

# Virginia Commission on Youth

## Definition of Kinship Caregivers Advisory Group

House Room 3, the Capitol  
September 17, 2012  
1:00 p.m.

### MINUTES

#### **Members Attending:**

Delegate Christopher Peace, Senator George Barker, Karen Addison, Melanie Baker, Lisa Banks, Gary Close, Maggie Deglau, Victor Evans, Stacie Fisher, Chris Freund, Richard Garriott, Lelia Baum Hopper, Christine Marra, Em Parente, Catherine Pemberton, Karen Reilly-Jones, Eric Reynolds, Shawn Rozier, Mattie Satterfield, Adalay Wilson, Mary Wilson, Therese Wolf, Amy Woolard

#### **Participating Electronically:**

Delegate Surovell, Patty Bailey, Kathy Dial

#### **Monitoring:**

Delegate Mark Keam, Betty Wade Coyle

#### **Staff Attending:**

Amy M. Atkinson, Leah Hamaker, Meg Burruss

#### **Guests:**

Joel Andrus, Carter Batey, Becky Bowers-Lanier, Gary Cullen, Denise Gallop, Gardenella Green, Julia Hammond, Lyndell Lewis, Sarah Stanton

#### **Welcome and Introductions**

*The Honorable Christopher K. Peace, Chair*

Delegate Peace welcomed the Advisory Group. He thanked staff for organizing the meeting and noted it was important so the members of the Advisory Group could offer their expertise on this important topic. He then asked that the Advisory Group members and guests introduce themselves.

Delegate Peace thanked Delegate Surovell for calling into the meeting between court hearings. He then turned the meeting over to Ms. Parente for an overview on the Department of Social Services' work on kinship diversion. He apologized to the members and noted, if the meeting was longer than one hour, he would have to leave to preside over another legislative meeting.

#### **Guidance on Kinship Diversion**

*Em Parente, Program Manager for Family Engagement and Placement  
Virginia Department of Social Services*

Ms. Parente noted that the Department of Social Services was currently working on an assessment tool to assess family placements for kinship diversion. A training curriculum for kinship diversion was also in development. She introduced Mr. Gary Cullum with the

Department and informed the Advisory Group that he would provide a more detailed overview about the Department's efforts with foster care diversion.

Mr. Cullum presented on the foster care diversion guidelines being developed by the Department of Social Services (DSS). He noted that all practices incorporated in the draft guidelines were gathered from national research and included elements such as how to engage families in strengths-based decision making; where should the child be placed, early prevention services; intervening prior to the need for a child protective services (CPS) intervention; and diversion during CPS intervention. Unless local agencies have taken custody of the child, the decision of where the child goes lies with the family. Local departments would like to facilitate parents' identification of family placements with the objective being identifying appropriate relative/non-relative placement options. Mr. Cullum noted the role of local departments is to work with the family to identify as many family members as possible. Local departments can also provide guidance regarding assisting the child's biological family, determining the child's needs, and establishing the duration of the placement. The local departments also connect diversion families with needed resources and/or transferring necessary resources (i.e., health insurance). Mr. Cullum stated that diversion was a family's decision, not a local department of social services' (LDSS) placement. Thus, it is important to engage both families because the child needs to be safe and feel safe and placement expectations must be identified.

Senator Barker asked about the mix of kinship diversions. Mr. Cullum replied that 70 percent of youth were placed with family members and 30 percent are placed with nonrelatives. He noted that families must consent to background checks and the draft guidance will address both types of placements. A follow up question was whether the first step was to look to relatives and then pursue other parties if no relative was identified. Mr. Cullum and Ms. Parente stated this was how local departments proceeded. Discussion followed whether the family's situation stabilized for a majority of the cases.

### **Standby Guardianship in Virginia**

*The Honorable Scott A. Surovell*

*Virginia House of Delegates*

Delegate Surovell briefed the Advisory Group members about his experience with standby guardianship. He noted that in Virginia, standby guardianship arises by consenter petition of a third party and is voluntary. It is similar to a Power of Attorney. It may provide some value for these cases because a parent can voluntarily designate another adult to make decisions for the child. Delegate Surovell noted that standby guardianship is helpful when parents are cooperative and allows them to specify the conditions. He stated that because the decision can be revoked, it might also accomplish what Senator Barker hoped to achieve with Senate Bill 217 which was introduced during the 2012 General Assembly Session.

An Advisory Group member asked about the "qualified parent" provision in the Code Section and noted that the law currently applies to end-of-life planning. Discussion ensued whether "qualified parent" was limited to parents diagnosed with a chronic medical condition. It was noted that standby guardianship was established in Virginia law in response to the AIDS epidemic. There was discussion as to whether this provision would be helpful. The Advisory Group concurred that standby guardianship was not appropriate for these situations.

## **Issues Impacting Kinship Care in Virginia: A Local Perspective**

*Mattie Satterfield, Assistant Director of Human Services  
Norfolk Department of Social Services*

*Cathy Pemberton, Member, Child and Family Services Committee  
Director, Powhatan Department of Social Services*

Ms. Satterfield and Ms. Pemberton provided the Advisory Group with a local perspective on issues affecting kinship care in Virginia. Ms. Satterfield noted that Virginia currently has no uniform policy or guidance on kinship diversion. Local departments strive to ensure that relative caregivers are an appropriate placement option for the child; however, there are inconsistent diversion practices among the local departments. One of the biggest challenges, described by Ms. Satterfield, was providing quality training for working with relatives and parents in a non-adversarial fashion.

Other challenges facing local departments include no training or curriculum addressing informal kinship placements to help with decision-making. Local departments facilitate informal kinship placements and strive to ensure youth are safely diverted from foster care to family members. Another common question confronting local departments is the legal standing of the relative caregiver. Ms. Pemberton stated that local departments may not want to place the child in foster care but are also aware that the relative caregiver has no legal authority over the child. There needs to be consistency of practice in the Commonwealth. For example, questions frequently arise when a child leaves one locality to reside with a relative in another locality. Other commonly raised questions include services for the child/family, payment sources, and authorizing medical care.

Virginia has not always sought relatives as a placement option. Family members may not have the money to hire an attorney to help them obtain custody; they have to go into court and face an adversarial process. Ms. Satterfield and Ms. Pemberton stated that diverting youth from foster care to informal kinship care is a complex issue accompanied by many challenges.

Several Advisory Group members noted that opportunities might be present when talking about diversion. A question arose whether local department can get involved to facilitate these placements without assuming custody. When the child goes to live with a relative in these situations, the child is not in the custody of the local department or the relative. Local departments may work with the child and the family as a prevention case. Thus, the child is in limbo. The biological parent has legal custody while a relative has physical custody of the child.

One Advisory Group member noted that the issue was really about facilitating the placement of the child with a relative as a way to avoid a formal CPS complaint. Another member stated that, once the government is involved, the elephant in the room is that the parties must do what the agency requires or risk being taken to court. It was also noted many cases come to the LDSS that are not CPS-related and the aim is to get the child placed with a relative. However, there needs to be a process if the parent is experiencing a crisis and needs a relative to help care for the child temporarily. This is particularly true when the parent is the party making the placement request. Another member stated that court involvement might be required in certain situations.

Senator Barker stated that the focus of this Advisory Group should be what could be done to best help these children and their families. A large number of children are not living with their birth parent(s) but are not involved with their local department of social services. It is important to understand the differences in these cases and what may be helpful for one case may be too

restrictive for another. It was also noted that, depending on the jurisdiction, parents might get a very different response.

## **Formulation of Options**

### *Advisory Group Discussion*

Ms. Hamaker provided the Advisory Group an opportunity to comment on the Commission's draft recommendations. Ms. Hamaker stated that Finding #1 addressed the definition of relatives for purposes of kinship care. She noted that several states have adopted broader definitions of relatives for kinship care to allow for case-by-case determinations. Ms. Hamaker shared the recommendation option handout with the Advisory Group. She referenced the recommendation options under Finding #1 which included amending § 63.2-100 of the *Code of Virginia* to either broaden the definition of relative or delineate who may be considered a relative for purposes of kinship care. She stated that this change could also be made to DSS policy or the Advisory Group may prefer taking no action.

The Advisory Group members discussed the draft options. Several of the members stated their preference that any changes to the definition be made legislatively and noted that such a change could give local agencies more latitude in relative placements. One member noted the prevalence of unmarried families and stated that changes to the *Code of Virginia* would be helpful to reflect this practical perspective. Several members expressed concerns regarding changing this section of the Code and the impact it could have on other sections. In addition, if the definition of relative becomes too broad, it may make placement decisions more difficult. The Advisory Group concurred that it may be appropriate to have a broader definition of relative early in the process, such as for kinship care. However, it may be problematic if the broader definition influences other more serious situations.

Senator Barker suggested defining the term based upon the situation, i.e., not defining relative but defining kinship caregiver. The Advisory Group concurred with this approach. Ms. Hamaker stated that she would include this recommendation to Finding #1 and remove the options to clarify relative by amending DSS policy.

Another member asked if the Advisory Group could discuss the school enrollment issue. It was noted that the Advisory Group was focusing on the removal and placement of a child from their parents with relatives in the early onset of a family crisis. Difficulties may arise in some localities because there are different practices among judicial districts and school divisions. However, families and local departments are being encouraged to utilize informal kinship care and then encountering barriers, such as enrolling the child in school. It was also noted that many families try to resolve their situation on their own but must go to court because of school enrollment issues. Judge Deglau indicated that she has already had 10 cases this year because of local school enrollment provisions.

Ms. Hamaker asked the Advisory Group to review Finding #5 and the accompanying recommendations and asked the Advisory Group whether any of these options might be helpful. Ms. Hamaker stated that one option would call for amending the standby guardianship provision in the *Code of Virginia* as an option when a child is placed with relatives as an alternative to foster care. Another option would be creating a relative care guardianship provision as a resource for relatives caring for children placed with them as an alternative to foster care. It was noted that this option was used in Michigan. Several of the members stated their opinion that Michigan's use of guardianship mirrored Virginia's custody provisions.

Mr. Freund asked whether the Advisory Group could recommend supporting Senator Barker's bill (SB 217, 2012). The Advisory Group concurred. Ms. Atkinson noted that there was no representation from schools on the Advisory Group and would share this with the Chair of the Commission on Youth.

Ms. Atkinson suggested that Commission on Youth staff schedule a meeting with representatives from the Virginia Department of Social Services to discuss several of the key study issues. She stated that staff would then report to the Advisory Group and then determine whether another Advisory Group meeting was necessary. Ms. Atkinson reminded the Advisory Group that staff would be providing an overview of the study at the upcoming Commission on Youth meeting scheduled for Wednesday, October 17 at 10:00 a.m. in House Room C of the General Assembly Building.

The meeting adjourned at 2:50 p.m.