

LEGAL GUARDIANSHIP OF A MINOR BY COURT PETITION

DRAFT STUDY PLAN

Study Mandate

- During the 2019 study year, the Commission on Youth reviewed Virginia's foster care system. At its December 4, 2019, meeting, the Commission approved nineteen recommendations in the areas of workforce recruitment and retention, Fostering Futures, kinship care, and foster care family recruitment and retention.
- As a result of feedback from local department site visits during its study, the Commission determined that guardianship of a minor by court petition is a potential legal arrangement that needs to be explored further. In other states, a person interested in the welfare of a minor will seek guardianship to prevent that child's involvement with the foster care system.
- The Commission adopted the following recommendation related to guardianship:
 - Direct the Commission on Youth to study adding guardianship of a minor as a legal arrangement in Virginia by creating an Advisory Group to:
 - a. Look at the benefits as well as the obstacles this change would create.
 - b. Determine the potential impact on school enrollment and medical care.
 - c. Investigate what would be the rights of the parties in such an arrangement.
 - d. Explore the possible implementation of state-funded guardianship assistance.

Background

- According to the Office of the Administration for Children and Families (ACF), legal guardianship is an option available to parents who are planning for the care of their children in their absence due to a variety of situations, such as illness or incarceration.
- In states with laws relating to guardianship for minors, a legal guardian has court-sanctioned custody and the ability to enroll the child in school, as well as to make medical, disciplinary, and other decisions relating to the well-being of the child.
- States that allow legal guardianship of a minor commonly have provisions for general and limited guardianships. The definition of these terms vary widely state by state.
- Unlike a number of other states, Virginia does not have a statutory mechanism for the granting of guardianship of a minor by court petition. Virginia does have standby guardianship, but that is only used in specific scenarios related to the debilitating condition or death of a parent. Virginia also has testamentary guardians related to wills and estates.
- Virginia law, however, does provide for transfer of legal custody. In Virginia, a party with a legitimate interest who is granted legal custody of a child has the ability to enroll the child in school, as well as to make medical, disciplinary, and other decisions relating to the well-being of the child.
- The National Conference of Commissioners on Uniform State Laws (NCCUSL) has for years debated and presented uniform laws related to guardianship of a minor to legislators across the United States. This organization most recently approved the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA) in 2018.

- Concerning support payments, in the majority of states that provide for state-subsidized guardianship payments, access to these payments is limited to the families of children who have come in contact with the child welfare system and have entered the foster care system.

Study Activities

- Review and analyze Virginia laws, policies, and procedures related to the following:
 - Standby guardianship
 - Power of attorney to delegate parental or legal custodial powers
 - Temporary entrustment
 - Kinship guardianship
 - Transfer of custody process
 - Guardianship of incapacitated persons and minors
 - Formal and informal kinship care
- Conduct extensive background and literature reviews:
 - Guardianship of a minor in other states
 - Subsidized guardianship in other states
- Convene an Advisory Group of impacted stakeholders:
 - Commonwealth's attorneys
 - County attorneys
 - Court Appointed Special Advocates (CASA)
 - Division of Legislative Services
 - Juvenile Court judges
 - Kinship families
 - Legal Aid Justice Center
 - Local Departments of Social Services
 - Patrick Henry Family Services
 - Secretary of Health and Human Resources
 - Virginia Bar Association – Family Law Coalition
 - Virginia Bar Association – Wills, Trusts & Estates Section
 - Virginia Department of Social Services
 - Virginia League of Social Services Executives
 - Virginia Poverty Law Center
 - Virginia's Court Improvement Program – Supreme Court of Virginia
 - Virginia's Kids Belong
 - Voices for Virginia's Children
- Present findings and recommendations to the Commission on Youth.
- Receive public comment.
- Prepare final report.