

# Virginia Commission on Youth

## Restoration of Parental Rights Advisory Group

5 East Conference Room  
General Assembly Building  
August 20, 2012  
10:00 a.m.

### MINUTES

#### Members Attending:

Delegates Mamye BaCote and David Toscano, Senator George Barker, Karen Addison, Melanie Baker, Lisa Banks, Gary Close, Jessica Cochrane, Margaret Deglau, Victor Evans, Stacie Fisher, Shannon Hoehl, Lelia Baum Hopper, Jack Ledden, Christine Marra, Ellen Nau, Cate Newbanks, Frank Royal, Karen Reilly-Jones, Eric Reynolds, Shawn Rozier, Mattie Satterfield, Charles Slemp, Anne Westcott, Adalay Wilson, Carol Wilson, Mary Wilson, Therese Wolf, Amy Woolard

#### Participating Electronically:

Patty Bailey, Betty Wade Coyle, Kathy Dial

#### Staff Attending:

Amy M. Atkinson, Leah Hamaker, Meg Burruss

#### Guests:

Denise Gallop, Sarah Stanton, Robley Jones, Lyndell Lewis, Becky Bowers-Lanier, Carter Batey

#### Welcome and Introductions

*Amy M. Atkinson, Executive Director*

Ms. Atkinson welcomed the Advisory Group and asked the members and guests to introduce themselves. She briefed the members on the history of this study and noted the three bills introduced this past General Assembly Session that dealt with the restoration of parental rights. Because there was not sufficient time to investigate the policy implications of these bills, the House and Senate Courts of Justice Committees continued the legislation to the 2013 General Assembly Session and referred the bills to the Commission on Youth so the Commission could evaluate the policy implications of the bills.

Ms. Atkinson noted that one common theme reflected by the legislation is that children typically do best when they are cared for by family members. Additionally, the federal *Fostering Connections and Increasing Adoptions Act* promotes the goal of maintaining family connections.

This Advisory Group is a “roll up your sleeves” work group and is tasked with evaluating the legislation introduced in the 2012 General Assembly Session. Ms. Atkinson stated that this was the first meeting of the Advisory Group and informed members that the Advisory Group would meet again in September to formulate draft recommendations. Those recommendations would then be presented to the Commission on Youth for consideration and action prior to the 2013 General Assembly Session.

Ms. Atkinson then asked Delegate Toscano and Senator Barker to explain their respective pieces of legislation.

### **2012 Introduced Legislation**

*The Hon. David Toscano, Virginia House of Delegates*

*The Hon. George Barker, Senate of Virginia*

Delegate Toscano, patron of HB 450 (2012) began by informing the Advisory Group that he practices in this area of law and frequently represents local departments of social services (LDSS) in court. The issue of restoration of terminated parental rights was brought to him by the Virginia Poverty Law Center as an option for youth in foster care. He stated that, while he anticipated that the option would rarely be used, it could be beneficial in some cases. He offered the example of a young parent having his or her parental rights terminated, but in time being able to remedy the mitigating problem. This legislation would provide a tool for these parents so they could have their parental rights restored. Currently, the only option available to these parents is filing an adoption petition. Delegate Toscano stated that the provisions in his legislation would provide protections for these youth and require agreement between the guardians ad litem and the LDSS. He also noted that his legislation did not allow parents to file the petition – a difference between his and Senator Barker’s legislation. He stated a preference for establishing that the petition to be filed by the LDSS.

Senator Barker, patron of SB 218 (2012) spoke next, informing the group of his background as a foster parent and past chair of the Fairfax County Board of Social Services. He noted that there were challenges to finding permanent placements for youth in foster care and thus a large number of youth ultimately age out of foster care. He identified the George Mason University study on the outcomes of youth aging out of foster care and stated that restoration of parental rights could be a reasonable mechanism to provide youth with permanency supports.

### Questions

- Delegate BaCote asked why the age of 14 was chosen for the legislation.
  - *Christie Marra, of the Virginia Poverty Law Center, spoke of her experience at National Training the previous week. The opinion there was that age 12 might be appropriate for youth to seek restoration.*

### **Termination of Parental Rights**

*Therese Wolf, Program Manager, Virginia Department of Social Services*

Ms. Wolf gave her presentation on the process of termination of parental rights in Virginia. She first briefly addressed the voluntary termination of parental rights before turning to the process for involuntary termination. Ms. Wolf went through the handout prepared by Commission on Youth staff, identifying the different bases for termination of parental rights.

### Questions

- Delegate Bacote asked about the role fathers play in this process.
  - *More often than not, the mother is the head of the household. When a mother’s rights are being terminated, the local departments need to look for the father. Furthermore, a lot of effort is spent looking for family from the father’s side of the family. Not a lot of fathers are the sole custodian.*
  - *On a national level, a number of local departments of social services are not seeking fathers to care for children, although that number has been increasing in the last five years. Again, more consideration needs to be given to fathers and their sides of the family.*

- *Judge Deglau, Henrico County Juvenile and Domestic Relations (JDR) District Court informed the Advisory Group that, in a termination proceeding, the greater issue is women not knowing whom the father is. In her court, she orders both parents to list every known relative, regardless of his or her preference.*

### Comments

- Senator Barker told of a personal experience with a foster youth in which the father lived in Minnesota but was located and stepped forward to care for the youth.
- An Advisory Group member spoke of the need to do better with a diligent search of all relatives, including those on the father's side of the family.
- Jack Ledden of Virginia Department of Social Services told the group about their father registry and the use of Accurint software to help locate fathers. He indicated that he sees a philosophical shift towards strengthening families.

### **State-by-State Comparison of Existing Restoration Laws**

*Meg Burruss, COY Legal Intern*

Ms. Atkinson stated that ten states have a process in place and introduced Ms. Burruss to review the states that have such a process. Ms. Burruss explained the use of "restoration" versus "reinstatement" in the state laws and on the handout but stated that she would be using "restoration." She covered the various provisions regarding who can file the petition, highlighting New York for being the only state that permits the parent to file. She pointed out the range of ages of the juveniles for whom restoration was permitted, highlighting age exceptions and the states that do not have an age threshold. Ms. Burruss also pointed out to the members the various waiting periods in the statutes and the consent requirements included in some of the laws. She highlighted New York's statute as the only one which specifically limits restoration to cases in which the parents' rights were terminated in one of three circumstances. (Delegate Toscano interjected that his proposed legislation had a similar provision.) Ms. Burruss concluded by directing members' attention to the several states which have conditional granting of restoration.

### Questions

- A question was asked whether there was any data about outcomes in restoration cases.
- Senator Barker asked about data from the states with the conditional period.
- A question was asked about which services were provided.
- A question was asked whether the process had to end before the child turns 18.
- A member spoke about research he had done and that responses out of California and Nevada had been mostly positive. Negative comments pertained mainly to the sense that age thresholds were high.
- There was a question about what was in place to protect adoptions.
  - *There is no provision in any of the laws but this process is only available where there is not a preadoptive family. Ms. Stanton, staff attorney with the Division of Legislative Services, stated that the language, "identified and approved," in Senator Barker's proposed legislation could be changed to "located parent."*
- There was a question about child support enforcement.
- There was a question about situations in which the child is receiving Temporary Aid to Needy Families (TANF) benefits.

### **Perspectives**

Judge Deglau opened, offering a judicial perspective. She agreed with requiring the petition to be filed by agency or guardian ad litem. She spoke of her experience with termination

cases and the impact upon the children. She expressed concern that this process could raise the child's hopes if the parent is permitted to file the petition. Judge Deglau noted that she could see this being a good thing for young families, stating that it is possible for a parent to change.

In regards to the age threshold, Judge Deglau said that younger children have less of an ability to protect their interests or assert themselves but, at the same time, there are 12 year olds who have seen and experienced things many in the room have not so perhaps age 12 might be more appropriate than age 14. She was reluctant to lower the age to under 12 because of the impact it could have on the child if they went home, only to have a repeated child protective services investigation and possible removal from the home. Senator Barker asked about states that have an exception for younger children, including children who are younger siblings.

Judge Hoehl with Hanover County JDR Court noted that her perspective was based on her role in presiding over many foster care petitions. Her concern with establishing a process for restoration was how it could impact the child's perception of permanency, particularly for older youth. If there is constant hope for the child that they can return home, this may impede their ability to move forward. Another concern was the Senate Bill allowing the child's parent to file with the guardian ad litem. This may conflict with the role of the guardian ad litem. Moreover, it could be a lengthy process assuming that the petition is filed in JDR District Court and time frames are established for appeal.

A member asked about why a two-year period after termination was required. Judge Deglau spoke about the need to get things right post-termination. Six months, she argued, would not be enough time for LDSS to work with the child and look for an appropriate adoption placement. She highlighted that the biggest risk was restoring the parental rights and then having the situation implode.

A question was asked about the quality of the psychological exams used in the juvenile and domestic relations courts. Judge Deglau answered that the quality varies by region but, in Henrico County, these assessments were very helpful. Another question was asked about how often these psychological assessments occur, whether they are point to point or a one-time process.

A member spoke of open adoption and the youth who want to be connected with their birth parents, regardless of what a court order specifies. The cases that are successful are those with informal open adoptions.

Mattie Satterfield, Norfolk Department of Social Services Director, gave an overview of LDSS and children in foster care. She spoke of these children's unflagging desire to know where their families were, despite positive relationships with foster parents. She advocates for restoration of parental rights primarily for the children's sake. Her observations have been that children will return to their parents, even when LDSS does not support it. Ms. Satterfield pointed out that when there are reunifications, aftercare services are provided to the families for six months.

One Advisory Group member spoke of how such a process underscores the work done for youth in foster care. It is widely known that when youth age out of foster care, they seek out their parents. Restoration of those parental rights would be a vehicle to allow for support in appropriate circumstances. Restoring the parental rights gives legitimacy to the relationship.

Judge Deglau spoke about how she initially disagreed with the idea of restoration but then realized that many of the youth who came before her run away from their placements at ages 16 and 17. They are reestablishing relationships with their birth parents on their own anyway. Judge Hoehl questioned whether the ruling would be in favor of these youths' returning to their parents and whether it was in the children's best interests.

Delegate Toscano pointed out that by the time a petition for restoration went to court, it should be a "slam dunk" because of the work done before filing. The petition would not be filed until the particular factors are addressed.

Another member expressed concern about how this could affect the services the youth are receiving while in foster care. Another member echoed this concern. There was a follow-up question about any designated tribes in Virginia. Senator Barker stated that where there are issues, they are identified so that all impacted parties could attempt to address them.

Delegate BaCote mentioned the problem with youth transitioning from foster care at age 18 and the difficulty of receiving independent living services should they change their mind after opting not to receive independent living services.

The overall response of the Advisory Group was support of the concept of restoration of parental rights legislation, with slight modifications.

### **Next Steps**

Ms. Atkinson thanked the members for their assistance and suggestions. Commission on Youth staff will consider all the expressed concerns and discussion including the age of the child, inclusion of a sibling exception, and options as to whether the guardian ad litem or the LDSS would initiate the petition.

The next step is developing a proposed legislative draft for the Advisory Group. Ms. Atkinson informed the attendees that the Advisory Group would reconvene on Monday, September 17 at 10:00 a.m. to review the draft legislation. A legislative draft would be disseminated to the Advisory Group prior to the meeting via email.

The meeting adjourned at 11:53 a.m.