemed to be appropriate. It allows for financial support to be given to caregiver by the parent, allows for safety and stability of the child, allows for visitation of the parent, establishes a plan to reunite the child with the parent if the parent complies with the placement plan, and grants legal authority to the provider, without having to go through the financial and emotional expense of seeking legal custody.
- Virginia, like other states, has standby guardianship laws in which a parent may transfer guardianship of his or her child to a specific person under certain conditions. Many States developed these laws specifically to address the needs of parents living with HIV/AIDS, other disabling conditions, or terminal illnesses who want to plan a legally secure future for their children. A standby guardianship differs from traditional guardianships in that the parent retains much of his or her authority over the child.

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1. Amend § 16.1-349 of the *Code of Virginia* to include standby guardianship as an option when a child is placed with relatives as an alternative to foster care.
2. Introduce legislation creating a relative care guardianship provision (similar to the limited guardianship option discussed above) as a resource for relatives caring for children placed with them as an alternative to foster care.
3. Take no action.
4. Other?

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