

Virginia Commission on Youth

Definition of Kinship Caregivers Advisory Group

5 East Conference Room
General Assembly Building
August 20, 2012
1:00 p.m.

MINUTES

Members Attending:

Delegates Christopher Peace, Mamyé BaCote, and Scott Surovell, Senator George Barker, Karen Addison, Melanie Baker, Lisa Banks, Gary Close, Maggie Deglau, Victor Evans, Stacie Fisher, Shannon Hoehl, Lelia Baum Hopper, Jack Ledden, Christine Marra, Ellen Nau, Cate Newbanks, Em Parente, Karen Reilly-Jones, Eric Reynolds, Mattie Satterfield, Charles Slemp, Anne Westcott, Adalay Wilson, Mary Wilson, Therese Wolf, Amy Woolard

Participating Electronically:

Patty Bailey, Betty Wade Coyle, Kathy Dial

Monitoring:

Delegate Mark Keam, Frank Royal,

Staff Attending:

Amy M. Atkinson, Leah Hamaker, Meg Burruss

Guests:

Vic Bakhshi, Sarah Stanton, Robley Jones, Lyndell Lewis, Becky Bowers-Lanier, Gardenella Green, Carter Batey, James Council

Welcome and Introductions

The Honorable Christopher K. Peace, Chair

Delegate Peace welcomed the Advisory Group. He stated that this study was adopted at the Commission's May 14 meeting. It is important to investigate the issue of kinship and as this Advisory Group endeavors to investigate the issue of kinship and a proper definition for it. He indicated that any recommended work product deemed necessary by the Advisory Group would need to be developed prior to the General Assembly Session.

Delegate Peace noted that during the previous General Assembly Session, a number of issues emerged which were impacted by the lack of a kinship definition in Virginia. While this Advisory Group is comprised of subject-matter experts, generally there is not a great understanding of what kinship is and what kinship care's goals are. The Advisory Group will receive background information on kinship care in Virginia. Delegate Peace thanked everyone for attending and being part of the process then asked the members and guests to introduce themselves. He then turned the meeting over to Ms. Atkinson for a study overview.

Study Overview

Amy M. Atkinson, Executive Director

Ms. Atkinson briefed the members on the history of this study. She noted that the study plan sets forth the study issues and activities. Ms. Atkinson stated that, for any proposal to be successful, the Commission and staff must interact with the impacted stakeholders so that if legislation were introduced, the policy recommendation(s) would be already vetted.

Ms. Atkinson noted that staff would be evaluating relevant statutes and regulations and working with the Advisory Group to develop recommendations. Ms. Atkinson informed the group that there would be one more Advisory Group meeting to formulate findings and recommendations. The Commission on Youth would receive a presentation on the proposed recommendations at the October 17 meeting.

Overview of Kinship Care Activities in Virginia

Leah Hamaker, Senior Legislative Analyst

Ms. Hamaker noted that several handouts were provided in the packets to help set the stage for discussion of kinship care activities in Virginia. She noted that, in times of need, relatives have cared for other family member's children; however, in recent years, there have been several legislative, executive branch, and private sector activities influencing kinship care. Ms. Hamaker discussed several of the legislative studies, including the Commission on Youth's studies in 2010 and 2011 on *Barriers to Kinship Care* and *School Enrollment Practices for Kinship Caregivers*. Delegate Peace asked whether these activities addressed formal or informal kinship care arrangements. Ms. Hamaker indicated both formal and informal kinship care activities in Virginia were included.

Ms. Hamaker noted that the handouts did not include the work conducted at the local level by a variety of organizations. One such agency, the Mountain Empire Older Citizens (MEOC), is one of Virginia's 20 area agencies on aging. MEOC administers a kincare program in the southwestern Virginia region. Ms. Hamaker asked Patty Bailey, MEOC KinCare Director, to comment on the services provided to caregivers at MEOC. Ms. Bailey stated that MEOC provided support services to grandparents and/or other relative caregivers who are acting as surrogate parents or who have custody of a relative child. Services include care coordination, support groups, case management, education, advocacy, and information and referral.

Virginia's Kinship Diversion Efforts

Therese Wolf, Program Manager for Permanency, Division of Family Services

Virginia Department of Social Services

Ms. Wolf briefed the Advisory Group on the Department of Social Services' efforts to increase permanency through kinship care. Ms. Wolf discussed the federal mandates that encourage kinship care, as well as Virginia's laws that specify priority in placing children with relatives. Ms. Wolf noted that Virginia's foster care population, based on point-in-time numbers, was currently 5,085. This is a significant reduction from 8,173 in 2007. Ms. Wolf stated that there were 540 youth currently in family foster care placements.

Ms. Wolf shared recent changes in Virginia laws which support kinship care placements. One such legislative action was enacted to allow a child who is in a 24-month period of Temporary Aid to Needy Families (TANF) ineligibility to regain eligibility. This occurs when the child is removed from the parents' home due to a child protective services complaint or report. Prevention services available to kinship caregivers in Virginia include case management, service referral, court-ordered monitoring and childcare.

Ms. Wolf discussed the barrier crime statutes in Virginia and noted the local departments of social services' (LDSS) concerns over the array of offenses that prohibit individuals from being approved as resource, foster, or adoptive parents. She noted that their concerns pertained to the lack of a waiver process for relatives having a barrier crime in their history, but who appear to pose no threat. Another issue she shared with the Advisory Group was the relative notification provisions set forth in the federal *Fostering Connections and Increasing Adoptions Act*. A question confronting LDSS staff is whether they are authorized to notify relatives about a pending child protective services investigation in the event the child must be removed from the custodian when the family does not want them to be notified. The Advisory Group members discussed this issue and concurred that it could be addressed with judicial involvement.

Ms. Wolf discussed the difference in TANF benefits for children living with relatives or informally placed with relative versus children placed in foster care. Average monthly rates for Title IV-E foster care is \$571 per month per child. The average monthly rate for TANF benefits for a child informally placed with relatives is \$186 per month. The average maximum allowable under this provision, regardless of the number of children residing with the relative, is \$497. Flexibility in this payment could be in diverting children from foster care into relative placements. Ms. Wolf indicated that the Virginia Code does not include a definition of "relative". The term "kin" is used interchangeably with relatives but the definition of "relative" varies program to program. Ms. Wolf stated the Advisory Group might consider a broad definition.

Ms. Wolf answered questions from the Advisory Group. Mr. Chris Freund asked if the rate of reunification was higher than non-relative placements. Another question dealt with children placed with relatives and school enrollment. It was noted that legislation was introduced during the last General Assembly Session to address this issue. While the legislation was not enacted into law, the issue may come up in the 2013 General Assembly Session. Mr. Charles Slemp asked where the broad definition outlined on Ms. Wolf's presentation originated. Ms. Wolf answered other states were using such a broad definition. Delegate Peace asked whether Ms. Wolf had any concerns about using a broad definition and the potential impact upon federal funding. Ms. Wolf noted impacted funding federal streams were Title IV-E and IV-B. However, other states were using a broad definition and receiving Title IV-E and IV-B funds so federal funding must be permissive. Delegate Peace asked that this be confirmed.

Ms. Wolf then presented the findings from two kinship diversion research studies conducted by the Department of Social Services. She stated that the Department conducted a quantitative study in 2009. In 2011, the Annie E. Casey Foundation and ChildTrends collaborated with the Department and collaborated with a follow-up qualitative study. The quantitative study was initiated to determine whether foster care diversion accounted for Virginia's lower placement of children in relative foster care. Ms. Wolf noted that Virginia ranks last in the nation for the number of children placed with relatives in foster care. She stated that kin diversion occurs when the child welfare agency facilitates the placement of children with relatives in lieu of foster care in instances when they cannot remain safely at home with their parents.

Ms. Wolf gave an overview of the sample population, the regions and the methodology used for the quantitative study. A survey was administered to the LDSS workers in the selected regions. The quantitative study yielded the following results:

- 11 of 361 (3%) children came into custody.
- 42 of 361 (11.6%) were placed in another home informally (diverted from foster care).
- 30 of the 42 (71.4%) children were placed with kin.
- 12 of the 42 (28.6%) children were placed with "other".

The study found that between 8.3% and 11.6% youth were placed with kin. It is estimated for 12 months, between 2,148 and 3,012 children were diverted from foster care and placed with relatives.

Of the 42 children diverted from foster care, over 78% were specifically placed informally as an alternative to foster care. In addition, over 61% of these children were being monitored after diversion and 57% were receiving services.

Ms. Wolf noted several follow-up questions that emerged from the study, including what are Virginia's philosophies around using kin as foster care prevention, what are Virginia's diversion practices, and understanding the statewide variation in diversion practices. Accordingly, the Department collaborated with the Annie E. Casey Foundation and ChildTrends to try to obtain clarification to these questions. She outlined the study methodology and the study findings, which are outlined below:

- In all localities, kin diversion practice is always considered first (if an appropriate relative available) and does not differ due to the severity of abuse/neglect, age of the child, or any other factors.
- Localities range from kin diversion/no licensure of relatives to kin diversion/some licensure of relatives.
- Kin diversion does not appear to be a tactic to avoid the provision of in-home services for the birth parent before removal.
- Agencies may work with families who come to them for reasons other than abuse/neglect.

The qualitative study found that kin diversion is utilized because agencies wish to support families staying together and believe that prevention services should be first option presented to families. Kin diversion was not used when there were no available relatives, there were no "appropriate" relatives or the relatives were out-of state. Diversion may not be considered if previous in-home prevention services were exhausted or the relative was out of the jurisdiction and there were no prevention services available in their jurisdiction.

Ms. Wolf noted that currently there are no formal guidelines specifying assessment type and there was worker confusion over the need for assessment. This was true for utilization of background and criminal checks in diversion cases. While all local departments utilized background checks in diversion case, some workers conduct quick checks via local police then follow up with federal check. Others may report placing the child with the relative prior to conducting a child protective services (CPS) check. Finally, other workers indicate there is no need for background checks because the parent was responsible for making the placement.

Ms. Wolf then discussed findings related to monitoring of open cases, which may be open for 30 days up to two years. She noted that not all diversions end in permanent custody. Service provision also varies based on the availability in the locality. Safety planning is used to list service recommendations for the parent and details for visitation. Because the service plan is signed by the parent and other parties, it can be confusing to parents because they may think it is legally enforceable.

Medicaid or the relative caregiver's insurance reimburses for services; however, it may become difficult to pay for services. This is because the child may no longer be considered "at risk" for an out-of-home placement when they are residing safely with relatives. Moreover, across the

Commonwealth, the use of Comprehensive Services Act (CSA) funds is not uniform. CSA funds may be used to fund temporary services to prevent child's entry into foster care.

Ms. Wolf noted that the qualitative study highlighted the following issues:

- No standard policy on kin diversion practice.
- Inadequate documentation of kin diversion to support appropriate accountability measures.
- Some localities lack services and system funding for kin diversion and prevention services.
- Kin diversion may hinder reunification efforts due to lack of mandated timelines.
- Nonrelatives not eligible for benefits, e.g., Medicaid, food stamps, day care, financial benefits.
- Caregivers lack knowledge of, access to adequate services and supports and training on handling children's issues.

Several recommendations emerged from their study, including:

- Developing clear, written state policy guidelines and associated training for kin diversion practice.
- Including minimum standards for assessment, service provision, safety planning, client education, monitoring, case documentation and data tracking.
- Providing workers with tools for clients and training on the tools to inform and advise families on benefits and options including: TANF eligibility, available services, option to become a kinship foster parent, legal options such as how kin can seek legal custody and birth parents can regain custody.
- Develop an accountability process to track diversion data statewide through OASIS by including kin diversion in Safe Measures reporting and in the Quality Service Review performance management process.
- Providing custody assistance for relatives who obtain custody.

Ms. Wolf noted that the Department was working on several of these recommendations, including developing assessment standards and tools for relatives and formulating policy on diverting youth from foster care. In addition, a prevention guidance manual is to be issued to emphasize diversion. Ms. Wolf asserted that lack of a data system able to track prevention/diversion cases remains an issue, as does a lack of services and support for relatives taking care of kin children.

Questions/Comments

- A question was raised about diverting children to relatives in a locality other than the originating locality – what is the impact on that locality and the services it is now required to provide.
- Delegate Peace commented on the lack of uniformity within the system and the lack of oversight.
- Judge Deglau spoke to the family partnership meetings in Henrico Juvenile and Domestic Relations Courts. She also discussed the foster care prevention assessment order which she formulates to require the custodians/parents to identify all family members. Frequently, the family members the custodians/parents do not want notified are the most stable placement option for the child.
- Delegate Peace asked what was in place in the local departments that were doing a better job diverting youth from foster care.

- Advisory Group members stated that funding was helpful but creativity was also important. Both Washington County and Hampton were examples of local departments that did a good job diverting youth from foster care.
- A comment was made that what works in one locality may not work in another.
- Mattie Satterfield noted that there were a variety of reasons to explain differences among departments. She asked whether it would be helpful to have state guidelines for assessing relatives for foster care diversion. The statistics illustrate this as an effective approach for helping youth in the child welfare system.
- Ms. Wolf noted there is no tracking to monitor children who are diverted from foster care. Comment about maintaining flexibility to the benefit to the child
- Christie Marra noted there is not a lot of available information or services for these family members. For example, they have no right to counsel.

Definitions of Kinship Care and Other Related Terms

Ms. Hamaker

Ms. Hamaker briefed the Advisory Group on how other states define kinship caregivers, as well as how Virginia programs define relatives. She started with an overview of states' definitions and noted that she had focused on states similar to Virginia because they were state-supervised, locally administered. Ms. Hamaker highlighted definitions of kinship and relatives and whether they were classified as "broad" or "narrow". She noted the selected states' definitions were categorized by the Casey Family Programs State Child Welfare Policy Database and their category may not be up-to-date.

Ms. Hamaker stated that a broad definition of kin means relatives and other kin have the same treatment by the child welfare agency, with the exception of preference for placement. A narrow definition of kin is stricter and includes only blood relatives or those related by marriage or adoption.

Ms. Hamaker highlighted the definition used by Ohio, which has a kinship caregiver definition, and North Dakota, which includes other appropriate individuals recognized in the community as having a relationship with the child. Nevada referenced fifth degree of relation to the child but was amended to the third degree of relation during the 2009 Nevada legislative session.

Ms. Hamaker then gave an overview of the definition of kinship/relative as referenced in Virginia Code, regulation, and/or policy. She explained that she included all available definitions from social services, child welfare, education, and juvenile justice. She noted that she also included the Virginia Code provision for standby guardianship. Several child welfare studies on this topic noted that states originally developed standby guardianship laws to address the needs of parents living with terminal illness. However, states are using these laws more broadly and many states no longer limit the use of standby guardianship to cases of illness.

Questions/Comments

- Lelia Hopper referenced a Virginia Court of Appeals case dealing with termination of parental rights. The parent argued the termination order should be vacated because the local department had not considered granting custody of the child to parties the parent claimed to be the child's relatives. The parent's brother was the boyfriend the couple whom the parent wished to be considered as a placement. The Court of Appeals ruled the couple to be nonrelatives. Ms. Hopper also stated that it was legitimate to have different definitions for family or relative for different purposes. She also noted there was justification for a

broader definition for “relative caregiver” because of the best interests of the child; however, there may be too many circumstances to settle on one definition.

- Judge Deglau agreed with Ms. Hopper, that a narrowly construed definition applied in some situations and would be appropriate (e.g., termination of parental rights, placements of custody, benefits, etc.). There need to be different definitions for different situations.
- Ms. Hopper asked a question about diversion; prior to court involvement, when parents agree to a relative placement to avoid an abuse and neglect proceeding, how does the child get back home? She noted that one’s hope is that the relative works with the parent to return the child home, but oftentimes that is not the case – what occurs then?
- An Advisory Group member commented that a broad definition that would allow flexibility for the different circumstances. A definition similar to Minnesota’s, which states a relative includes an individual with whom the child has resided or had significant contact, ensures a placement that is best for the child. A broad definition would be helpful in allowing for case-by-case determinations.
- Mr. Freund whether there was outcome data when a broader definition was utilized versus a more narrow definition.
- Ms. Satterfield noted that that local departments could locate an eligible non-relative and bring them into the foster care system and go through the process to license them as “non-relative foster placement.” It was noted that the law does not allow for licensing variances for these individuals.
- Several members expressed concern about legal liabilities of informal non-relative placements.
- A question was raised about whether fictive kin were included in the Family Finding completed by the local departments. Several members noted fictive kin were included, but it may not be a very comprehensive.
- Should the focus be on a more unified process for “relative” placements rather than a uniform definition?
- The Advisory Group discussed including definitions of “formal” kinship care and “informal” kinship care.

Next Steps

Delegate Peace thanked the members for their assistance and suggestions. Commission on Youth staff will consider all the expressed concerns and discussion, including whether changing the definition would affect Title IV-E funding, and which program definitions would be most appropriate to clarify. Staff will also work with the Department of Social Services to receive information on data collection efforts on kinship care placements.

Ms. Atkinson informed the attendees that the Advisory Group would reconvene on Monday, September 17 at 1:00 p.m. The meeting adjourned at approximately 3:20 p.m.